

Chapter IV: Cases of operational malfunction

4.1 Incorrect utilisation of DEPB duty credit

Paragraphs 2.12 and 2.12.3 of HBP, vol 1 stipulate that the validity of DEPB authorization shall be 24 months from the date of issue and the duty credit scrips must be valid on the date on which actual debit of duty is made. Further, as per paragraph 4.3.1 of FTP, 2009-14, DEPB credit may be utilised for payment of customs duty on freely importable items and/or restricted items. DEPB scrips can also be utilised for payment of duty against imports under EPCG Scheme. Further, DEPB scrips can also be used/debited towards payment of customs duty in case of EO defaults for Authorisation issued under chapters 4 and 5 of FTP.

Audit scrutinised whether the RAs/Customs Department were exercising checks to ensure that DEPB duty credit scrips were being adjusted/utilised correctly and in the following instances, it was noticed that the licences were utilised in contravention of provisions.

4.2 Incorrect adjustment of excess DEPB duty credit

In eight cases at RA, Ahmedabad, adjustment of excess DEPB duty credit and/or interest amounting to ₹ 23.40 lakh was done against unutilised DEPB scrip/FMS scrip, which was incorrect.

RA, Ahmedabad stated (November 2013) that recovery process has been initiated.

4.3 Irregular debit of Clean Energy Cess in DEPB Scrips

According to Central Excise notification dated 22 June 2010, an effective rate of Clean Energy Cess is ₹ 50 per tonne. Notification nos. 28/2010-CE and 29/2010-CE, both dated 22 June 2010, have also been issued to exempt such goods (i.e. to which the clean energy cess applies) from education cess and higher education cess. As a result, aggregate rate of cess would be ₹ 50 per tonne. This amount had to be paid in cash, as suitable amendment in the CENVAT Credit Rules 2004 had been made to exclude payment of clean energy cess using credit.

Audit noticed that 'coal in bulk' imported under 64 Bills of Entry at Custom House, Kandla, Kolkata, Bengaluru, JNPT, Goa, Ludhiana, Paradeep and Mundra were cleared by debiting the duty in DEPB scrips, in contravention of the above provisions. This resulted in incorrect debit of Clean Energy Cess of ₹ 68.37 lakh and ₹ 1.16 crore in DEPB scrips for the period from 2010-11 and 2011-12 respectively.

DoR in their reply stated (February 2014) that Kandla Customs has reported recovery of ₹ 1.26 crore and Amritsar Customs has reported recovery of ₹ 2835 in two cases and six cases are under examination. Regarding cases at Kolkata, Bengaluru, JNCH, Goa and Paradeep, reports are awaited from field formations.

4.4 Irregular grant of DEPB duty credit

As per paragraph 1.1 of HBP, vol 1, DGFT notifies the schedule of DEPB rates. Further, as per paragraph 2.4 of FTP, DGFT may specify procedure to be followed for an exporter or importer or by any licensing or any other competent authority for purpose of implementing provisions of FT (D & R) Act, the Rules and the Orders made there under and FTP. Such procedures shall be published by means of a PN, and may, in like manner, be amended from time to time.

Audit scrutinised whether the RAs were exercising checks to ensure correct grant of DEPB credit. In the following instances, it was noticed that the licences were issued in contravention of provisions.

4.5 Irregular grant of DEPB duty credit during suspension of benefit under DEPB

DEPB benefit on six items were withdrawn through various PNs issued by DGFT. Though the benefit was subsequently restored from a later date, Audit however noticed that in 108 cases, DEPB benefit amounting to ₹ 13.01 crore had been granted for exports made during the suspension period.

(a) Cotton yarn

As per PN dated 21 April 2010, DEPB benefit was withdrawn on export of cotton yarn including Melange Yarn appearing at DEPB entry sl. No. 78 (Product Group 89-textiles). It was further clarified vide policy circular no. 04 (RE-2010)/2009-14 dated 29 November 2010 that exports of 'Cotton Yarn' would not be entitled to any DEPB benefit even under the residual entry at sl. No. 22D of the Product Group "Miscellaneous" of DEPB rate schedule. The same was restored for exports made on or after 1 April 2011 vide PN dated 4 August 2011.

Audit scrutiny, however, revealed that four RAs (Ahmedabad, Coimbatore, Puducherry and New Delhi) issued 35 licences for duty scrips of ₹ 5.40 crore for exports made during the gap period from 21 April 2010 to 31 March 2011 when DEPB benefit was not admissible to 'cotton yarn'.

DGFT in its reply stated (February 2014) that action for recovery has been initiated wherever benefits were not admissible. Further action will be taken

as per provision of FT (D&R) Act 1992. Action initiated may be intimated to audit.

(b) Cotton

DEPB benefit on export of 'cotton' was withdrawn with effect from 21 April 2010 vide PN dated 31 March, 2011. It was also clarified that DEPB benefit should not be available even under DEPB entry serial no. 22C and 22D of the Product Group "Miscellaneous", with respect to shipments made on or after 21 April 2010. The same was restored vide PN dated 4 August 2011 w.e.f 1 October 2011.

Audit scrutiny, however, revealed that three RAs (Ahmedabad, Mumbai and New Delhi) issued 37 licences for duty scrips of ₹ 4.85 crore for exports made during the gap period from 21 April 2010 to 30 September 2011 when DEPB benefit was not admissible on 'cotton'.

DGFT in its reply stated (February 2014) that action for recovery has been initiated wherever benefits were not admissible. Further action will be taken as per provision of FT (D&R) Act 1992. Action initiated may be intimated to audit.

(c) Cold Rolled Non Alloy Steel

According to PN dated 27 March 2008, read with corrigendum dated 5 April 2008, DEPB benefit on product 'cold rolled non alloy steel' appearing at DEPB rate list serial no. 387A of Product Group Engineering (Product code 61) was withdrawn from 27 March 2008. The DEPB benefit on this item was again restored with immediate effect vide PN dated 14 November, 2008.

Audit scrutiny, however, revealed that RA, Mumbai issued five licences for duty scrips of ₹ 3.12 lakh to four exporters on 'cold rolled non alloy steel strips' under serial no. 387A of product group 'Engineering' exported between 27 March 2008 and 30 March 2008.

DGFT in its reply stated (February 2014) that recovery has been initiated wherever benefits were not admissible. Further action will be taken as per provision of FT (D&R) Act 1992. Action initiated may be intimated to audit.

(d) Skimmed Milk Product

As per PN dated 17 April 2008, read with corrigendum dated 23 April 2008, DEPB benefit on export of 'skimmed milk product, casein and any other milk product' under serial no. 22C and 22D of the Miscellaneous Product (Product Code 90) and 'Casein all types' appearing at DEPB entry serial no. 571 of the Product Group 'Chemicals' (Product Code 62) was withdrawn for the shipments made from 17 April 2008 to 16 December 2008. The DEPB benefit

on this item was again restored with immediate effect vide PN dated 16 December 2008.

Audit scrutiny, revealed that RA, Mumbai issued four licences for duty scrips of ₹ 44.79 lakh on export of 'acid casein and milk protein concentrate-80 per cent' under product group 'Chemical' under serial no. 571 of DEPB rate schedule for shipments made before 16 December 2008, which was irregular.

DGFT in its reply (February 2014) stated that RA, Mumbai has raised the demand to the beneficiary. Further action will be taken as per provisions of the FT (D&R) Act 1992. Action initiated may be intimated to audit.

(e) Ferro Manganese H.C

As per PN dated 27 March 2008, DEPB rate on Ferro Manganese appearing under serial no. 327 of Engineering Product Group was temporarily suspended with immediate effect. The DEPB benefit on this item was again restored with immediate effect vide PN dated 14 November 2008.

Audit scrutiny, however, revealed that RA, Pune issued one licence to M/s Natural Sugar and Allied Industries Ltd and duty credit of ₹ 2.66 lakh was granted on export of 'Ferro Manganese H.C.', covered under serial no. 327 of Engineering Product Group, exported in May 2008, which was irregular.

DGFT in its reply (February 2014) stated that RA, Pune has raised the demand to the beneficiary and the firm has been put under Denied Entity List (DEL) on 12 November 2013. Further action will be taken as per provisions of the FT (D&R) Act 1992. Action initiated may be intimated to audit.

(f) Non Basmati and Basmati rice

As per PN dated 27 March 2008, DEPB benefit on 'non-basmati rice' under sl. Nos. 22C and 22D of the Miscellaneous Product was suspended with immediate effect from 27 March 2008. Further, vide PN dated 3 April 2013, DEPB benefit on 'basmati rice' under serial nos. 22C and 22D of the miscellaneous product was suspended from 3 April 2008.

Audit scrutiny, however, revealed that RA, Delhi issued 28 licences for duty credit scrips of ₹ 1.94 crore on exports of non basmati and basmati rice during April 2008 under DEPB scheme.

DGFT in its reply (February 2014) stated that the cases are under review and updated position will be intimated.

4.6 Irregular grant of DEPB credit for supply of goods not manufactured in India

As per sl. No. 1(e) of the General Instructions for DEPB Rates to the Schedule of DEPB Rates (notified on 9 February 2004), the rates of DEPB specified in

the schedule shall not be applicable to exports of goods of foreign origin, unless the goods have been manufactured or processed or on which similar operations have been carried out in India.

The Development Commissioner (DC), Falta SEZ, allowed duty credit of ₹ 74.84 lakh to M/s Exotica International, a Domestic Tariff Area (DTA) unit, for supply of cotton track suit (knitted) to a SEZ unit under 17 SBs. Audit noticed that the goods against 11 SBs were manufactured either in Oman or Kuwait as per the examination report of the customs officer endorsed on SBs. Since the goods were not manufactured in India, the supplier was not eligible for duty credit amounting to ₹ 50.16 lakh under DEPB scheme for supplies against these 11 SBs.

The reply of the Department is awaited (March 2014).

4.7 Irregular grant of DEPB credit on supply of goods to SEZ unit

As per paragraph 4.43 of HBP, vol 1, an application for grant of DEPB credit for supplies from DTA to SEZ unit can be filed either with the RA or DC concerned along with BRC in prescribed form. Further, as per paragraph 4.3.1 of FTP, in case of supply by a DTA unit to a SEZ unit/SEZ Developer/Co-Developer, the exporter may apply for credit for exports made from foreign currency account of SEZ unit/SEZ Developer/Co-Developer. However, the exporter shall also be entitled for DEPB benefit in case payment is made in Indian Rupees by SEZ Developer/Co-Developer for supplies received w.e.f 10 February 2006.

DC, Falta SEZ, issued ten duty credit scrips aggregating ₹ 89.40 lakh between January 2006 and January 2009 to seven DTA units for supply of goods to SEZ units. Audit scrutiny of BRCs submitted by the claimants revealed that the payments made by the SEZ units were in Indian currency. Since only SEZ Developers/Co-Developers are permitted to pay in Indian currency, such transactions by SEZ units were not entitled for grant of duty credit under DEPB scheme. Therefore, grant of duty credit of ₹ 89.40 lakh was irregular. The reply of the Department is awaited (March 2014).

4.8 Irregular grant of DEPB credit due to non declaration of net weight of exported DEPB items

As per DEPB schedule, automobile tyres reinforced with 'nylon tyre cord warp sheet or rayon tyre cord warp-sheet with or without butyle rubber tubes' exported under product code 62/494 were entitled to duty credit at the rate of 10 per cent subject to value cap of ₹ 90 per kg (FOB value).

RA, New Delhi issued licence to M/s Modi Tyres Company Ltd for ₹ 54.86 lakh on the basis of 43 manual SBs and DEPB duty credit was restricted to

applicable rate of value cap. Audit observed that though the SBs contained both DEPB and non-DEPB items, the exporter had not declared their respective net weights and had instead incorrectly declared total number of units exported. Since value caps are calculated on the basis of net weight of the goods, in the absence of any declaration of net weight of DEPB items, the department had accepted and granted benefit on the basis of weight declared by the exporter in the application.

In the absence of relevant information, the correctness of the claim could not be ascertained in audit.

DGFT in its reply (February 2014) stated that the applicant has declared weight in DEPB application itself but the same could not be cross checked. RA, Delhi has assured that due care would be taken to meticulously check all entries in respect of such cases in future.

The reply of the department is not acceptable as the SB is an authenticated record and the Department cannot rely upon the declaration furnished by the applicant alone.

4.9 Irregular grant of duty credit against unrealised export proceeds

As per paragraph 4.45 of HBP, vol 1, RLAs are required to monitor all such cases wherein the scrip(s) has been issued without BRC and to ensure that the BRC is submitted within 12 months from the date of issuance of the scrip (s). Further, as per paragraph 2.25.3 of HBP, in cases where applicant applies for duty credit scrip against confirmed irrevocable letter of credit and this is confirmed and certified by exporter's bank in relevant Bank Certificate of Export and Realisation, payment of export proceeds shall be deemed to be realised. For Status Holder, irrevocable letter of credit would suffice.

Audit observed that in three instances in two RAs (New Delhi and Kolkata), duty credit amounting to ₹ 5.48 crore had been granted without actual realisation of the export proceeds. Further, the scrips were issued without safeguarding the government revenue by not obtaining Bank Guarantees/Legal Undertakings against unrealised export proceeds.

DGFT in its reply (February 2014) stated that pending realizations under DEPB, cases are being very meticulously monitored at the highest level. In case of non-realization action will be initiated under FT (D&R) Act, 1992 as amended from time to time. Action initiated may be intimated to audit.

4.10 Irregular grant of DEPB credit on advance payment

According to clause 16 of the Foreign Exchange Management (Export of goods and services) Act (FEMA) 2000, where the exporter receives advance payment (with or without interest), from a buyer outside India, the exporter

shall be under an obligation to ensure that the shipment of goods is made within one year from the date of receipt of advance payment or where the export agreement provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment, the exporter shall require the prior approval of the Reserve Bank.

Audit observed that RA, Kochi, issued a DEPB duty scrip valuing ₹ 0.70 lakh to the exporter, for shipments made between September and December 2009, against advance payment of ₹ 94.00 lakh received during July and August 2007 without furnishing approval of RBI, which was not in order.

DoR in their reply stated (January 2014) that DEPB scheme is no longer in operation. As far as DGFT's reward and incentive schemes like VKGUY, FMS, FPS are concerned, the shipping bill reflects only the intent of claiming reward and the checks are exercised by DGFT to ensure the grant of correct benefit.

DGFT in its reply stated (February 2014) that SCN to the authorization holder has been issued.

DGFT and Customs Department did not have checks in place to filter out export consignment made during suspension period to rule out incorrect grant of DEPB scrips. Action initiated may be intimated to audit.

4.11 Incorrect grant of DEPB benefit

As per paragraph 4.3.1 of FTP, an exporter may apply for credit, at specified percentage of FOB value of exports, made in freely convertible currency. Credit shall be available against such export products and at such rates as may be specified by DGFT by way of PN. Further, as per general instructions for DEPB rates, wherever any specific rate exists for a particular item under DEPB rate list, the item shall not be covered under any generic description of DEPB rate list.

Audit scrutinised whether the RAs were exercising checks to ensure that duty credit had been calculated correctly as per notified rates and as per the provisions made on this behalf. In the following instances, audit found that licences with excess duty credit had been issued.

(I) Misclassification of goods and incorrect grant of DEPB duty credit

DEPB duty credit is eligible on export of specified goods at the rates notified. Audit noticed that in two cases, the exported goods were misclassified and DEPB credits were granted incorrectly.

(a) Fish and Fish products

'Fish, crustaceans, molluscs, aquatic, invertebrates and any aquatic animal product of marine or fresh water origin in live or chilled or dried form' under sl. No. 1 in the product group 66 (Fish and Fish Products) are eligible for 4 per cent DEPB credit, whereas, 'fish, crustaceans, molluscs, aquatic, invertebrates and any aquatic animal product of marine or fresh water origin in frozen form' are eligible for 8 per cent DEPB credit under Sl. No. 2 in the product group 66 (Fish and Fish Products) with effect from 12 July 2007 (PN 17 RE 2007). Further, PN 69 dated 28 May 2010 prescribed a value cap of ₹ 131/Kg for 'fish, crustaceans etc in dried form'.

Audit observed that RA, Kochi granted DEPB credit at the rate of 8 per cent to two exporters for export of 'freeze dried shrimps' classifying them under Sl. No. 2 of the product group 66 *ibid*. The exported goods are rightly classifiable under sl. No. 1, and thus, eligible for duty credit at the rate of 4 per cent of fob value of exports. This resulted in excess grant of DEPB credit to the tune of ₹ 1.03 crore.

DGFT in its reply (February 2014) stated that the matter has been referred to DGFT by RA, Cochin. The matter is under consideration in consultation with the Technical Members representing the Administrative Ministries in the DEPB Committee.

(b) Hot Rolled Steel Sheets

RA, Kolkata issued duty credit scrip for ₹ 67.82 lakh on export of G.P. coil for FOB value of ₹ 13.81 crore exported through Kolkata (Sea Port) in April 2005. The exporter was allowed DEPB credit under sl. No. 329 of Product Code 61 at the rate of 4 per cent with value cap of ₹ 30.50/kg.

Scrutiny of export documents submitted along with the claim revealed that the description of the export item in SB was 'Cold Rolled Steel Sheets' classifying them under customs tariff heading (CTH) 7208 5190, which pertains to 'Hot Rolled Steel Sheets etc'. Further, in the invoice and the BRC the export product was described as 'Hot Dipped Galvanized Steel Coils'. But, despite the disagreement in the description of the export item in the different export documents, DEPB credit at higher rate was allowed as per sl. No. 329 of Product Code 61, as 'Cold Rolled Galvanized Non-alloy Steel Sheets etc.'

The risk of granting of DEPB credit at higher rate without ascertaining the actual export item could not be ruled out.

DGFT in its reply (February 2014) stated that RA, Kolkata has asked the firm to substantiate the documents for regularization of case and personal hearing has been allowed to settle the issue immediately.

(II) Incorrect grant of duty credit on items under 'Negative List' of exports

Goods which are permitted for exports are detailed in 'schedule 2 of Indian Trade Classification (Harmonised System) Classification of Export and Import Items' notified by the Government of India, Ministry of Commerce & Industry, Department of Commerce vide notifications Nos. 2 and 3 dated 31 August 2004. As per paragraph 3A to the General Notes to Export Policy – Goods under Restrictions of Schedule 2 cited, the prohibited items are not permitted to be exported and an export authorisation will not be given in the normal course for prohibited goods.

Pulses, falling under sub-heading code 0713 of the ITC HS code were placed in the 'Negative List' of exports by the Government of India, Ministry of Commerce & Industry, Department of Commerce vide notification Nos. 15 dated 27 June 2006 and were prohibited for exports. The prohibition, as above, on export of Pulses was extended till 31 March 2014, vide DGFT notification No. 38 dated 25 March 2013.

RA, Chennai issued DEPB duty credit valuing ₹ 1.12 lakh for export of Pulses during the year 2007-08. Similarly, 11 other shipments of Pulses with FOB value of ₹ 2.05 lakh were allowed at Chennai Seaport under DEPB post-exports scheme when the prohibition cited above was in force.

DoR replied (February 2014) that the circumstances under which such export was permitted are being examined and the recovery has been made from the exporter in Chennai.

4.12 Incorrect grant of DEPB duty credit on ineligible items

Under DEPB scheme, an exporter may apply for credit, as a specified percentage of FOB value of exports, in freely convertible currency. The credit shall be available against such export products and at such rates as may be specified by DGFT by way of PN. These rates were based on the computation of basic customs duty paid by the exporters on the inputs listed in SION applicable to the export product. As per general instructions for DEPB rates, wherever any specific rate exists for a particular item under DEPB rate list, the item shall not be covered under any generic description of DEPB rate list.

Audit observed that six RAs had issued 172 licences on export of seven items which are not covered in DEPB schedule. Incorrect grant of duty credit in two cases noticed at RAs, New Delhi and Hyderabad could not be worked out due to lack of details.

- Audit noticed that at Madras Export Processing Zone (MEPZ)-SEZ (Chennai) and RAs Pune, New Delhi, Kolkata and Bengaluru, 176 DEPB scrips amounting to ₹ 1.12 crore had been granted on seven items

(Prefabricated parts of corner arm, Ordinary Portland cement, Soap nuts without seeds, IGL-5060 Mono Ethyl Glycol, frozen peeled then cooked PUD shrimps, Manipulators, Rotators, Hydraulic Fit up station and Welding rotators and coffee packed in glass bottles) which were not covered under DEPB schedule and thus not eligible for grant of DEPB duty credit.

- As per DEPB schedule, product sl. No. 519 of product group 62 covers 'Beauty Cream'. RA, New Delhi while issuing seven DEPB licences valuing ₹ 6.58 lakh, non-DEPB items viz. Toner, cleanser, eye liner, conditioner, shampoo, nail enamel, soap and kajal were also taken into consideration along with beauty cream for calculating benefit under DEPB scheme. Omission to eliminate these items from the exported goods by RA, New Delhi, while calculating DEPB credit resulted in excess grant of DEPB credit. Customs authority also failed to disallow such products for claiming benefit under DEPB.

DGFT in its reply stated (February 2014) stated that recovery memo has been issued in Delhi. In Pune, the firm has been placed under DEL and further necessary action has been initiated as per FT (D&R) Act, while in Kolkata the case is under process for finalisation.

4.13 Grant of duty credit on time barred claim

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 up-linking of EDI SB details in DGFT website, or within three months from the date of printing/release of shipping bill, whichever is later, in respect of shipments for which claim has been filed.

DC, Falta SEZ granted five DEPB licences with duty credit of ₹ 50.51 lakh for claims submitted between July 2005 and June 2008 for SBs with LEO date between November 2003 and May 2005. Since the applications had been filed after expiry of the maximum prescribed time limit for submitting claim with late cut, the same had become time-barred and thus ineligible for grant of DEPB duty credit.

The reply of the Department is awaited (March 2014).

Similarly, audit noticed that in 70 cases at 7 RAs (Ahmedabad, Jaipur, New Delhi, Hyderabad, Bengaluru, Kanpur and Dehradun) and 2 SEZs (Falta and Kandla) excess DEPB credit amounting to ₹ 25.93 lakh had been granted due to non/incorrect imposition of late cuts.

On being pointed out (May/June 2013) RA, Ahmedabad stated (July 2013) that reply would be sent in due course after examination. DC, Kandla Special

Economic Zone (KASEZ), Gandhidham replied (June 2013) that recovery, if any, would be made after proper scrutiny of documents.

Further, audit noticed that RA, New Delhi levied excess late cut amounting to ₹ 0.98 lakh in two cases comprising five shipping bills even though the applications were filed within time frame as per the provision *ibid*.

DGFT in its reply (February 2014) stated that the cases at RAs, New Delhi and Hyderabad, the scrips were issued correctly as the applications were filed within six months from the date of realisation of as per BRC and in one case at Delhi, recovery action has been initiated. Similar recovery action has also been initiated at RA, Bengaluru and Kanpur have also initiated recovery proceedings and recovery has been made at RA, Jaipur.

4.14 Incorrect grant of duty credit on third party exports

As per paragraph 2.34 of FTP, third party exports, as defined in chapter 9, shall be allowed under FTP. Further, as per paragraph 9.62 of the FTP, 'third-party exports' means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as SBs shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s). BRC, GR declaration, export order and invoice should be in the name of third party exporter.

RA, Kolkata issued a transferable duty credit scrip valuing ₹ 75.49 lakh to M/s Asbesco (India) Pvt Ltd in November 2010 for export of 'pole line hardware fittings and accessories'. The DEPB credit was claimed for exports made vide 20 SBs filed between January and March 2009.

Audit scrutiny revealed that M/s Fedders Lloyd Corporation Ltd was the exporter while M/s Asbesco (India) Ltd was the 'third party exporter'. However, neither were the BRCs in the name of M/s Asbesco (India) Ltd nor was there any endorsement of the firm's name. Yet, the RA, Kolkata granted DEPB scrip for ₹ 75.49 lakh in contravention of rules.

DGFT in its reply (February 2014) stated that endorsement of the third party has been endorsed in BRCs. The reply of DGFT is not correct as perusal of BRCs issued by State Bank of India in favour of M/s Fedders Llyod Corporation Ltd does not bear the endorsement of the third party exporter.

DGFT did not frame the terms of scheme clearly to ensure proper interpretation and correct grant of benefit under the scheme.

4.15 Undue benefit to the exporters under DEPB Scheme

As per paragraph 2.4 of FTP, DGFT may specify procedure to be followed for an exporter or importer or by any licensing or any other competent authority for purpose of implementing provisions of FT (D&R) Act, the Rules and the

Orders made thereunder and FTP. Such procedures shall be published by means of a PN, and may, in like manner, be amended from time to time.

Audit scrutinised the PNs issued by DGFT for withdrawal and restoration of DEPB benefit on various items to ensure that no undue benefit had been extended to the exporters. The following instances of undue benefit due to discrepancies in PNs issued were noticed.

(a) Undue benefit to the exporters of cotton due to contradictory notifications

While issuing PN dated 31 March 2011, for withdrawing benefit on exports of Cotton retrospectively, DGFT clarified that *'when the intention of the Government is not to encourage exports of specific commodity, DEPB benefit on such a commodity would be contradictory to its intention.'*

The DEPB benefit on export of 'Cotton yarn including Melange yarn' was withdrawn vide PN dated 21 April 2010 with effect from 1 April 2010. The export benefit on 'Cotton yarn including Melange yarn' was restored w.e.f. 1 April 2010 vide PN dated 4 August 2011. Similarly, the export benefit on Cotton was restored w.e.f. 1 October 2010 vide PN dated 4 August 2011. Thus, by withdrawing the benefit simultaneously but restoring retrospective DEPB benefit on both the items from different dates not only defeated the intention of the Government to discourage export of both these items but also extended undue benefit by six months to the exporters of cotton.

RA, Mumbai issued 47 licences valuing ₹ 17.03 crore to seven exporters for export of raw cotton from November 2010 to February 2011.

Hence, the issue of PN 68 dated 4 August 2011 was contradictory to the intention of the Government expressed in PN dated 31 March, 2011 and gave undue benefit to the exporters of cotton.

DGFT in its reply (February 2014) stated that the restoration of DEPB benefit on export of raw cotton and cotton yarn on two different dates is a matter of policy.

The reply is not acceptable as restoration of DEPB on raw cotton (October 2010) prior to restoration of incentive on cotton yarn (April 2011) was against the intention of withdrawal of incentive on cotton along with cotton yarn by PN dated March 2011. This also indicates that there is inconsistency in policy implementation.

(b) Undue benefit to the exporters of Basmati Rice

The Cabinet Secretariat put restriction on export of rice on 27 March 2008 and ordered withdrawal of export incentives on all types of rice with immediate effect. PN dated 27 March 2008 was issued by DGFT, New Delhi

for suspension of DEPB benefit under sl. Nos. 22C and 22D of the Miscellaneous Product on Non-basmati rice with immediate effect (27 March 2008). However, notice for withdrawal of benefit on Basmati rice was issued only on 3 April 2008, leading to a gap period of seven days and thereby extending undue benefit to exporters of basmati rice for the period from 27 March 2008 to 2 April 2008.

Audit noticed two RAs (New Delhi and Mumbai) had issued 25 licences valuing ₹ 3.92 crore on export of Basmati rice during 27 March 2008 to 2 April 2008.

Thus, delay in issue of withdrawal of export incentive on Basmati rice resulted in undue benefit to the tune of ₹ 3.92 crore to the exporters of Basmati rice.

DGFT in its reply (February 2014) stated that DEPB benefit for non-Basmati Rice was withdrawn vide Public Notice No. 130 dated 27.03.2008 *as per verbal directions of Commerce Secretary*. The written communication from Cabinet Secretariat for withdrawal of DEPB benefits on all types of Rice was received in DGFT only on 31.03.2008. Hence, the Public Notice No. 137 for withdrawing DEPB benefits on Basmati Rice was issued on 03.04.2008 after completing necessary formalities, with approval of the then Commerce and Industry Minister. Thus there does not seem to be any undue delay.

Fact remains that the delay in issue of PN withdrawing the incentive on Basmati Rice resulted in undue benefit to the exporters.

4.16 Benefit to ineligible exporters

Rule 7 of the FT (D&R) Act, 1992 empowers RA to refuse grant of fresh licences if applicant has contravened any law/regulations of Customs/FTP. Once Refusal Order (RO) is issued, the entity's name will be placed in the DEL which debars the licensee from getting any fresh licence.

Audit scrutinised whether the RAs were exercising checks to ensure that licences were not issued to defaulters or to applicants not eligible for the benefit of the scheme. In the following instances, audit noted that licences were issued to ineligible exporters.

(a) Licences issued despite Refusal Order

RAs, Ahmedabad, Jaipur and Bengaluru issued DEPB scrips amounting to ₹ 127.51 crore despite ROs issued to the exporters and the exporters' being placed in DEL maintained at the RAs after issuing abeyance order (AO) against these ROs to temporarily lift the defaulter's name from DEL for a short period.

Audit noticed that there was no provision in FTP for issuing AO against a licensee whose name had been placed on DEL. However, AOs were being issued repeatedly in favour of exporters to facilitate issuance of licences. AOs issued without complying with the conditions of ROs defeated the very purpose of putting the licensee under DEL and the provision of FT (D&R) Act.

DGFT in its reply (February 2014) stated that Guidelines for DEL dated 31 December 2003 is given under rule 7 of Foreign Trade (Regulation) Rules 1993 which state that the authority placing the firm on DEL can also remove the firm from DEL by a speaking order.

The reply is not acceptable as there was no provision in statute to legalise AOs.

(b) Licence issued to ineligible exporter

Audit noticed that RA, Ahmedabad placed M/s Meghmani Organics Ltd under DEL vide its order dated 5 January 2012. When the exporter applied for duty scrip, RA, Ahmedabad issued DEPB Licence amounting to ₹ 64.97 lakh stating that "Firm was in DEL but through oversight DEPB licence already typed". This resulted in irregular grant of DEPB licence for ₹ 64.97 lakh.

Analysis of the cases revealed that more than 10 abeyance circulars were issued against a single Refusal Order, thereby facilitating issuance of fresh licences.

DGFT in its reply (February 2014) stated that Guidelines for DEL dated 31 December 2003 is given under Rule 7 of Foreign Trade (Regulation) Rules 1993 which state that the authority placing the firm on DEL can also remove the firm from DEL by a speaking order.

Reply is not acceptable as issuance of AOs without the fulfilment of conditions for which refusal order was issued defeated the very purpose of putting a licensee under DEL.

4.17 Excess grant of DEPB benefit

Paragraph 4.38 of HBP, vol 1 stipulates that DEPB rates as may be specified by DGFT by way of PN shall be applied on the FOB value or value cap wherever exists, whichever is lower.

Audit examined whether the RAs were exercising checks to ensure that DEPB duty credit was being calculated correctly. In the following instances, audit noted that excess benefit had been granted.

Audit noticed that in eight RAs (Jaipur, Hyderabad, Cuttack, Bengaluru, New Delhi, Vishakhapatnam, Kochi and Thiruvananthapuram), DEPB duty credit amounting to ₹ 1.54 crore, involving 44 cases, had been granted in excess of

entitlement due to application of DEPB rate on higher than the eligible FOB value.

In one instance it was seen that RA, Bengaluru had issued DEPB licence in excess of ₹ 56.96 lakh by wrongly calculating duty entitlement as ₹ 57.53 lakh instead of ₹ 0.57 lakh.

DGFT in its reply (February 2014) reported that its field formation has initiated action in the cases reported by Audit. Action initiated may be intimated to audit.

4.18 System of issue of DEPB scrips in case of supply by a DTA unit to a SEZ unit/SEZ Developer/Co-Developer

In terms of paragraph 4.43B of the HBP vol 1, an application for grant of credit for supplies from DTA to SEZ can be made by DTA unit or SEZ unit. DTA unit may claim benefits either from RA or DC concerned. In case claims have been filed with RA, while allowing benefits to DTA unit, the RA would simultaneously endorse a copy of communication to the concerned DC along with details of export documents.

However, it was observed that the RA, Chennai had granted thirteen DEPB scrips valued at ₹ 1.18 crore to a DTA unit for supplies made to a SEZ Developer without following the prescribed procedure cited above. Similar observation was also noticed at RA, Kolkata.

On this being pointed out, the RA, Chennai stated that in most of the files, their office endorsed a copy of the communication to the concerned DC, SEZ and in few cases it was not done by oversight. Reply from RA, Kolkata is awaited (March 2014).

4.19 Issue of duty credit scrips without production of prescribed documents

As per guidelines of ANF4G (HBP 2009-14), DEPB application must be accompanied by application fee, EP copy of Bill of Export and BRC evidencing payment made to the supplier.

DC, KASEZ, Gandhidham issued a DEPB licence to M/s Pipavav Shipyard Ltd., (Amreli) on submission of 'Exchange Control Copy' of Bill of Export instead of 'EP copy of Bill of Export'. This resulted in irregular grant of DEPB licence for ₹ 15.96 lakh without valid documents.

RA, Coimbatore issued DEPB duty credit amounting to ₹ 1.13 crore without obtaining the undertaking that "the exporter has not availed any duty exemption/neutralization benefit on the exports made under the Shipping Bill for export made under EPCG" as required under policy circular dated 12.1.2012.

DGFT in its reply (February 2014) stated that in case of DEPB issued by RA, Coimbatore, the firm has submitted the documents and in case of DEPB issued by DC, KASEZ, the firm has been instructed to submit the documents and action will be initiated on receipt of reply from the firm.

4.20 Delay in issue of DEPB licences

As per paragraph 9.11 of HBP, 2009-14, RA shall dispose of DEPB application expeditiously within 3 days provided it is complete in all respect and is accompanied by prescribed documents.

DC, KASEZ, Gandhidham issued 20 DEPB licences late involving a delay ranging between 1 day and 103 days. Further, no reason was mentioned for the delay in issue of licences.

On this being pointed out (June 2013), the DC, KASEZ, Gandhidham replied (June 2013) that delay was due to shortage of ministerial staff and no loss was incurred to the Government exchequer.

Reply of the department regarding shortage of staff is not justifiable since they are having full strength of men in position.

4.21 Delay in recovery of confirmed demands

According to section 142(c)(i) of Customs Act, 1962, where any sum payable by any person under this Act is not paid by initiating action under sub section (a) & (b) of the said section, the Assistant Commissioner of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

- Audit noticed that three confirmed demands cases involving ₹ 22.17 lakh (including penalty of ₹ 3 lakh) were outstanding at Custom House, Kandla in March 2010. Detention Notices were issued under section 142(b) in all the three cases in September 2010 and subsequent reminders were issued in January 2012. However, no further action has been taken to recover the demand under section 142(c) of Customs Act, 1962 so far (July 2013). On this being pointed out, Customs House, Kandla stated (September 2013) that detention notices were issued. Further matter was taken up with the Commissioner of Central Excise concerned and a request made to deploy the recovery team to recover Government dues.
- DRI, Chennai had booked a case against a firm for exporting 'starch powder' by mis-declaring the same as 'Omerprazole' so as to avail the

benefit under DEPB. Accordingly, ICD, Hyderabad imposed a penalty of ₹ 5 lakh under section 114(iii) of Customs Act and ₹ 2.5 lakh under section 112(A) of Customs Act and the same were yet to be recovered. Recovery of arrears amounting to ₹ 1 crore in connection with M/s Help Line and ₹ 1 crore in connection with M/s Mejda International were also awaited.

- RA, New Delhi reported 9 cases of excess duty credit amounting to ₹ 4.07 lakh due to incorrect application of value caps and recovery of the same is awaited as of March 2014.

DoR in their reply stated (January 2014) that Kandla Customs has reported that as a part of step wise procedure of recovering sums due to the government, detention were issued in the three cases and matter also taken up with Central Excise in Ludhiana (one case) and Rajkot (two cases) where the addresses were located. Certificate action was also initiated which could not be enforced as no property was identified so far. ICD, Hyderabad has reported that in the case of M/s Pearl Pharma where penalty of ₹ 5 lakh and fine ₹ 2.5 lakh was imposed, the action for recovery was initiated but defaulters are not traceable. In the case of M/s. Help Line, on deposit made of ₹ 20.50 lakh, stay has been granted by CESTAT, Bengaluru. In the case of M/s. Mejda International, on deposit made of ₹ 20.50 lakh, stay has been granted by CESTAT, Bengaluru.

DGFT in its reply (February 2014) stated that only three cases are pending in Delhi. Action initiated may be intimated to audit.

Recommendation: *In case of policy implementation issues and cases of operational malfunction, audit recommends that appropriate action be taken under the FT (D&R), Act.*

5 Conclusion

Audit came across policy implementation issues and cases of operational malfunction, both in the manual as well as EDI environment, in the 28 RAs, seven SEZs and 31 Customs Ports. This was aggravated by a weak Internal control and audit system of RAs/Customs /ports for implementation of reward and incentive scheme of DGFT. There were lacunae in implementation, monitoring and compliance of the scheme as observed during the audit. The coordination between DGFT, Customs and RBI required more attention, in respect of coming up with solutions and taking prompt actions on alerts issued by the Department for all rewards and incentive schemes. DGFT needs to review the online data received from Customs Department and modify data requirement on EDI module to ensure compliance to policy provisions. DEPB credits were not related to the actual

incidence of duty and despite earlier C&AG reports the scheme implementation remained mired in similar policy misinterpretations and malfunctions. DGFT has not carried out any outcome assessment of the efficacy of the scheme with regard to its performance strategy nor had a revenue impact assessment done before implementing the scheme on import duty neutralisation and financial benefits accrued to the beneficiaries.

DGFT in its reply (February 2014), apart from other explanations stated that, the observation of the audit that no outcome assessment of the efficacy of the scheme was done while launching the scheme nor a revenue impact assessment was carried out midway to analyse the outcome envisaged vis-a-vis obtained, the same has been noted and will be complied with for all schemes in future.

Audit recommends that while impact or outcome studies of schemes are done, DoC/DoR must take into account the intertwined components of scheme based rewards and incentives and PTA based incentives to the exporters/importers and manufacturers, to draw the complete picture. Such statements may serve the purpose better as a part of the Fiscal Responsibility and Budget Management (FRBM) disclosure in the Receipt budget of the Union Government.

New Delhi
Dated : 28 May 2014

(Nilotpal Goswami)
Principal Director (Customs)

Countersigned



New Delhi
Dated : 30 May 2014

(Shashi Kant Sharma)
Comptroller and Auditor General of India