Chapter III: Functionality of the Application

3. Short scoping of ICES 1.5

The deficiency in customising various business rules in the system, as per the rules/Acts in force were observed relating to the following business requirements:

3.1 Incorrect calculation of warehousing interest by ICES 1.5 Application:

According to section 61(2)(ii) of the Customs Act 1962, if any warehoused goods specified in sub-clause (b) of sub-section (1), remain in a warehouse beyond a period of 90 days, interest shall be payable for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

An analysis of ICES data for the period of 1 April 2012 to 31 March 2013 revealed that out of 6,887 Ex-Bond BEs involving clearances from Warehouse beyond 90 days *(considering the WBE_WH_DT field from the BE_STATUS Table and the PAYMENT_DT field from the BE_CASH Table)* and where WH interest was levied, in 6,756 BEs WH interest was levied for one day less, resulting in short-levy of WH interest by ₹ 13.28 lakh. In the remaining 131 BEs, WH interest was found to have been either excess or short-levied for periods varying from 28 days in excess to 6 days less, for reasons not ascertainable from the available data. This indicates that there is an error in the 'program for the calculation of WH Interest' in ICES 1.5 application, which, if not rectified, will result in continued short levies of WH interest.

CBEC in its reply (January 2014) clarified that:

Interest on the warehoused goods is to be computed as per the provisions of Section 61 of the Customs Act, 1962 read with the provisions of General Clauses Act, 1897 and Customs Circular dated 01.10.2013. Presently, ICES application calculates the warehousing interest for warehoused goods after completion of 90 interest free days and interest shall be payable by the importer from 91st day till the date of payment of duty.

CBEC further reiterated that the first day needs to be excluded for the purpose of ascertaining the period the goods remain in the warehouse, in terms of the General Clauses Act, as well as settled case law. A plain reading of Section 61(2) of the Customs Act, 1962 clearly indicates that the interest liability commences from the expiry of the said 90 days period for goods that remain in a warehouse beyond a period of 90 days. This inherently implies that there is no gap if the duty is paid on the 91st day after availing the 90 day period, as the goods have not remained in the warehouse beyond the

specified period and therefore interest liability would arise if the goods were not removed on the 91st day.

CBEC added that, it is evident that the interest calculated as per the contention of the department is tallying with the actual interest collected. Since audit has applied direct formula from the interest per day calculated backwards from the duty amount without any rounding off, hence the shortfall. This formula of reverse calculation by audit is erroneous and produces misleading results.

The Department, however, did not initially provide the formula adopted for calculation of interest in ICES to audit. After the exit conference, the formula was provided to audit (February 2014), which would be verified in subsequent audit.

3.2 Absence of RSP validations to enforce RSP declaration for imports attracting RSP based assessment

According to sub-Sections (1) & (2) of section 4A of the Central Excise Act 1944, the Central Government, vide NT notification dated 24 December 2008, has specified certain goods (for which it is required under the Legal Metrology Act 2009 to declare the 'retail sale price (RSP)' on their package) which shall be charged to central excise duty on the declared RSP, less such amount of abatement, as may be allowed under the notification.

Sub-section (4) of section 4A states, *inter alia*, that if such goods are removed without declaring the retail sale price on the packages or by declaring a RSP which is not the RSP as required to be declared under the provisions of the Act, rules or other law as referred to in the sub-section, then such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of that section.

Further, according to proviso to section 3(2) of CTA, for imported goods which are required under the Legal Metrology Act 2009 to declare the RSP on their package and are covered under the RSP notification under section 4A (1) of the Central Excise Act 1944, the value for the purpose of levy of countervailing duty (CVD), shall be the RSP declared on the imported article, less the abatement admissible according to the said RSP notification.

To ascertain whether imported goods attracting RSP based assessment were being assessed correctly by the ICES 1.5 Application, ICES data on BEs given OOC during the one year period 01 April 2012 to 31 March 2013 was analysed. For this analysis, a sample of 76 out of 135 serial numbers of the RSP notification were mapped with the Central Excise Tariff Headings (CETH) intended to be covered under these serial numbers of the notification**.**

The results of the data analysis are summarised in Annexure C.

The analysis revealed that there were no validations in the ICES 1.5 application to ensure that importers of goods falling under any of the Tariff lines attracting RSP based assessment were required to declare the RSP of the imported goods.

In 61 per cent of the imports valuing ₹ 44,612.93 crore, CVD amounting to ₹ 5,746.40 crore was levied on ad valorem basis. Had these imports been assessed under RSP, the revenue realisation could be much more. The exact short realisation of revenue cannot be quantified as RSP were not declared in these cases.

Kolkata (Port) Commissionerate in their reply stated (October 2013) that as per rule 3 in Chapter II of The Legal Metrology (Packaged Commodities) Rules, 2011, packages of commodities containing quantity of more than 25kg or 25 litre excluding cement and fertilizer sold in bags up to 50 kg, and packaged commodities meant for industrial consumers or institutional consumers are exempted from the provisions of Chapter II.

Recommendation: *DoS may consider mapping the serial numbers of the RSP notification with the Tariff line items and put in place necessary validations in the application to ensure that the importer declares the RSP, if there are any imports under a tariff line item, covered under the RSP notification.*

CBEC in its reply (January 2014), while not accepting the observation stated that that RSP notification is not purely based on Customs Tariff Heading (CTH) or Central Excise Tariff Heading (CETH), i.e. in most cases the goods description under the description column is also relevant. The goods description being a non structured field, it cannot be used for validations in an automated system. Moreover, RSP based duty is leviable *only* if the goods imported are in a packaged form. The other condition applicable for RSP based levy of duty is that the goods must be for sale. Therefore, if the same goods are imported in bulk or for captive consumption, promotion, free distribution, etc. they will not attract RSP based duty. Similarly, if the goods are imported for 100 per cent EOU units or under EPCG/ DEEC/ any other export incentive scheme, RSP based duty is not attracted. Also, the Legal Metrology Act excludes packaged commodities meant for industrial consumers or institutional consumers. Similarly, packages of commodities containing quantity more than 25 kgs or 25 litres are also excluded. For all these reasons, a foolproof and comprehensive RSP validation cannot be built into an automated system, as these facts can only be determined at the time of assessment.

Further, validations with regard to CETHs to the extent possible as per RSP notifications have already been built in the system from 1st March 2013 onwards. However, as mentioned above, these cannot be an infallible validation, as the RSP based levy would be dependent on product description, packaging and sale. It also needs to be kept in mind that 100% validations cannot be built into the System given the way the notifications are structured. A distinction also needs to be drawn between the technical feasibility of what an application can be programmed to do, vis-à-vis the role and responsibilities of the proper officer.

CBEC in its reply (February 2014) stated that EPCG and DEEC incentive schemes are monitored through licences and have a large number of validations built on quantifiable parameters such as CTH, quantity, UQC, value/duty etc. as per requirement. The requirement for validations for RSP as suggested by Audit is qualitatively and technically quite different from the license monitoring.

Reply is not acceptable because further audit scrutiny of 4,106 records of such goods imported through Kolkata (Port) during the period 2012-13 revealed that the goods imported included parts of motor vehicles, manicure sets, flower vases, lunch boxes, cup plates, make up mirror, glass show pieces, digital set-top boxes, etc. In 3,713 of these records, the field for END_USE was left blank, indicating that there was no information available with the department on the basis of which it could be ascertained that such items were packaged commodities meant for industrial consumers or institutional consumers and hence to be exempted from RSP based assessment.

However, in the Exit Conference with the local customs commissionerates (Kolkata) held on 17 October 2013 the department had agreed with the audit view that if goods otherwise attracting RSP based assessment were exempt under any clause of the applicable laws, the ICES application should have necessary additional fields to record such declaration by the importer.

Further, based on the claim made that validations have been introduced in the ICES application from 01 March 2013 onwards, audit re-tested data for the month of March 2013. Out of 2,80,564 items attracting RSP based assessment imported under these 565 CETHs in March 2013, 1,73,006 items, were found to have been not assessed on RSP basis, indicating that there was 'no change' in the percentage of non-compliance even after the claimed introduction of validations.

3.3 Absence of validation to check mis-declaration of RSP

According to the proviso to the section 3(2) of the Customs Tariff Act 1975 (CTA), for imported goods which are covered under the RSP notification under section 4A (1) of the Central Excise Act 1944, the value for the purpose of levy of CVD, shall be the RSP declared on the imported article, less the abatement admissible according to the said RSP notification.

According to explanation to section 4A of the Central Excise Act 1944 'retail sale price' means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale.

Sub-section (4) of section 4A states, *inter alia*, that if such goods are removed without declaring the RSP on the packages or by declaring a RSP which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in the sub-section, then such goods shall be liable to confiscation and RSP of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be RSP for the purposes of that section.

From the above statutes, it follows that imported articles which are specified in the RSP notification issued under section 4A (1) of the Central Excise Act 1944 should be mandatorily assessed on RSP basis and the correct RSP should be declared for such goods, otherwise they are liable to confiscation and ascertainment of RSP price in the prescribed manner. According to definition, the declared RSP should be inclusive of the various elements of cost suffered, and therefore for imported goods, it cannot be less than the import cost, i.e. the sum of Assessable Value and the import duty. Further, in the Conference of Chief Commissioners of Customs held on 25/26 March 2003 at Visakhapatnam, it was decided that duty may be levied on the basis of transaction value ignoring the RSP, wherever there was evidence that the RSP has been deliberately mis-declared.

Analysis of ICES 1.5 data for BEs given OOC during the period from 01 April 2012 to 31 March 2013, revealed that CVD was collected on mis-declared RSP {i.e. where RSP declared was less than the import cost (Assessable Value + Duty)} in 20,970 cases. Of these, there were 12,071 records where the declared RSP was even less than the assessable value of the imported goods.

A few instances of CVD collected on mis-declared RSP, as noticed from ICES 1.5 data indicate the extent to which importers have mis-declared RSP without detection by the system (as tabulated in Annexure D).

Further, it was observed reputed importers including ACP clients M/s Acer India (P) Ltd. and M/s Lenovo (India) Ltd., have been regularly importing goods in substantial volumes at declared RSPs which were lower than their import cost, resulting in under-assessments of CVD. A summary of such imports by four importers is given in Annexure E.

Incorrect declaration of RSP by importers could have been detected through a validation check to compare the declared RSP value with the import cost. The above cases indicate that no such validation exists in the ICES 1.5 application or in RMS, resulting in scope for mis-declaration of RSP and consequent short realisation of revenue.

Recommendation: *The department may consider the introduction of appropriate validations in ICES Application and RMS to detect the related cases. The facilitation accorded to ACP clients by RMS may also be re-examined, in view of the large volumes of goods cleared at RSPs declared below import cost.*

CBEC in its reply (January 2014) stated that RSP notification is not based purely on CTH or CETH but is dependent on numerous other variables.

Against all the CTHs where RSP based CVD is applicable, CCRs to that effect are already in place which instruct the OOC Officers to ensure compliance of declaration of RSP and correctness of CVD levied/collected before the consignment is allowed out of Customs. As of now, 1455 CTHs have been identified for RSP based assessment.

Further, there are no legal provisions empowering the customs authorities to mandatorily disallow lower RSP based assessment vis-a-vis transaction value based assessment. Selling goods at a price lower than the cost may be a purely commercial decision. Further, as mentioned in the Audit report itself, the decision in the Conference of Chief Commissioners was that transaction value would be taken wherever there was evidence that RSP was deliberately mis-declared. Such evidence would not be available within the system, and therefore no validation can be built rejecting an RSP merely on the grounds that it is less than the AV. To establish the mis-declaration, the case needs to be investigated by the assessing formation, and such action cannot be taken within the System.

In view of the above, no validations are considered necessary for determining mis-declaration. For the specific instances where the RSP based duty is lower than the assessable value based duty, relevant annexure have been forwarded to the respective field formations to examine the issue.

CBEC in its reply (February 2014) stated that It is not correct to say that CBEC has taken a considered decision to maintain the system and practices at

present level of validation. It was clarified earlier that there are no legal provisions empowering the Customs authorities to mandatorily disallow lower RSP based assessment vis-a-vis transaction value based assessment. Selling goods at a price lower than the cost may be a purely commercial decision. For the specific instances where the RSP based duty is lower than the assessable value based duty, relevant annexure have been forwarded to the respective field formations to examine the issue. Risk assessment is a dynamic process and CBEC can never take a stand to maintain the system and practices at a particular level of validation. Based on risk assessment and legal provisions, whenever a need is felt, appropriate interdictions are put in place.

Reply of CBEC is not acceptable as it is the responsibility of CBEC to amend Customs law for protection/safeguard of revenue, if need arises. Further, no reply has been furnished against the cases highlighted by audit. Data for the period 2013-14 has not been provided to audit despite request made to DoS. Moreover, the reply is also silent about the monitoring mechanism they have to protect the revenue in such cases of mis-declaration. Even Kolkata (Port) Commissionerate concurred with the views of audit (October 2013) that most of the cases pointed out were facilitated by RMS. In the cases where RSP based CV duty was found to be lower than CV duty on ad valorem basis, it was stated that documents/ explanations were being called from importers and demand would be raised, if necessary. Similarly, Kolkata (Airport) commissionerate stated (October 2013) that as a corrective measure, the office was issuing letters to the concerned to submit the import documents and to declare the correct RSPs. Further, they stated that DoS should be suitably requested to take up the matter so that there should be some checks in ICES to detect when RSP declared is less than the assessable value.

3.4 Acceptance of multiple rate of exchange rates by the application

According to Section 14 of the Customs Act 1962, valuation of goods for assessment to duties of customs is to be ascertained with reference to the 'rate of exchange' of the foreign currency of the invoice, as in force on the date of presentation of BE and the rate notified by CBEC. The Board, vide NT notifications dated 21 May 2012 and 24 May 2012, had upwardly revised the exchange rates for the Japanese Yen (JPY), the U.S. Dollar (USD), and the Hong Kong Dollar (HKD), effective from 22 May 2012 and 25 May 2012, respectively. However, audit observed that the changes were not updated in the system, resulting in incorrect assessment and consequently short levy of duty.

Further, it was noticed from the all-India ICES data that 6,709 BEs with invoices in USD filed on 25 May 2012 were assessed to duty at the revised

rate of 1USD (₹ 55.95) whereas another 1,084 BEs filed on same date were assessed at the older rate of 1USD (₹ 53.10). Similarly, assessments at both old and new rates were noticed in the case of BEs filed on 25 May 2012 with invoices in HKD and also in the case of BEs filed on 22 May 2012 with invoices in JPY. Although this is likely to have occurred due to the delayed updating of the JPY, USD and HKD exchange rates in the 'Exchange Rate Directory', it also indicates lack of validation controls to enforce acceptance of a single exchange rate for BEs filed on a particular date, which is stipulated in section 14 of the Customs Act.

CBEC in its reply (January 2014) stated that the responsibility for updation of exchange rates is assigned to ICD Patparganj, and the exchange rate notifications are sent to ICD, Patparganj directly by the Board. The exchange rate notification is effective from the time it is entered in the ICES 1.5 application. In this regard, it is informed that earlier the exchange rate notification was issued once a month. This practice was changed without providing due notice to the directory managing site or DoS. There was delay in receipt of notification by the directory manager which forced DoS to remove an existing validation in the system which ensured that exchange rate notifications could be made effective in ICES only from a future date. Instead, a facility was immediately provided for the System Managers of all locations to change the effective exchange rate for those BEs which were assessed according to earlier existing exchange rate.

However, in all such situations, all sites are alerted through an advisory issued by the concerned directory manager for re-assessing and recovering the differential amount.

It is further informed that as directed by the Board, DG (System) is presently working on a module for daily updation of exchange rates with SBI. This would enable the exchange rate to be applicable from midnight and the issue would get resolved automatically.

CBEC further stated (February 2014) that testing of daily exchange rate update message has been completed. However, date of commissioning can be decided only after the technical issues with State bank of India (SBI) get resolved.

CBEC accepted the audit observation. However, copy of the direction of the Board to DG (System) has not been produced to audit.

3.5 Absence of reliable directory updating procedure

According to the ICES Directory Management User Manual Ver.1.0, DoS follows a centralised directory updating procedure. The updating of several

important directories of the ICES 1.5 application has been delegated to different customs sites. The National System Manager (NSM) at the highest level assigns directories to different sites which are responsible for maintenance of these directories. The System Manager at each site assigns roles of Directory Officer (DIROFF) and Directory Manager (DIRMGR) to the users to perform operations on the directories assigned to their site. DIROFF has the privilege to make new entries in the directories assigned for the role, modify these entries, generate checklist and submit these entries to DIRMGR for approval. DIRMGR has the privilege to approve the entries thereby making them available to external users, reverting entries to DIROFF in case the entries are not correct, and modify the entries if required.

(i) Failure to update the central excise duty rate and notification directories

The updating of rates of central excise duty and the central excise notification directories are delegated to the Jawaharlal Nehru Custom House (JNCH), Nhava Sheva. Audit observed that these directories were not updated when the Finance Act 2012-13 was passed and notified vide Gazette of India notification No. 25 dated 28 May 2012. The omission continued for the rest of the FY 2013, as a result of which a number of amendments in the Central Excise Tariff Schedule involving changes in duty rates was not incorporated in the system. This resulted in continued short levy of CVD on goods like 'cigarettes (Chapter 24)' and 'railway wagons', 'parts of locomotives' etc. (CETH 8607, 8608 and 8609) throughout the year.

The impact of short levy on imports under chapter 86 vide 1,696 BEs at all-India level due to application of CVD rate of 6 per cent instead of the higher applicable rate of 12 per cent from 28 May 2013 amounted to ₹ 97.55 crore, as ascertained from ICES 1.5 data.

Similarly, the specific rates of Central Excise Duty on various types/lengths of cigarettes were revised with effect from 28 May 2013. It was observed from the ICES data that there were incorrect assessments of duty in 468 records, out of which there was under-assessment of customs duty amounting to ₹ 5.14 crore in 401 records and over-assessment of ₹ 0.22 crore in 67 records. The change in specific rate of duty on cigarettes was tabulated in Annexure F.

Though the irregularity was brought to the notice of ICD, Tughlakabad and Kolkata (Port) between September 2012 to March 2013, DoS had not instituted any system for centralized monitoring of the directory updating or for cross-verification of the directory updating delegated to the various customs field formations.

(ii) Delay in updating of Customs Exemption Notification and Duty rate Directories

The updating of rates of customs duty and the customs notification directories are delegated to Chennai Sea Customs. Custom's exemption dated 17 March 2012 was amended by notification dated 23 January 2013 enhancing the BCD rate from 'nil' to 2.5 percent in respect of certain goods involving crude oil imports. However, audit observed that in 15 instances of imports of 'crude sunflower oil' and 'crude palm kernel oil' made on 23 and 24 January 2013 under Chennai Sea Customs were assessed at 'nil' rate of BCD vide exemption notification dated 17 March 2012, resulting in short collection of duty of ₹ 2.29 crore. The reason for the incorrect exemption was the delay in updating of customs exemption notification.

(iii) Failure to update the SAD Exemption notification

As per the Finance Act, 2011 effective from 08 April 2011, all goods specified in the First Schedule of the Additional Duty of Excise (Goods of Special Importance) Act, 1957 were deleted from the purview of the said Act. Consequently, the goods specified under the said Act, which were exempted from the levy of 4 percent Special Additional Duty of Customs under serial No. 50 of notification dated 01 March 2006, became liable to the duty in terms of notification dated 1 March 2006.

It was noticed that in several instances at Chennai Sea, Air and Tuticorin Commissionerates, incorrect exemption from SAD was allowed under serial No. 50 of notification dated 1 March 2006 though the goods are liable to SAD in terms of the other notification dated 1 March 2006. This resulted in short levy of duty of ₹ 2.33 crore, out of which recovery of ₹ 0.98 crore had been effected till July 2013 (Audit Paragraph No. 4.3 of Report No.14 of 2013). Similarly, in 49 instances in Kochi Sea Customs incorrect grant of exemption resulted in short levy of duty of ₹ 0.89 crore (Audit Paragraph No. 1.75 (4) of Report No.14 of 2013). Similar case was once again noticed in audit in Kochi in November 2012 which resulted in short levy of ₹ 0.51 lakh.

Scrutiny of the EDI transaction data from 8 April 2011 to 31 March 2013 pertaining to Kolkata Port and Airport Commissionerates revealed that in 1,034 and 9154 cases SAD was not levied. This resulted in short levy of SAD amounting to ₹ 46.59 crore and ₹ 29.26 crore in the respective Commissionerates.

CBEC in its reply (January 2014) stated that:

The audit team has pointed out non updation of central excise duty rate, customs exemption notification and duty rate directories and SAD exemption notifications in time, resulting in loss of revenue.

In this regard, the role of the Directorate is restricted to the aspect of automation, and providing a platform for updation of the directories. Content management, including timely updation of directories is the responsibility of the specific field formation to which the role has been assigned by the Board. Keeping in view the limited staff working in DG Systems, New Delhi, centralized monitoring of directories is not possible. Therefore, the work of updation of the notification directories is entrusted to Chennai Custom House and updation of CTH and CETH tariff directories is the responsibility of JNPT, Mumbai. The directory entry itself has a maker-checker procedure, so that any erroneous entries can be determined before entry into the System itself.

It is informed that by providing facility for central updation of directories by different Directory Managing site, the process of updation has been simplified, and therefore any lag due to delay during the process of updation has been taken care of. However, the issue of delay in communication of the issuance of notification to the Directory manager remains, which may not be addressed even by introducing cross verification facility regarding directory updation.

It is not possible for the Ministry to directly undertake updation of the notifications on ICES, as Ministry officials do not have access to ICES. The notifications are communicated to DG Systems and the Zones by email. At present there is no system of feedback to the issuing wing. The concerned formations updating the notifications are being instructed to confirm the successful updation of notifications by return mail. In the event of non-receipt of a confirmation of updation in a reasonable time, appropriate action for updation can be taken.

As regards the specific cases listed by Audit, the issue has been forwarded to respective field formations for examination and necessary action. However, some of these issues, for instance, specific rate of duty on cigarettes and levy of CVD on certain chapter 86 goods were already in the notice of the department and suitable corrective action to recover the short levy of duty was initiated by the department through customs field formations. All the System Managers had been informed of the aforesaid issue.

CBEC in its reply (February 2014) again reiterated the reply of January 2014 and stated that details regarding recovery will be provided in the due course by Cus-PAC Wing in CBEC.

The Department has accepted the loopholes in the directory updation procedure. Directory updating is a fundamental activity of CBEC for correct and timely realisation of revenue. This is indicative of integrity of the revenue information system. This is to be coordinated and linked in ICES to ensure revenue leakage.

3.6 Absence of validations to ensure declaration of unique IEC/PAN

According to paragraph 2.9 of the HBP, Vol.1 of FTP, only one Importer-Exporter Code (IEC) should be issued against a single PAN number. Further, according to Chapter 2 of the CBEC's Manual on Self-Assessment 2011, IEC is validated online in ICES with database of DGFT and PAN is validated online with database of CBDT.

However, analysis of all-India ICES 1.5 data for the year 2012-13 revealed that there are records of imports against 33 PAN numbers for which more than one unique IEC number has been quoted. Conversely, there are records of 251 imports where more than one PAN number has been quoted against one IEC. There are also 13 imports where no PAN number has been given.

CBEC in its reply stated (January 2014) that DGFT is the owner of the IEC data and the responsibility of its accuracy and validity rests with them. Similarly, the PAN database is owned and maintained by the CBDT. The ICES 1.5 application only validates the existence of the IEC number/ PAN quoted by the Importer/ exporter in the customs document with the DGFT/CBDT database online, to ensure that the same is a valid number issued by the concerned authority, as mandated in the CBEC's Manual on Self-Assessment which provides that:

"For entry in B/E or S/B. IEC is validated online in ICES with database of DGFT" and "for DGFT, Bank etc. PAN is validated online in ICES with database of CBDT."

What audit pointed out was that the data validation can flow from the initiatives taken by user department (CBEC in this case), especially if the information helps in better implementation of the departmental objectives of revenue safeguard. In the present scenario of electronic information environment, the databases to be utilized by various stake holders are required to be correct and uniform for all concerned.

CBEC in its reply (February 2014) stated that the observation will be sent to DGFT for correction at their end.

Final outcome may be intimated to audit.

3.7 Absence of validations to ensure declaration of same CTH and CETH

From 28 February 2005, vide the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), the classification of goods under the Central Excise Tariff Schedule was harmonized with the Customs Tariff Schedule according to 8 digit ITC HS classification system. Thus, CTH and CETH are identical for all goods, except for those classifiable under chapters 97 and 98 of the Customs Tariff Schedule for which the corresponding chapters 97 and 98 do not exist in the Central Excise Tariff Schedule.

However, it was noticed from ICES 1.5 all-India import data for the year 2012-13 that out of 2,63,40,427 records pertaining to imports under chapters 1 to 96 of the Customs Tariff, there were 4,81,864 records in which the CTH and CETH did not match. This shows that the ICES 1.5 application does not have any input controls/validations to ensure declaration of same CTH/CETH for imports. This may lead to incorrect assessments and short/excess levy of customs duty. As an illustration, in the case of BE No. 7948637 dated 14 September 2012 pertaining to ICD Patparganj, the item imported was 'sports shoes' for which CTH was correctly declared as 6403 19 90, but the CETH was incorrectly declared as 3924 90 90. By declaring incorrect CETH, importer availed higher abatement of 40 per cent (Sl. No. 53) on his declared RSP as against admissible abatement of 35 per cent (Sl. No.56) of RSP based assessment Notification No. 49/2008 CE (NT) dated 24 December 2008.

The absence of such validation was earlier reported in paragraph 3.14.1 of the Performance Audit Report No.24 of 2009-10, when the Ministry had accepted that validation between CTH and CETH was not done in ICES 1.0. However, it is noticed that the necessary validations have not been incorporated in ICES 1.5 either.

3.8 Absence of validations to ensure declaration of goods imported under chapter 98 of Customs Tariff with corresponding CETH

For the purpose of levy of BCD and CVD, imported goods were classified under CTH and CETH respectively. In respect of Project Imports, the goods are to be classified under chapter 98 for the purpose of levying BCD. However, as there is no corresponding CETH such goods are classified under chapters 1 to 96 of central excise tariff for the purpose of levying CVD. Audit observed that the system could generate various reports based on CTH and not on CETH. For example, to find out list of BEs where goods falling under CETH 8607, 8608 and 8609 were imported from 28 May 2012 to March 2013 by charging less CVD as reported in paragraph 3.7 above, audit tried to generate a list of all such imports by giving respective CTH as the system does not accept CETH. It was noticed that five bill of entries, where items falling

under CETH 8607 were imported under CTH 9801, were not included in the report run for CTH wise report. It is therefore recommended that there should be facility to generate report based on CETH also.

CBEC in its reply (January 2014) stated that more than 250 MIS reports, new MIS reports and MIS reports have been provided in ICES 1.5 after due consideration of requests forwarded by different field formations. Request for CETH based reports have not been received by DoS. The present request from audit will be examined for consideration.

Audit is of the view that when the data/information are available in the system, the databases need to be utilized by various stakeholders.

Recommendation: *To ensure correct assessment, validation checks for declaration of same CETH/CTH may be provided for in ICES 1.5 application, for all goods classifiable under chapters 1 to 98 of the Customs and corresponding Central Excise Tariff Schedules.*

In a similar recommendation of Audit in the Performance Audit Report No.24 of 2009-10, the Ministry had accepted that validation between CTH and CETH was not done in ICES 1.0. However, it is noticed that the necessary validations have not been incorporated in ICES 1.5 either.

CBEC while accepting the recommendation stated (January 2014 and February 2014) that validations are yet to be built in to ensure declaration of same CTH and CETH. As and when the changes are made in the system, the business process map and Software Requirement Specifications (SRS) would be made available to audit.

Though CBEC accepted similar observation pointed out in 2009-10, they are yet to incorporate the validation leaving scope for importers to mis-declare CETH to get higher abatement/exemption from CVD.

3.9 Mis-match of country of origin data in different ICES tables

The risk of non-levy of anti-dumping duty due to mis-match of country of origin data in different ICES table was earlier reported in paragraph 3.11.4 of the Performance Audit Report No.24 of 2009-10. The Ministry then stated (December 2008) that the system has been properly designed by capturing 'country of origin' at two places and using the value at the 'item' level for levy of anti-dumping duty and that any short-levy pointed out by audit then could be on account of assessment lapse.

Analysis of ICES 1.5 data on 32,83,674 BEs given OOC during the year 2012-13 revealed that the COO data, appearing under the field name 'CRG' in the BE_ITEM_DET table as well as under the field name 'CORG' in the BE_MAIN table, are different in 2,50,325 cases, i.e. in 7.6 per cent of BEs. This indicates

lack of validation in the application where the data fields for capturing the same data in separate tables are holding different data, leading to scope of incorrect availing of concessions under the various COO based exemption notifications or non-levy of anti-dumping duty.

There are presently about 25 COO based exemption notifications in force as on date, out of which imports under 11 single-country specific notifications, allowing partial or full exemption from BCD, were examined to check for availing of these exemptions due to absence of 'country of origin' validation in the application. It was observed that in 13,413 records the declared COO at the 'item' level, as recorded in 'CRG' field in the BE_ITEM _DET table, was different from the Country Code for which the notification was valid, resulting in incorrect grant of exemption from BCD amounting to ₹ 125.53 crore in these cases. Thus, inspite of the Ministry's claim that the system has been properly designed by capturing 'country of origin' at two places and using the value at the 'item' level, the absence of validations for COO data in the ICES application are continuing to cause loss of revenue.

CBEC in its reply (January 2014) stated that CORG is the Country of Origin at the BE level and CRG is the Country of Origin at the item level. When all or most of the goods have the same country of origin, the CORG field is declared. Only for those items of the BE, where the country of origin is different from the CORG, CRG for those items is declared. The logic for consideration of the country of origin for the items of BE has been in built accordingly. The objection that the same data should be captured in both the fields is erroneous, as both the fields relate to different data. For instance, one BE may contain goods whose origin is of different countries. Thus, a consignment coming from Dubai, may have goods of Chinese, Taiwanese, Korean origin. This does not indicate a lack of validation nor does it lead to scope for incorrect availment of COO based notifications. Rather it facilitates the levy of ADD, as well as restricting COO based concessions to specific items rather than to the whole BE.

It is further informed that before March 2013, direct linkage between the country codes and the preferential tariff notifications were not built in the system due to absence of facility in the directory for such linkage. System was facilitating capture of Country of Origin for anti-dumping notifications only and validating the same with the COO provided against the relevant item of the Bill of Entry. Since, 1st March 2013, such linkage has been provided for all Country of Origin based notifications. The data used by Audit pertains to the period before these validations were built in. However, the annexure have been forwarded to the respective customs field formations for necessary action regarding incorrect availment of notification, if any.

The reply of CBEC is not acceptable. The data for the month of March 2013 has again been tested by audit to test validation of COO with COO based exemptions and it was found that validations for all 11 COO based exemption notifications had been introduced with respect to CORG/CRG data.

However, a fresh analysis to confirm whether the CORG and CRG fields in the BE_MAIN and BE_ITEM tables respectively, contain the same data on COO in case of Single Invoice – Single Item imports, where logically both fields should contain identical data, revealed that in the month of March 2013 alone, there were 5,398 single item imports where the CORG and CRG data were different. Thus, there is clearly no validation in such cases where both data should be identical. Neither customs data for the period FY13-14 nor any sample data was provided to audit for necessary verification.

3.10 Details of producer of goods not captured in ICES for levy of ADD

Anti Dumping Duty (ADD) is leviable on certain imported goods based on factors such as customs classification, description of goods, country of origin, country of export, name of the producer and name of exporter. The amount to be levied depends on one or more of the above factors. It is observed that in the BE display screens in the ICES application, such as Master, invoice, GATT declarations, etc. there is no field showing name of producer. In the absence of such vital information, it cannot be assured in audit that correct ADD has been levied. For example, according to notification dated 11 March 2008, ADD on the 'ACETONE' falling under CTH 2914 11 00 with country of origin and country of export as 'Chinese Taipei' is USD 89.42 per MT if the producer is M/s Formosa Chemicals and Fibre Corporation and for producer being M/s Taiwan Prosperity Chemicals Ltd, ADD to be levied at the rate of USD 87.14 per MT. Since there is no field showing name of the producer, the correct rate of ADD leviable cannot be ascertained at the time of assessment and also during audit.

CBEC in its reply (January 2014 and February 2014) stated that the EDI BE format is compliant to the prescribed format for electronic filing of import documents. The format has evolved over last few decades as per requirements. It is not possible to capture each and every detail of the importer/supplier/manufacturer by introducing separate fields in the BE format. Levy of ADD is dependent on the serial no. of the anti-dumping notification declared by the importer. Anti-dumping notifications may prescribe any kind of conditions such as description of goods, country of exports, name of the producer, name of the exporter etc., none of which are structured fields. Hence, automation of such fields for automatic decision-making is not possible. The risk management system populates CCR in the BE

based on the CTHs where anti-dumping has being levied. Such BEs are routed through shed examination where the necessary checks are carried out manually by the customs officers. This directorate has already discussed the issue of making the notifications automation friendly with the Board.

It is pertinent to mention here that, if more data is captured, it would require more storage space apart from entailing more work for the trade/agent. It would put unnecessary load on the system. The instance pointed out by the audit team is applicable in a very small percent of the cases. Therefore, it may not be appropriate to carry out changes in the application at the format level.

CBEC has not clarified the mechanism available in ICES to ascertain correctness of levy of ADD at correct rate without the field of 'name of producer' as ADD notifications are producer specific in many cases.

3.11 Absence of mapping of tariff items with customs exemption notification

It had been pointed out in paragraph 3.13.1.2 of the Performance Audit Report No.24 of 2009-10 that ICES 1.0 did not have a validation check to ensure whether any imported item was eligible for the benefit of exemption under the relevant notification. The Ministry then explained that CTH/CETH was captured in the 'notification directory' only in the case of unconditional notifications.

To ascertain whether necessary validations had since been introduced to ensure that imported goods were being assessed correctly by the newer version of the ICES application by allowing only eligible exemption benefits under the customs exemption notification to be claimed, all-India data on BEs given OOC during the year period 1 April 2012 to 31 March 2013 was analysed. For this analysis, 422 out of 521 serial numbers of notification dated 17 March were mapped with the Customs Tariff line items intended to be covered under these serial numbers of the notification.

All-India data was analysed to detect cases of incorrect availing of exemption benefits, if any, by claiming exemptions under serial nos. against which the imported tariff item were not eligible for exemption/concessional rate of duty. This was run on the one year data on the BE_ITEM_DET, BE_A_ITEM_DET and BE_STATUS tables. Imports under Chapters/ Headings/Tariff Items not leviable to BCD or attracting 'NIL' tariff rate of BCD have been ignored for this analysis. The results of the data analysis are summarised in Annexure G.

Analysis of imports made under claims of duty exemption under various serial numbers of the customs exemption notification dated 17 March 2012 during

the FY 2012-13 showed that there were no validations or mapping of CTH with the serial numbers of the notification, either for conditional or for unconditional exemptions, which resulted in incorrect assessments and inadmissible exemptions from customs duty amounting to ₹ 93.05 crore.

CBEC in its reply (January 2014 and February 2014) stated that the exemption notifications apply BCD rates against CTHs qualified by description, serial no. and the list of conditions. Both the list of conditions, as well as the description are unstructured fields, and are not conducive to automation. Correct availment could be validated in the system only if the exemption notification was defined on the basis of the CTH. However, as neither the conditions, nor the description can be quantified/ structured, it is not possible to build 100 per cent validations with regard to the CTH and the notification duty rates. There are several notifications which cannot be automated since these are description based and not linked to a specific CTH, or listed as 'all CTH'. Similarly, general exemptions for generic imports, for instance, 'ship stores' cannot be validated in the system.

It is informed that mapping of tariff items with exemption notifications to the extent possible has been built in the notification directory since 1st March 2013 as part of pre-budget exercise. The data used by Audit pertains to the period before these validations were built in. Further, test check of some of the entries in annexure shows that while in some cases, wrong serial number of the notification has been used, however, the rate of duty is the same, and there appears to be no loss of revenue.

However, the cases listed have been forwarded to the field formations for examination and necessary action. It is also pertinent to note that applicability of a notification is finally the decision of the assessing officer.

Different directory managing sites are responsible for monitoring the status of different directories as per the direction of Board.

Reply of CBEC is not acceptable as audit tested the validation of 422 out of 521 Sl. Nos. of Customs general exemption notification No.12/2012-Cus against CTH on data for March 2013 and it was found that validations for Sl.No.123 of the said exemption notification had not been introduced with respect to CTH. Hence, CBEC's claim that validation has been introduced cannot be accepted. Further, the relevant report(s)/record(s) bringing about the changes in the system had not been provided to audit. CBEC also did not provide the benchmark adopted to arrive at the extent of validation designed in the system and monitoring system in DoS to check the validations incorporated in the system.

3.12 Absence of mapping of tariff items with central excise exemption notification

As in paragraph 3.11, ICES data was analysed to check the correctness of exemption allowed to importers for the purpose of levy of CVD under Central Excise notification dated 17 March 2012 was carried out.

The analysis revealed that that there was no validation or mapping of CTH with the serial number of the notification in the ICES 1.5 application, to ensure that exemptions from CVD allowable under the said notification were correctly claimed. This resulted in incorrect assessments and inadmissible exemptions from customs duty amounting to ₹ 137.02 crore being allowed to importers who had incorrectly claimed the benefits of exemptions under the said notification. The results of the data analysis are summarised in Annexure H.

The ICES 1.5 data was further analysed to check the validation controls in the system with reference to the findings of audit of BEs through CRA module or physical verification of BEs for which Draft Audit Paragraphs were issued to the Ministry for inclusion in the Customs Compliance Audit Report for the year ending March 2013. Audit found that 1,20,951 cases were wrongly assessed by the system due to lack of proper validation control in the system. Summary of the results of the analysis of ICES 1.5 import data for the year 2012-13 are detailed in Annexure I.

These incorrect assessments were neither detected by the system nor in PCA or by Internal Audit of the department indicating shortcoming in the validation controls in the ICES application, RMS and PCA. The department may review all these cases and recover the short levy/non levy etc.

CBEC in its reply (January 2014) referring the response in paragraph 3.11 stated that the exemption notifications apply CVD rates against CETHs qualified by description, serial no. and the list of conditions. Since the list of conditions and the description are unstructured fields, it is not possible to build 100 per cent validations with regard to the CETH and the notification duty rates. It is informed that mapping of tariff items with exemption notifications to the extent possible has now been built in the notification directory since 1st March 2013 by the officers of different custom sites as part of pre-budget exercise. The data used by Audit pertains to the period before these validations were built in.

However, the cases listed have been forwarded to the field formations for examination and necessary action.

CBEC in its reply (February 2014) reiterating the reply of January 2014, stated that different directory managing sites are responsible for monitoring the status for different directories as per the direction of Board.

Reply of CBEC is not acceptable as audit tested the validation on data for March 2013 and it was found that validations for Sl.No.326 of the said exemption notification had not been introduced with respect to CETH. Hence CBEC's claim that validation has been introduced cannot be accepted. Further, the relevant report(s)/record(s) bringing about the changes in the system had not been provided to audit. CBEC also did not provide the benchmark adopted to arrive at the extent of validation designed in the system and monitoring system in DoS to check the validations incorporated in the system.

3.13 Difference in duty calculated and duty collected:

During the analysis of ICES 1.5 import data pertaining to Chennai Sea Customs, audit observed that M/s Visteon Automotive Systems India Private Limited imported goods vide BE No. 3614987 dated 26 May 2011, which was assessed by the system under RMS facilitation (on merit duty) and the duty payable was ₹ 33.62 lakh. However, the goods were cleared and given OOC on 2 June 2011 on payment of lesser duty of ₹ 33.14 lakh. The findings of the data analysis were confirmed by cross checking through the CRA module of the ICES 1.5 application. The variation between the assessed duty and the duty collected was also confirmed by the department; however, neither any plausible explanation was furnished for this difference by the department nor there was any audit trail of the same available in the system.

The issue was also analysed on the all-India ICES 1.5 data for the FY 2011-12 and 2012-13 by comparing the duty payable (TOT_DUTY field in the BE_CASH Table) and the duty paid (sum of the DUTY_AMT field in BE_CASH Table) and related information from the BE_MAIN and BE_STATUS Tables.

The analysis revealed that there were differences in the calculated duty payable and duty actually paid in the cases of 1,057 and 1,729 BEs for the year 2011-12 and 2012-13 respectively. The total duty payable in these BEs were ₹ 106.77 crore and ₹ 195.73 crore, whereas, only ₹ 20.87 crore and ₹ 59.07 crore were collected on clearance of imported goods for the year 2011-12 and 2012-13, resulting in short collection of ₹ 85.70 crore and ₹ 136.66 crore in these BEs for the respective years 2011-12 and 2012-13. Further, out of 1,057 BEs for the year 2011-12 and 1,729 BEs for the year 2012-13, in 162 and 445 BEs calculated duty payable were ₹ 32.29 crore and ₹ 72.68 crore for the respective years 2011-12 and 2012-13, against which no amount was collected.

CBEC while not accepting the observation stated (January 2014) that duty can be paid through cash payment, as well as through scrips and the cases highlighted by audit were those where duty debit was made through scrips.

Audit called for the details of the duty debited through scrips in each case and the procedure existing in ICES to capture the entire picture of the duties forgone as required under FRBM Act to be reported in 'Statement of Duty forgone' in the Union Receipt Budget.

CBEC in its reply (February 2014) stated that details of duty debited through scrips are captured in BE_CASH_LIC table. ICES can generate location specific duty forgone statement for import through EDI systems. No utility exists in ICES to provide the entire picture of the customs duties forgone. The statement of duty forgone reported in the Union Receipts Budgets is prepared by TRU in CBEC based on inputs received from Directorate of Data Management (collated from statements uploaded by field formation), Directorate of Drawback and Director General Export Promotions.

Reply of CBEC could not be verified because audit was neither provided with BE_CASH_LIC table nor case-wise details of duty debited through scrips intimated to audit. The total revenue collected and forgone was not reconciled by CBEC or by Pr. CCA. CBEC admitted that there is no utility in ICES to capture the entire duty forgone.

3.14 Business processes not covered under ICES, requiring manual assessments

According to sections 46 and 50 of the Customs Act 1962, import documents (BEs) as well as export documents (SBs) are mandatorily required to be filed electronically (through EDI system). In order to prevent misuse, CBEC issued instructions on 04 May 2011, that manual processing and clearance of import/export goods shall be allowed only in exceptional cases and data for manual documents should be compulsorily entered and transmitted by all locations within the stipulated time period.

Year wise summary of customs document filing data from 19 EDI Ports, which include all the major ports, viz. JNCH, NCH Mumbai, ACC New Delhi, ICD Tughlakabad, ICD Patparganj, Chennai Sea, ACC Chennai, Tuticorin, Kochi Sea, ACC Ahmedabad, Kolkata Sea and Kolkata Air is given in the Annexure J.

It was observed that an average of 3.64 per cent, 1.87 per cent and 1.39 per cent BEs were filed manually at these 19 EDI ports during the years 2010-11, 2011-12 and 2012-13. Similarly 4.35 per cent, 2.16 per cent and 2.19 per cent SBs were filed manually at these 19 EDI ports during the years 2010-11, 2011-12 and 2012-13. However, the number of EDI processed customs documents has increased over the past three years. The percentage of

manual filing of BEs were higher at Tuticorin, Goa, Nagpur and Kolkata Port, ranging between 3.53 percent to 6.90 percent, whereas the manual filing of SBs were higher at Chennai Air, Kochi, Goa, Nagpur and Kolkata Airport, ranging between 4.77 percent to 23.76 percent, which were in contravention of section 46 and 50 of the Customs Act and the Board's instructions**.** It was also noticed that 100 per cent of BEs were assessed manually at West Bengal (Preventive) Commissionerate.

Further, examination revealed that manual BEs were being filed mainly for imports of Aircraft/Ship stores, diplomatic cargo, post parcel, domestication of containers, imports under 'Status Holder Incentive Scrip (SHIS)' scheme, for imports attracting more than one duty exemption notification, imports against notifications not accepted by the ICES 1.5 application, BEs filed for payment using SAD re-credited duty credit scrips like DEPB, FMS, FPS, etc., temporary imports under ATA Carnet and for imports against DEPB, EPCG licenses, etc. for which TRAs were issued manually. In most of these cases the BEs were filed manually due to lack of provision to handle such cases in the ICES application. On the export side, the SBs were filed manually for lack of provision in ICES system for coverage of re-exports under section 74 of Customs Act 1962, export of free unaccompanied baggage, Aircraft/Ships stores and Aviation Turbine Fuel (ATF).

Audit also observed that out of 116 EDI enabled locations, only in 89 locations, electronic filing of import documents were carried out, out of which in 29 locations, less than 500 BEs were filed during 2012-13. Similarly export documents were filed in 99 locations; out of this in 20 locations, less than 500 SBs were filed during the same period.

In response to Audit observation on Customs procedure and trade facilitation – ICT based solutions (ICES) and self assessment not being extended to all customs transactions (Paragraph No. 1.39 of Audit Report No. 14 of 2013), DoS stated (October 2013) that there are very few sites where ICES is not implemented; however, there are efforts going on to include them under the purview of ICES.

CBEC in its reply (January 2014) stated that the percentage of manually assessed documents has been reducing over the years and presently it is less than one per cent of import documents and less than 2.5 per cent of export documents.

CBEC in their reply (February 2014) reiterated that work on development of modules depends on the feasibility and prioritization based on revenue impact demand satisfaction, Ministry requirement and other factors.

The reply of CBEC is not acceptable, since majority of the issues raised in Audit Report No.24 are still persisting as on date though the department accepted all the recommendations of the Audit Report No. 24 of 2009-10.

3.15 Absence of linkage with 'sezonline' portal of MoC

ICES 1.5 has not been linked with 'sezonline' portal of Ministry of Commerce (MoC), which facilitates online clearance of both imports and exports by the Development Commissioners of SEZs, to monitor the closure of IGM filed at the customs port for the goods imported which are intended for use in SEZs.

CBEC in its reply (January 2014 and February 2014) stated that the modalities for exchange of data with SEZ online are under discussion stage between DoS and MoC and progress is dependent on the response from DoC.

Final outcome may be intimated to audit.

3.16 No mechanism to monitor goods released on transhipment

ICES 1.5 does not have any mechanism to monitor goods released on transhipment.

CBEC in its reply (January 2014 and February 2014) stated that In ICES 1.5, the module for transhipment of goods from Gateway Sea Ports to Inland Container Depots (ICDs) is already functional since the last few years. The Sea to Sea transhipment module has been launched on 7 February 2014. However, the access path in the application was not specified by CBEC.

This would be verified in next audit.

3.17 Absence of integration of NIDB and ECDB data with ICES

There is no direct integration of National Import Database (NIDB) and Export Commodity Database (ECDB) with the ICES 1.5 application. NIDB and ECDB can only be assessed by departmental officers indirectly by the following two methods:

(i) After logging in using SSOID and password, the officer has to click on the 'Mozilla Firefox' web-browser icon available on the CITRIX homepage. Then the officer has to connect to DoV website, www.dov.gov.in on the internet, and use another set of UserID/Password assigned by DoV to access the NIDB and ECDB data.

(ii) After logging in using SSOID and password, the officer has to click on the 'Mozilla Firefox' web-browser icon available on the CITRIX homepage. Then the officer has to connect to the Local File & Print Server by typing the IP address of the Local Server in the address bar of the Firefox browser. This takes him/her to the

'Mulyakosh' Query Module where another set of UserID/Password issued by the local commissionerate's System Manager has to be used to access the Valuation data available in the 'Mulyakosh' Valuation Query Module. The valuation data accessed through 'Mulyakosh' is updated periodically by DoV.

CBEC in its reply (January 2014) stated that the Directorate General of Valuation is developing their own module by employing their own vendors.

CBEC, further, in its reply (February 2014) stated that the hardware is being procured and the prototype of the module will be loaded for testing as soon as the server is delivered. Efforts are being made to meet the deadline of 31st March 2014 for commissioning of the module.

Final outcome may be intimated to audit.

3.18 Details of 'import against essentiality certificate for project' not captured in ICES

ICES does not have any field to capture 'import against essentiality certificate for a particular project' and hence cannot be queried. Further, the invoice numbers of the invoices submitted as physical documents were not entered into the System during data entry of BE.

CBEC in its replies (January 2014 and February 2014) stated that requirement for capturing the details of essentiality certificate as a ledger will be examined.

Final outcome may be intimated to audit.

3.19 Functionalities lacking in the ICES 1.5 applications

3.19.1 No option to generate licence-wise imports made, duty forgone and exports made for monitoring export obligations (EO)

Since every duty-free/concession duty import licence issued by the DGFT, e.g. EPCG, Advance Authorisations, etc., has to be registered in the ICES application before any imports and exports are allowed thereagainst, licence-wise information relating to exports and imports made from every customs location in the country (except manual ports) is available with the department in the ICES 1.5 application database, which can be used for monitoring and ascertaining the duty forgone on the imports as well as the quantum of exports made in fulfilment of the EO against such licences. However, this information is not collated and utilised by department through any module/report in the application to monitor EO fulfilment for identifying licencees failing to discharge their EO within the stipulated EO discharge period of the licence.

Recommendation: *The proposed Export Obligation Discharge Certificate (EODC) message exchange between the DGFT and ICEGATE has not materialised. The manual transmission of EODCs and their monitoring has not been found to be efficient. However, the data available in the application database may be used to generate EODC discharge failure reports and the licencees as well as DGFT may be pursued, for timely initiation of the revenue recovery procedures related to the EODC.*

CBEC in its reply (January 2014) stated that the responsibility of monitoring of EODC lies with DGFT. As far as customs is concerned, license wise import ledger is maintained in ICES where duty forgone, quantity, value, credit remaining, etc is available.

CBEC further stated (February 2014) that all custom houses are having export obligation monitoring cells where the pre exports licenses and their bonds are monitored.

Audit is of the opinion that, since duty forgone in export incentive schemes are allowed under Customs notifications and it is the onus of the CBEC to recover the duty and act against the importer/exporter in case of default, therefore when the data is available with CBEC, the same can be made use of especially to cater to the report mandated under FRBM Act.

3.19.2 No information on finalization of provisional assessments

There is no provision for finalisation of provisional assessments through the Application even after more than fifteen years of its development, and even after this being pointed out in audit in the CAG's PA Report {Paragraph 3.16 (iii) of Report No. PA 24 (Customs) of 2009-10}.

CBEC in its reply (January 2014 and February 2014) stated that the module for finalization of provisional assessment in ICES has been created by NIC and is under testing stage. Depending on progress of testing and user satisfaction the module will be finalized.

Though the issue was pointed out in 2009-10, the department failed to commission the module till date. However, final date of completion and target date of commissioning of the module may be intimated to audit.

3.19.3 No information on action taken in short-levy cases

Section 28 of the Customs Act, 1962 provides that where any duty has not been levied or has been short levied or erroneously refunded or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may issue notice within the prescribed time to the concerned person to show cause why he should not pay the amount specified in the notice. Audit observed that wherever action has been initiated by the

department in the form of issue of less charge notice/show cause notice or recovery of duty short levied, no information about such action is available in the ICES application.

CBEC in its reply (January 2014) stated that the EDI system already provides the facility to capture the details of fine and penalty in their respective columns till the OOC of the BE. Reference to the file no., show cause notice no. and details of the adjudication order are captured in the departmental comments of the BE and further stated (25.02.2014) that details regarding recovery will be provided in due course by Cus-PAC Wing in CBEC.

CBEC's reply is not satisfactory and may be verified during subsequent audit.

3.19.4 No provision in application to record duty paid through manual challans

Wherever duty is debited through manual challans, information about such payments is not uploaded into the system.

The department in their reply (January 2014) stated that in ICES, provision is there to capture payments made against manual BEs in the manual DTR module which is available with all EDI sites.

This could be verified in subsequent audit.

Recommendation: *The information regarding provisional assessments, action taken in cases of short levy of duty and duty paid through manual challans may be provided for in the application, to allow updation of the data relating to each of import/export assessment record.*

3.19.5 No facility to levy and collect Extra Duty Deposit (EDD)

There is no facility to levy and collect EDD through ICES application, due to which it has to be collected separately manually.

CBEC in its their reply (January 2014 and February 2014) stated that the necessity and scenarios for extra duty deposit requires detailed study which includes ascertaining the requirement for automating this activity, its formal process flow, as well as the priority of development of the module.

CBEC's reply is not relevant to the audit observation. Action initiated by CBEC in this regard has not been elaborated.

3.19.6 Quality of EDI data

DGCI&S, Kolkata has informed (July 2013) in response to an audit query that ITC (HS) corrections were carried out by DGCI&S in about 4 per cent of EDI records in case of imports and in 7 to 10 per cent EDI records of export pertaining to the years 2010-11, 2011-12 and 2012-13. Quantity corrections

were done in more than 40 per cent EDI records on both import and export data of the same period whereas value and country code corrections were made in few cases.

The incorrectness in the EDI data pointed out by DGCI&S is indicative of lack of validations which leaves the scope for incorrect declarations that could impact the assessments and the quality of the country's trade statistics as well.

CBEC in its reply (January 2014) stated that enhancing validation on all data fields would lead to increased rejections and keeping in view the objectives of trade facilitation and accurate data analysis, a balance needs to be maintained between validations of data and transaction costs. However, in their reply dated February 2014 CBEC admitted that 70 per cent and 55 per cent SBs and BEs are filed with UQCs other than Standard UQC respectively. Hence, it has been considered by the department not to enforce absolute validations with regard to Standard UQCs, as it may have a serious potential to hamper the smooth flow of international trade. It was reiterated that efforts of the department are geared towards standardization of trade data without disturbing the fine balance between revenue and smooth flow of international trade.

Reply of CBEC is not acceptable. From the reply it appears that the Board adopted an easy approach not to enforce validation in the system rather than educating the trade for filing of correct UQCs in the guise of smooth flow of international trade. However, no records/reports were produced to audit on any study conducted for dwell time analysis of cargo clearance, impact on the trade facilitation in terms of measurable indicators, transaction cost saved etc. Further, the reply of the department seemed to emphasize on preventing rejections rather than revenue safeguard.