

## **Chapter II: Internal control and monitoring**

**2.1** DGFT and DoC need to strengthen their internal control procedures and internal audit systems and outcome measurement of the reward and incentive schemes.

DoC or its CCA have not conducted any internal audit of the field units of DGFT or DoC. According to DGFT, an inspection unit of DGFT, New Delhi, headed by an officer of the rank of Additional Director General, carried out inspection of offices of RAs from time to time including export promotion schemes. Controller Aid Accounts and Audit, Department of Economic Affairs informed (October 2012) that various Export Promotion Licences issued by DGFT were to be audited by them but they have not conducted any such audit.

DGFT in their policy circular dated January 2000 and October 2003 on licences and brand rates, circulated to RAs, stated that about five to ten per cent of the cases, selected on random basis, may be subjected to post audit by Internal Audit Unit and requisite follow-up action initiated immediately to review the case at appropriate level. This required RAs to create an Internal Audit Wing in their respective jurisdiction for audit activities in respect of the office. RAs are required to maintain all register/records i.e. claim receipt register, cheque payment register, monthly technical reports and post audit register etc. for proper monitoring.

As per paragraph 4.45 of HBP, vol 1, RA shall monitor all such cases wherein the scrip(s) has been issued without bank realisation certificate (BRC) and ensure that the BRC is submitted within 12 months from the date of issuance of the scrip or such extended period as may be allowed by RBI. Further, as per paragraph 4.40.2 of HBP, each Custom House at ports shall maintain a separate record of details of exports made under DEPB.

In terms of DoR, MOF letter No F.No. A-11019/34/2001 - Ad. IV dated 27 June 2002, the Directorate General of Export Promotion (DGEP), CBEC is also supposed to conduct post audit of select cases of duty free imports allowed under various Export Promotion Schemes in the Customs and Central Excise formations. For this purpose, DGEP interacts with trade, EOUs, STPIs, SEZs and also handles the audit of these formations.

### **2.2 Internal control procedures and internal audit system at RAs**

Though the system provided for test check/review of all the authorisations at prescribed percentages, as per DGFT instructions dated January 2000 and October 2003, the same is not being practised at eight RAs (Hyderabad, Vishakhapatnam, Chennai, Coimbatore, Madurai, Ahmedabad, Puducherry

and Cuttack) in contravention of the above circular. System of Internal audit was also not observed at KASEZ, Gandhidham and MEPZ Chennai.

- Though RA Jaipur, claimed 100 per cent internal checks in respect of DEPB scrips, instances of short/non imposition of late cut, excess DEPB granted due to incorrect FOB value, incorrect application of higher exchange rate or due to consideration of higher FOB amount of BRCs instead of SBs, were noticed during the audit scrutiny, indicating inadequate mechanism of monitoring and control.
- Instances of expiry of demand draft (₹ 2500) and short payment of application fee (₹ 1000) were also noticed at RA, Jaipur.
- Further, genuineness of the relevant documents like RCMC, BRCs/FIRCs, Shipping Bills/Bill of Exports and Registration with different Authorities submitted by the applicants were also not being verified.
- Internal Audit wing of the RA, Cuttack audited only the cash and contingency of the office and not the scheme. Hence, there was no Internal Audit System for DEPB scheme. Further, there was no internal control over the scheme as the Department was not able to furnish the exact number of DEPB scrips issued, FOB value and DEPB credit figures year wise. The DEPB Register maintained by the RA, Cuttack differed from MIS Report on DEPB scrips issued with Electronic data at Home page and database maintained at National level.
- RAs Kanpur and Varanasi and NSEZ Noida issued 11 DEPB scrips valued at ₹ 63.08 lakh during 2005-06 to 2012-13 on the basis of photocopy of BRC.

RAs Jaipur and Ahmedabad and KASEZ, Gandhidham accepted the audit observations. RA, Ahmedabad further stated that duly verified SBs were received from customs and duly authenticated BRCs were received from Bank, therefore, there was no need to maintain separate register as 100 per cent verification was done for SBs and BRCs.

Reply of RA, Ahmedabad is not tenable because as per above circular the Post Audit Wing of the RA had to select 5 per cent of DEPB licences and the non EDI SBs and BRC of the selected files were to be cross-verified with the concerned Port and Bank.

Audit further observed that there was no system of monitoring and internal audit at ICDs Mandideep & Pithampur, ICD Santhanagar and ACC Hyderabad. ACC, Bengaluru admitted that no internal audit mechanism existed. Though

Internal Audit Department existed at Sea Ports, Chennai and Kochi and Airport, Thiruvananthapuram, audit of DEPB cases was not undertaken.

DoR replied (January 2014) that Board's circular No. 14/1999-Cus dated 15.3.1999 had prescribed detailed verification procedure for registration of DEPB scrip before they could be utilized. On initiation of electronic transmission of shipping bills and DEPB scrips, the online validation checks were put in place (circular No. 11/2007-cus dated 13.2.2007). Post clearance audit is prescribed for imports. All these were in the nature of audit checks.

DGFT in its reply (February 2014) stated that Post Issue Audit Wing (PIAW) has been set up at all the RAs.

DoR replied (January 2014) that incentive and reward schemes are in the domain of DGFT. However, this Department is open to examining suggestions for strengthening monitoring and compliance.

Replies of DGFT and DoR are not acceptable because audit revealed that the instructions issued by DGFT or DoR from time to time were not implemented/monitored in regional formations.

**Recommendation:** *Internal control and audit system of RAs, Customs, Ports need strengthening for efficient implementation, monitoring and outcome of the incentive schemes.*

### **2.3 Monitoring and Internal control at Ports**

As per paragraph 4.40.2 of HBP, vol 1, 2009-14, each Customs House at ports shall maintain a separate record of details of exports made under DEPB.

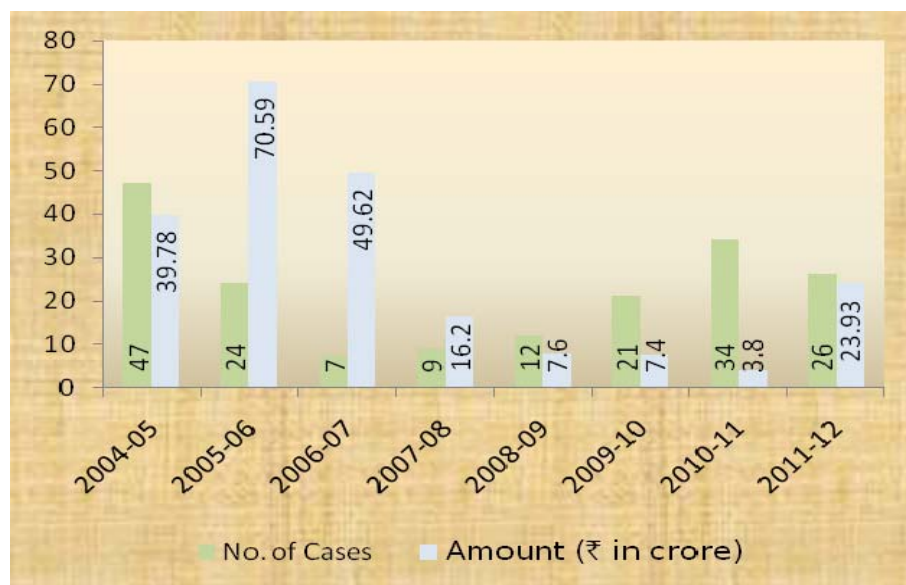
- At KASEZ, Port, Gandhidham, one consolidated 'Bill of Export Register' was being maintained instead of maintaining separate register/records showing details of export (Bill of Export) made under DEPB Scheme.
- At ICD, Garhi Harsaru (Gurgaon) records relating to all the export promotion Schemes had been kept together instead of in Scheme wise segregation. One combined file containing information of all TRAs issued/received for all the export promotion Schemes was maintained, no separate Scheme wise register was maintained in the absence of which, total number of TRAs issued/ received during the period, records maintained manually i.e. (2005-06 to 2009-10) could not be ascertained. Further, no record relating to sale/transfer of DEPB Scrips etc. by the original licence holder was maintained in the Custom Port.

DoR in its reply stated (January 2014) that on the aspect of maintaining consolidated record, the report of the jurisdiction is awaited and accepted that the sale/transfer of freely transferable DEPB scrips is not maintained by Customs, but its usage by the transferee holder-importer is reflected in customs record.

The reply is not acceptable because in the absence of separate records in respect of any scheme, it may not be possible to monitor or act upon cases of default properly.

#### 2.4 Misuse of DEPB duty credit benefit

The Directorate of Revenue Intelligence (DRI) had reported the following cases of misuse of DEPB scheme during the years from 2005-06 to 2011-12 in their Annual Reports (Appendix VII). The trend is interesting as in the initial three years after closure of the scheme was announced (2002), there were higher number of cases detected. This also coincided with the commencement of CECA. After a lull period of three years the misuses increased around the period DEPB was finally closed. The nature of misuse was due to incorrect valuation, misclassification, mis-declaration, round tripping etc. Study of these trends may serve a useful purpose for future scheme formulations. Garments, fabric/yarn, crude palm oil etc were the most seized commodity by DRI.



Audit observed that 60 cases of misuse had been detected at two RAs (Kochi and Kolkata) and two Customs Ports (ICD Hyderabad, ACC Bengaluru) during the period 2003-04 and 2011-12.

One case of misuse of DEPB duty credit scrips was detected by ACC, Bengaluru for export of IC-engine parts such as valve seats, bushings, turbo charger parts, nozzle blank rings etc and mis-declaring the goods as 'Alloy

Steel Castings'. The same was intimated to RA, Bengaluru and an SCN was issued to the exporter. The final outcome of the case is awaited as of March 2014.

DRI and Preventive unit of Customs Commissionerate at Kolkata detected 14 cases of misuse of the scheme amounting to ₹ 54.86 lakh during the period 2003 to 2011 for fraudulent conversion of SBs or wilful mis-declaration of exported goods to be of Indian origin to avail DEPB benefit. On adjudication of the cases, penalty of ₹ 55.16 lakh was imposed by RA, Kolkata. However, copy of adjudication order was not endorsed to Customs authority, except in one case.

DoR in their reply stated (January 2014) that DRI proceeds on cases on the basis of specific intelligence and it has informed the details of the cases on misuse of DEPB Scheme as compiled from its Zonal units. After investigation by DRI and issue of show cause notices the cases lie with various Adjudicating Authorities/ jurisdictional Commissioners of Customs. Further, while the number of cases and duty amount shown in the Annual Reports is based on detection, this may be different from the amount demanded in show cause notices.

DGFT in its reply (February 2014) stated that action under Foreign Trade (Development and regulation) Act has been initiated. However, DGFT has not provided any detail of the action initiated in these cases to audit.

## **2.5 Deficiencies in DGFT's EDI system**

To simplify procedures, reduce transaction costs and to provide electronic commerce solutions to the trade and industry for various Export Promotion Schemes, the data relating to Electronic data Interchange (EDI) SB (for DEPB Scheme) issued on or after 1 October 2005 from Customs EDI Ports was exchanged between the Customs and DGFT Server on a digital platform. DEPB scheme was claimed to be completely online in the outcome budget of DoC. Audit noticed the following deficiencies in the system at RAs:-

- The EDI module did not capture the exports made under FTAs
- The EDI Module did not provide any system for online sharing of information regarding transfer and sale of DEPB scrips between RA/DGFT/Customs.

In the absence of proper system for capturing all the relevant information, Customs/DGFT did not have any details on exports made under FTAs or sale/transfer/ utilisation of duty scrips.

DoR in their reply stated (January 2014) that the lead agency for entering into Free Trade Agreement is Ministry of Commerce. On the Customs side,

exports under FTA do not attract any FTA related benefit. Therefore, no differentiation is made for such exports. The sale/transfer of freely transferable DEPB scrips is not maintained by Customs, but its usage by the transferee holder-importer is reflected in Customs record.

DGFT in its reply stated (February 2014) that Customs EDI system does not capture the export made under FTAs. It is the importer in India's FTA partner country and not the Indian exporter that declares that imports are under FTAs.

Reply of DoR is not acceptable because FTAs provide duty concessions and result in duty forgone. Reply of DGFT overlooks the point that DEPB is earned out of exports and can be used for any imports, therefore any trader could over value export (with no RMS/valuation on exports/PMV and unlinked with BRS) to a non dutiable destination and undervalue imports (with high import duties) which could be a bottleneck for growth of trade.

#### **2.5.1 Absence of mechanism for verification of Present Market Value (PMV) of EDI Shipping Bills and issue of duty credit without verification of PMV**

Paragraph 4.43 of HBP 2004-09 and 2009-14 stipulates that where the rate of credit entitlement under DEPB Scheme comes to ten per cent or more in respect of products entitled for Duty credit under DEPB scheme, the amount of credit against each such export product shall not exceed 50 per cent of the Present Market Value (PMV) of the export product. At the time of export, the exporter shall declare on the SB that the benefit under DEPB scheme against the export product would not exceed 50 per cent of the PMV of the export product. However, PMV declaration shall not be applicable for products for which value cap exists irrespective of DEPB rate of the product.

Policy circular no. 28(RE-2005)/2004-09, dated 6 October 2005 stipulates that applicants are not required to submit a hard copy of DEPB SBs. The RA will finalise DEPB claim based on the data submitted on DEPB ECOM module only. However, RA may, at their discretion, call for such additional documents as may be required to satisfy themselves of the admissibility of DEPB claim as per FTP and HBP.

The scrutiny of EDI data of RLA, Mumbai revealed that where licensee had filed their application electronically, licensee had not submitted hard copy of SBs. The details of SBs were available in online e-shipping bill. However, the online process of e-shipping bills does not reflect PMV of the exports product, hence were not reflected in EDI system at RLA, Mumbai. As such, RLA, Mumbai could not verify the PMV of items where DEPB rate of products was ten per cent or more. In absence of this information, the basic condition

for verification of PMV where the duty credit is ten per cent or more and no value cap exists had not been verified by RLA, Mumbai before issue of licence.

Audit observed that RLA, Mumbai issued 19 DEPB scrips amounting to ₹ 23.95 crore to M/s Videocon Industries Ltd. for export of TV Glass Bulbs/Shells/Glass Parts for TV Picture Tubes under Electronics Product code 83 (serial no. 73) without verification of PMV.

RA, Kolkata also admitted that there is no system in the RA office to verify PMV.

DoR in their reply stated (January 2014) that the requirement for which data fields is required from Customs is defined by DGFT.

DGFT in its reply (February 2014) reiterating the reply of RA, Mumbai, stated that the situation of DEPB benefit exceeding 50 per cent of PMV will arise only in the rarest of rare cases since provision says that wherever DEPB rate comes to 10 per cent or more, the duty credit should not exceed 50 per cent of the PMV. It is also pertinent to note that even though DGFT did not receive details relating to PMV in its EDI system from Customs, DGFT factored PMV calculations in its processing based on the details mentioned in the physical copy of the shipping bills submitted by the exporters. Audit is in no position to verify the methodology adopted under the circumstances.

#### **2.5.2 Wrong classification of Vishesh Krishi and Gram Udhog Yojana (VKUGY) cases under DEPB Scheme**

Paragraph 2.56 of HBP vol.1 stipulates that if Customs authorities, after recording reasons in writing, permit conversion of an Export Promotion (EP) copy of any scheme-shipping bills on which benefit of that scheme has not been availed, exporter would be entitled to benefit under the scheme in which shipment is subsequently converted.

RA, Jammu, issued seven duty credit scrips valuing ₹ 2.92 crore to VKUGY Scheme during 2005-06 and 2006-07 and the same were entered under DEPB scheme (Code: 06). Audit noticed that the same were correctly entered under VKUGY manually without deleting them from DEPB Scheme in EDI data. Since these cases continued to be shown under DEPB scheme in EDI data, as such it reflects poorly on the integrity and completeness of EDI data.

DGFT while admitting that duty scrips were issued under VKYU and wrongly entered in DEPB scheme stated (February 2014) that a person can claim benefits under both DEPB and VKGUY, if the product in question is entitled under these schemes. There is no bar that if a person has claimed benefits

under DEPB scheme, he cannot claim benefit under VKGUY scheme. Hence no loss has accrued to the Government.

Reply of DGFT is not related to the facts presented by audit. The issue raised was that scrips issued under VKGUY were entered in EDI system under DEPB scheme and not about the entitlement of the scrip holder. Further, in terms of paragraph 3.13.3 of FTP, benefit of VKGUY and DEPB cannot be allowed at the same rates.

### **2.5.3 Duty credit debited without licence details**

Audit scrutiny of data furnished by ACC, Bengaluru, revealed that 1,11,161 items had been imported under DEPB scheme from 2005-06 to 2011-12. Audit noticed that though the duty amounting to ₹ 1.01 crore in respect of 279 items had been debited, however, no details of licence were found in the data. In the absence of licence details, the correctness of debiting of duty could not be ascertained in audit.

The reply of DGFT is awaited (March 2014).

DoR in their reply stated (January 2014) that the Bengaluru Customs has reported that out of the 279 items (under 61 Bills of Entry), the debit details can be viewed for Sl. No. 60 to 63, Sl. No. 120-277, for which the registration numbers are available. For remaining items, data is not available in the new ICES 1.5 System, as it pertains to earlier period viz. 2005, 2006. The Commissioner is being directed to get the balance details from NIC/importers.

### **2.5.4 Grant of duty credit on export of goods with 'zero' DEPB rate**

In terms of paragraph 4.3.1 of the FTP 2010-11, as amended, an exporter may apply for credit, at specified percentage of FOB value of exports, made in freely convertible currency. Such credit shall be available against such export products and at rates, as may be specified by DGFT by way of Public Notice (PN). The duty credit may be utilized for payment of customs duty on freely importable items and/or restricted items.

RA, Chennai issued DEPB duty credit scrips valuing ₹ 29.38 crore against FOB value of ₹ 552.54 crore on exports against which DEPB rates (both as a percentage on the FOB value and Value Cap) were 'zero'.

DGFT in its reply stated (February 2014) that due to system error the shipping bills show '0' even though specific DEPB rate existed.

Reply of DGFT confirmed that EDI system had glitches and could not be totally relied upon.



### **2.5.5 Deficiencies in the online systems database**

DEPB rates for the year 2008-09 were revised vide PN dated 5 November 2008. However, the department later noticed that there was an anomaly in the English and Hindi versions for item Cotton Yarn (DEPB serial no. 78/89) which was fixed at 7.67 per cent but printed as 3.67 per cent in the English version and 7.67 per cent in the Hindi version of DEPB Schedule of the system. On a query to the Senior Technical Director and NIC official by DGFT in May 2009 about the history of any changes having been made in the website on rates notified vide PN dated 5 November 2008, it was informed by NIC that the system did not allow retrieval of the "Change history" and that the same would be installed shortly. DGFT in its reply stated (February 2014) that a system has been put in place for the past two years to trace changes/modifications.

Audit concludes that the system was at risk of being changed by any unauthorized person without leaving a trail during the period of audit (2007-13) and the same may be presented for verification during future audits.

### **2.5.6 Delay in transmission of SBs from customs ports to DGFT**

The Customs Authority had to upload EDI SB data to DGFT system and on the basis of uploaded information, the exporter had to file online application to the concerned RA. As per paragraph 4.46 of HBP vol 1, application for obtaining credit shall be filed within a period of twelve months from the date of exports or the date of uplinking of EDI SB details on DGFT website, or within three months from the date of printing/release of SB, whichever is later, in respect of shipments for which claim has been filed.

Audit observed that there was a delay ranging from 30 to 1553 days noticed at seven RAs, Bhopal, Mumbai, Pune, New Delhi, Kolkata, Ahmedabad and Lucknow in uploading of the SBs at DGFT site.

DoR in their reply stated (January 2014) that the shipping bills are transmitted online from Customs to DGFT Systems after filling of correct EGM by the shipping lines provided bill assessment is final and not provisional. The transmission is not made merely on crossing the Let Export Order (LEO) stage at the time of export. There may be a few cases requiring re-transmission after rectification of technical or EGM errors.

DGFT in its reply (February 2014) stated that the observation primarily relates to Customs. Further, they stated that the exporter cannot be penalized and his entitlement cannot be reduced on account of delayed uplinking of EDI shipping bills in DGFT website by customs. Attention was also drawn to paragraph 4.46 of HBP Vol. 1 which clearly stated that the time period for filing DEPB claim shall be within a period of 12 months from the date of

exports or 6 months from the date of realization of export proceeds or the date of uplinking of EDI shipping bill details in DGFT website or within 3 months from the date of printing/release of shipping bill, whichever is later.

Audit is of the opinion that there was substantial delay in uplinking of EDI shipping bill details in DGFT website from customs ports. DGFT and DoR need to review and eradicate the reason for delays in uplinking of data.

**Recommendation:** DGFT may review its EDI system along with the online data exchanged with the Customs Department and modify its data requirement in the EDI module to ensure compliance to the policy provisions.

## **2.6 Lack of co-ordination between DGFT, RAs, Customs Department and Banks**

The implementation of DEPB scheme required coordinated functioning of the four authorities i.e. DGFT, RAs of DGFT, Customs Department and Banks.

The Task Force on Indirect Taxes (October 2002) constituted by Ministry of Finance, under the chairmanship of Shri Vijay Kelkar commented that *“Both DGFT and Customs are two arms of the Government and it is necessary that they operate together and in harmony while giving effect to Government policies. At the same time it is appreciated that at the field level the individual officer of Customs (or DGFT) are bound by their individual laws and would hesitate to act on the basis of a DGFT order unless specifically so authorized to do so under their own law. Thus, the remedy lies in improved coordination between the two departments”*.

The Action Taken Report of Ministry of Finance, Department of Revenue on the recommendation of Kelkar Committee is awaited (March 2014) from the Department.

While DGFT determined the rates of items under DEPB scheme and RAs issued DEPB scrips to the exporters on the basis of realised FOB value of exported goods at DEPB rates as per rates set by DGFT, the Customs Department certified that the goods were exported and allowed duty free import against the scrip issued by RA, and the Bank issued certificate for the realisation of foreign exchange of goods exported. After the introduction of online system, the licences were being issued on the basis of EDI Shipping Bill (SB), which could be verified through the system by RAs and Customs.

Audit observed several instances of lack of co-ordination between all these four authorities involved in the implementation of the scheme. A few such instances are listed below:-

- DGFT, in its Policy Interpretation Committee (PIC) meeting on 24 March 2009, decided that DEPB benefit against export of ‘fish meal’

and 'fish oil' products, being value added products, were not entitled for DEPB benefit. Subsequently, in September 2009 Customs Commissionerate, Mangalore, asked RA, Bengaluru for cancellation of DEPB scrips issued on the basis of export of said products through Mangalore port. However, RA, Bengaluru argued that the exports of these products under DEPB ought not to have been allowed by Customs and no action was initiated by RA, Bengaluru for recovery/cancellation of DEPB scrips utilised/unutilised. The action in this regard was taken by RA, Bengaluru only in January 2010 after intervention of DGFT, New Delhi.

DGFT in its reply (February 2014) stated that RA Bengaluru is in constant touch with the concerned exporters for recovery.

- The Chief Commissioner of Customs (Preventive), New Delhi, vide letter no. VIII (SB) 9/73/INV/2010/9287 dated 3 September 2010 informed RA, New Delhi about Indian Trade Classification (ITC) violations by M/s M.K. Exports and M/s M.K. Overseas Pvt Ltd in respect of export of Frozen/Chilled Buffalo/Sheep Meat exported under DEPB scheme and requested for non-issuance of DEPB scrips till the finalisation of adjudication. However, circular for non-issuance of scrip to the said exporter was issued by RA, New Delhi only on 11 October 2010, i.e. after a delay of more than one month. Audit noticed that during the period from 3 September 2010 to 11 October 2010, ten DEPB scrips valuing ₹ 1.86 crore were issued to these two exporters by RA, New Delhi.

DGFT in its reply (February 2014) stated that the matter regarding M/s MK Exports was settled and alert notice was withdrawn and due care would be taken in future to reduce the time period in communicating such notices.

- It was observed that though Electronic Data Interchange (EDI) started functioning at Paradeep Port, Orissa w.e.f 21 March 2011 as per the PN dated 11 July 2011, it was not properly operative till the closure of the scheme i.e. 30 September 2011. Both the manual system and EDI system were in use simultaneously.

DGFT in its reply (February 2014) stated that Custom Ports which are EDI enabled send data to Customs Centralized server at ICEGATE. It is ICEGATE that collates data and sends it to DGFT server. When there is a problem in the functioning of the Custom's EDI system, Customs issue manual shipping bills.

- RAs Chennai, Coimbatore, Madurai, Kochi, Puducherry, Delhi, Kolkata, Jaipur, Hyderabad, Raipur, Bhopal, Ahmedabad, Moradabad, Varanasi and Thiruvananthapuram had no specific system for correspondence/exchange of information with Customs and Bank authorities. There was no inter-departmental meeting among the RA and Customs Department with Bank regarding cross checking of BRCs. It was only in cases of doubt/specific information that the BRCs submitted by the exporters were being verified from the issuing banks. RA, Kolkata had verified BRCs in only seven cases during the period between 2005-06 and 2011-12.

RA, Kolkata replied (August 2013) that the matter will be taken up with DGFT, Headquarters. RA, Jaipur stated (June 2013) that no such provisions were prescribed in FTP and it relied on the BRCs provided by the firm and an undertaking was also obtained from the exporter declaring the genuineness of documents. ACC Bengaluru admitted that there was no specific mechanism for information exchange between DGFT and Customs regarding misuse of DEPB scrips. RA, Delhi stated that it is an organisation for export facilitation and promotion and the same worked on trust basis. However, as a precautionary measure, the documents, including BRCs, of the firm applying for DEPB scrip for the first time were verified before extending any benefit.

DGFT in its reply (February 2014) stated that for the new comers DEPB was issued after verification of BRCs with the banks. Copies of forwarding letters of DEPB scrips issued were being endorsed to concerned bank from where the BRC was issued for cross checking at their end. After the introduction of the e-BRCs, the details of foreign exchange realization comes to DGFT directly (electronically) and shipping bill detail is transmitted electronically from customs to DGFT. Incidentally all benefits at present are being granted only after realization.

- The Customs Authority had to register DEPB licences issued by all RAs. However, the system that was in existence did not provide the RA-wise DEPB scrips registered. At three EDI Customs ports (ICD, Khodiyar, ACC, Ahmedabad and Kandla Customs House) and two non-EDI Ports (Pipavav Customs House and KASEZ port, Gandhidham), there was no system to provide information on RA-wise DEPB scrips registered with them.

- Though the Reserve Bank of India (RBI) provided Export Outstanding Statement (XOS) at RAs Ahmedabad and Kolkata, every six months showing the exporter/SB-wise foreign exchange outstanding, however, this statement was silent about the scheme to which the SB pertained, thereby rendering the whole exercise futile. XOS statements were not received from RBI at RA, Hyderabad and Custom Ports at Hyderabad.

Though the recommendation for improvement of coordination between DGFT and Customs Department was made way back in 2002, audit noticed that there was no healthy exchange of information/data between the agencies concerned with the implementation of the scheme.

DoR in their reply stated (January 2014) that the recommendations of the Task Force on Indirect Taxation (headed by Dr. Vijay Kelkar) were handled by Central Excise Wing of CBEC and response has been sought which is awaited.

They further stated that:

- a) On the issue that both manual and EDI Customs systems functioned at Paradeep Port after EDI system was made functional, the Bhubaneswar Commissionerate has reported that though EDI operations began from March 2011, drawback module and link with DGFT started functioning from October 2011, and there were also teething problems. The manual filing was with prior permission of the competent authority.

This reply, however, did not highlight the implicit issue of clarity in such permissions.

- b) On the issue of Customs EDI system not providing information on RA-wise DEPB scrip registration, it was stated that no differentiation is made RA-wise while registering the licenses in Customs EDI as no such requirement was received from DGFT. The DEPB licenses were issued by RA specifying the port of registration and this detail can be provided by DGFT.

**Recommendation:** DGFT needs to improve its coordination with Customs and RBI by coming up with solutions and taking prompt action on alerts issued by Customs/RBI for all rewards and incentive schemes.

DoR in their reply stated (January 2014) that the Board's Instruction No. 609/119/2010-DBK dated 18.01.2011 relating to reward schemes and export obligations, directed all field formations on 18 January 2011 that 'an institutional mechanism should be set up whereby the customs officials and

the officials of the local RLA meet at least once every quarter, or as per mutually agreed period, to exchange intelligence, check misuse and pursue issues such as export obligation (EO) fulfilment status in cases, where Export Obligation period has expired in that quarter/ previous quarter so that concerted action can be taken against the defaulters'. Major field formations have reported that there is regular interaction between Customs and RA. The Board shall reiterate these instructions for further improving the coordination.

DGFT stated that recommendation has been noted for compliance in future scheme. Further, DGFT stated that quarterly meetings between the regional authorities of DGFT and local customs formation are being held on a regular basis.

## **2.7 Non-monitoring of Bank Realisation Certificates /Legal Undertakings (LUTs) by RAs**

RA can initiate action for recovery of the duty credit where scrip holder fails to produce BRC or extension as granted by RBI. In case, where BRC is not submitted, LUT for the same amount as the duty credit granted is to be submitted in accordance with paragraph 4.45 of HBP, vol 1 and watched through LUT Register. As per PN dated 30 March 2009 the licensing authority had to monitor the submission of BRC in respect of licences issued from April 2009 onwards.

### **(a) Non-submission of BRCs within the prescribed timeframe**

Audit scrutiny revealed that at 15 RAs, BRCs for export proceeds of 1652 DEPB scrips having duty credit value of ₹ 709.59 crore had not been submitted. Fresh duty credit scrips were issued to the exporter without compliance with the scrip issued earlier.

- RA, Kolkata issued SCN in 55 cases, out of which in 15 cases BRC has been submitted by the scrip holders after being pointed out in audit.

DGFT in its reply (February 2014) stated that in 26 cases the party submitted the documents and in the remaining cases SCN were issued for finalisation of cases.

- RA, Ahmedabad had issued demand letters against 20 DEPB scrips for recovery of excess duty credit along with interest. However, exporters had neither paid duty nor surrendered the unutilised DEPB scrips, even after passage of 52 days to 787 days (June 2013) from the date of issuance of demand letters.
- RA Bhopal, in 61 cases forfeited Bank Guarantees for ₹ 44.33 lakh and an amount of ₹ 8.29 crore is still pending.

- An analysis of DEPB SB data provided by ACC, Bengaluru and NCH, Mangalore was compared with the XOS statement provided by RBI and it was found that there were 225 DEPB SBs amounting to ₹ 42.09 crore pending realization in respect of ACC, Bengaluru and NCH, Mangalore.
- RA, Jaipur issued 16 DEPB scrips for ₹ 1.17 crore during February 2009 to October 2010; however, the scrip holders did not submit BRCs within 12 months of the issuance of the scrips.
- Except at RA Bhopal and RA Hyderabad, there was no monitoring mechanism in place to ensure that the export proceeds are realized subsequently. There was nothing on record in respect of these cases regarding grant of proper extension of time by RBI for realization. There was no mechanism for watching the cases where there was failure in realization of export proceeds and consequent enforcing of recovery of credit.

On these being pointed out, RA Jaipur replied (June 2013) that evidence of partial realisation of export proceeds was furnished by the exporter and for the remaining realisation, the firm would submit evidence shortly. Reply is not acceptable as copies of partially received BRCs were not produced to Audit. RA, Delhi replied that cases would be reviewed and required action according to policy provisions would be taken.

**(b) Discrepancies noticed in Legal Undertaking (LUT) register**

The following discrepancies were noticed in the maintenance of LUT register at RAs:

- RA, Ahmedabad was maintaining LUT register which was incomplete and without full information in respect of scrips issued against LUTs, viz file no., scrip no., LUT no., date and amount of LUT etc. Further, year-wise break-up of cases pending realisation in the form of abstract was also not prepared in the register. No signatures of a competent officer were found recorded on the cases which were shown closed.
- LUT registers maintained at RA, Jaipur were incomplete and information required for monitoring LUT cases was not found incorporated. Summaries of outstanding LUT cases were also not maintained. The detailed information of 61 DEPB scrips (13 of year 2009-10, 16 of 2010-11 and 12 of 2011-12) issued without BRCs against LUTs could not be ascertained.

- LUT Registers maintained by RAs Mumbai and Pune revealed that data maintained in Register as well as in EDI were not updated. The method of closing the files after submission of requisite BRCs was also not uniform and systematic.

In the absence of complete details in the LUT register, the very purpose of monitoring of LUT cases and their realisation is defeated.

DGFT in its reply (February 2014) stated that master register for DEPB against LUT has been updated and wherever BRCs have not been received, action has been initiated against the firms under FT (D&R) Act 1992.

Actual action initiated may be intimated to audit.

## **2.8 Non production of records/information in respect of misuse of DEPB scrips and redressal of grievances**

Audit requested RA, Ahmedabad to provide information regarding misuse of DEPB scrips and system for redressal of grievances in May 2013 along with the relevant SCN/Adjudication files.

While furnishing the information, RA, Ahmedabad stated that year-wise compilation was not available with them. Regarding SCN/Adjudication files pertaining to DEPB scrips, RA Ahmedabad replied that the information was not available since the Enforcement cum adjudication (ECA) master register did not contain licence-wise information of SCNs/Adjudication cases.

RA, Ahmedabad did not produce SCN/Confirmed demand files to audit and asked it to seek permission of the Adjudicating Authority for access of such files by pointing out specific reason for its requirement. RA further stated that Audit team would then have to take responsibility for such files by giving an undertaking in writing since it involved risk of loss of documents or misplacement of files, which could have an adverse bearing on the outcome of the case.

DGFT in its reply (February 2014) stated that ECA master register does not contain any information relating to DEPBs issued for the audit period FY 2005 to FY 2012. However, RA Ahmedabad has stated that it has directed its ECA Division to show/produce the ECA master register to the audit team for the above said period if they visit the RA again at a time convenient to them.

The above indicates reluctance on the part of RA Ahmedabad to submit records for audit. Necessary action may be taken by DGFT to avoid such recurrence in future. Action taken may kindly be intimated to audit.



## **2.9 Non maintenance of records at RAs**

Audit noticed that list of DRI cases; search and seizures records; appeals cases; CBI cases; SCN cases; Special Valuation Branch (SVB) cases, statement of outstanding Arrear of revenue; Post Clearance Audit (PCA) and On Site Post Clearance Audit (OSPCA) cases are not being maintained by the RAs Hyderabad and Visakhapatnam.

DGFT may instruct the RAs to maintain the records for all incentive schemes so that they can monitor the cases and avoid operational malfunctions. Providing records in time to audit forms an essential part of the legislative control mechanism. This also helps audit in having a balanced view of the entire transaction related to the policy implementation. DGFT may like to ensure this for all future audits.