

### Chapter 3. Adequacy of rules and provisions

Audit examined the existing statutory provisions of project import regulations, and CBEC circulars and notifications with regard to registration of contracts, assessment of import, monitoring of imports under the scheme and finalization of contracts. Audit observed instances which reflected that some of the existing provisions were ambiguous leading to different interpretation while applying such regulations to project imports. Audit also observed certain provisions lacking in the existing statutes which allowed projects to linger on indefinitely, thus creating an ambiguity in the status of contracts. Some illustrative cases are given below:

#### 3.1 Inconsistency in interpretation of statutory provisions

Board's circular dated 8 August 1987, stipulates that once a contract is registered under Project Imports, the imports covered by the contract are liable to be classified and assessed under CTH 9801 and cannot be classified on merit under any other CTH. However, the Apex Court in the case of M/s Abrol Watches Pvt. Ltd. vs. Collector of Customs (1997 (92) ELT 311{SC}), Commissioner vs. M/s G. Claridge & Co. Ltd. (1999 (114) ELT A231 [SC]) held that assesseees are eligible to avail benefit of any exemption notification which was more beneficial to them.

**3.1.1** Audit observed that in City (ICD) Bangalore Commissionerate, an importer<sup>9</sup> registered in July 2010 a project import contract No. 3/2010 for CIF value of ₹ 405.20 crore for supply of goods to M/s Bangalore Metro Rail Corporation Ltd. (BMRCL). The importer was entitled to import cables of different descriptions at the concessional rate. Although the importer registered the goods under Project Imports, 38,12,847 meter cables of assessable value of ₹ 70.20 crore were imported between March 2013 and April 2014 from Thailand<sup>10</sup> at lower rate of duty under Free Trade Agreement notification<sup>11</sup> classifying the cables under CTH 85446010. As the goods were part of the registered contract, its assessment under CTH 85446010 was not in accordance with the Board's circular of 8 August 1987. The importer had availed the duty concessions of ₹ 2.06 crore.

**3.1.2** Audit observed that two importers<sup>12</sup> under Cochin Customs Commissionerate, were allowed imports at lower rate of basic customs duty (BCD) under Sl. No. 642 of notification dated 29 July 2011 and Sl. No.580 of notification dated 31 December 2009 respectively after classifying the goods

---

<sup>9</sup>M/s ABB Ltd.

<sup>10</sup>supplier M/s Phelps Dodge Intl, Thailand

<sup>11</sup>Notification 46/2011 dated 1 June 2011-Sl. no I-1455

<sup>12</sup>M/s Prodair Air Products India Pvt. Ltd and M/s Bharat Petroleum Corporation Ltd.-Kochi Refinery - IREP

under different CTH other than 9801. This resulted in short levy of duty of ₹ 76.75 lakh. Further, in case of one of the importers, part of the imports valued at ₹3.60 crore were assessed to higher rate of BCD under notification dated 17 March 2012 (Sl. No. 334A) even though concessional rate of BCD (Project import rate) was eligible, thus resulting in excess duty of ₹ 40.99 lakh.

On this being pointed out (April and June 2016), the Cochin Commissionerate stated (May and June 2016) that circular mentioned by the audit appears to be in order but in view of the apex court judgement (Collector of Central Excise, Baroda vs. Indian Petro Chemicals (1997 {92} ELT.13 {SC}) dated 11 December 1996), the circular is not applicable in these cases.

**3.1.3** In ICD, Juhi Railway Yard (JRY), Kanpur under Kanpur Commissionerate, audit observed (June 2016) that a contract<sup>13</sup> was registered in March 2012 for import of 7500 Composite long rod insulators having CIF value of ₹ 9.47 crore. Out of this, the importer had imported 3750 insulators having assessable value of ₹ 5.04 crore under notification dated 6 July 1999, which allows the duty concessions to goods required for UN projects. In this case, though the goods were classified under CTH 9801, the importer availed benefits of Nil rate of customs duty under notification dated 6 July 1999. The importer availed the duty concessions of ₹ 1.15 crore.

Commissionerate wise response of DoR (December 2016) to the above observations was under examination.

The above instances noticed by Audit reflect an inconsistent application of statutory provisions, resulting in either undervaluation or overvaluation of duty. More importantly, the objective of the scheme which is to simplify the procedures allowing for a uniform rate of assessment is lost due to simultaneous existence of apparently contradictory provisions for assessment of imports under the project import scheme.

***Recommendation: Audit recommends that the Ministry, after reviewing the existing statutory provisions and rulings of the apex court on this issue remove the inconsistency in the provisions for assessment under project imports by issuing appropriate instructions.***

The Board during the exit meeting (19 December 2016) and DoR in their response (26 December 2016) stated that they are considering withdrawal of the circular dated 8 August 1987.

---

<sup>13</sup> M/s Power Grid Corporation of India Ltd.

### 3.2 Absence of provisions for time-bound completion of projects

Since the Project Import Scheme is primarily meant for key capital intensive sectors and aims to encourage setting up or substantial expansion of their manufacturing capacity by facilitating imports, it implies that the importer availing of concessions under the scheme will complete the project within a specified time to achieve the objective of the scheme. However, Audit observed that the PIR, 1986 does not contain any provision that supports incorporation of a clause of time bound completion of imports in the project contract. Absence of statutory provisions for ensuring timely completion of imports defeats the purpose of the scheme aimed at increasing manufacturing capacity of critical infrastructure sectors of the country. It also creates opportunities for clandestine removal of plant and equipment from the project site. Audit also noticed that imports, especially of spare parts, were allowed beyond five to six years after the commencement of project and registration of fresh contracts for import of goods after commissioning of the project. Some illustrative cases are given below:

**3.2.1** An importer<sup>14</sup> registered a contract on 20 March 1997 at Kolkata Commissionerate for import of second hand machinery and equipment of CIF of ₹ 28.82 crore required for initial setting up of an industrial plant. Audit scrutiny of excise records of the importer revealed that import of the entire contracted machinery was completed in December 1998. However, from the scrutiny of customs records Audit found that the importer did not submit documents to customs authority for finalisation of the contract. Thus, Customs Department remained unaware of the completion of imports, and initiated no action for finalisation of the contract. In December 2012, Kolkata-IV Central Excise Commissionerate informed Kolkata Port Commissionerate that importer had attempted to dispose off its machinery which was imported under PIR, 1986. On receipt of information, the Kolkata Port Commissionerate confiscated the machinery and on the basis of subsequent investigation found violation of the provisions of PIR, 1986. In adjudication order dated 20 March 2014, the Commissionerate disallowed the project import concessions and confirmed the differential duty of ₹ 92.84 lakh and imposed penalty of ₹ 1.33 crore for violating the PIR.

Had the information not been received from central excise authorities, the above violation of the PIR, 1986 by the importer would have remained undetected by the customs for indefinite period since the Customs Department does not monitor the timely completion of imports, in the absence of requisite provisions.

---

<sup>14</sup>M/s Century Pulp & Paper Ltd.

**3.2.2** In NCH, Mumbai Commissionerate, two contracts of an importer<sup>15</sup> for setting up of a cement plant<sup>16</sup> with CIF value of ₹ 15 crore each were registered in September 2011. Audit scrutiny of the project file of importer maintained at the Commissionerate revealed that although the requisite machinery had been imported, it was not installed at the project site since land acquisition by the importer was not completed. Instead, the importer reported to the Department that the machinery had been stored at a different site. As on June 2016, no installation certificate/reconciliation statement was submitted by the importer.

Similarly, for the second project, the importer vide letter of February 2013 furnished amendment to the contract changing the location of plant from Bokaro to Nagpur as supported by sponsoring authority. From the documents kept on record by the Commissionerate, Audit noticed that the imports had been completed in August 2014, but no records establishing the installation of machinery/commissioning of the plant were available in the project file maintained by customs authority.

Thus, in these two contracts, involving duty foregone of ₹ 90 lakh, in the absence of a supporting regulation in PIR, the Commissionerate had no means to enforce a timely installation of imported machinery even after lapse of three to four years from the date of registration of contracts with the Customs authority.

**3.2.3** In 88 project contracts of CIF value of ₹ 13,089 crore, registered during the period March 2011 to July 2015 under Chennai Sea Customs Commissionerate and in 24 contracts<sup>17</sup> of CIF value of ₹ 5,031.66 crore registered between March 2008 and August 2013 under Kandla Commissionerate, no imports were made by the importers even though substantial time period had lapsed.

**3.2.4** In Kolkata Commissionerate, seven contracts (CIF value ₹ 1,188 crore) were registered between June 2011 and August 2014. On verification of the status of these projects from the websites as well as Annual Reports (2014-15) of the importers concerned, audit observed that these projects were either completed or the plants were undergoing trials. However, importers did not furnish the import details to the customs authority for finalisation.

**3.2.5** In JNCH, Mumbai Commissionerate, an importer<sup>18</sup> registered contract for importing the goods for setting up a Mega Power Project (5x660 MW) at

---

<sup>15</sup>M/s UltraTech Cement Ltd.

<sup>16</sup>One at Panchgarha, Tehsil Chanditala, Dist. Hoogly, West Bengal (Dankuni Cement Works) and second plant at Bokaro, Jharkhand.

<sup>17</sup>M/s Power Grid Corporation of India Ltd. and 23 others

<sup>18</sup>M/s Adani Power Maharashtra Ltd.

Tiroda, Maharashtra. The importer applied for registration for the five units between (August and September 2010) along with list of capital goods to be imported. The total contract value for all the items required for the above five units was ₹ 8,024.52 crore involving duty concessions ₹ 2,074.34 crore.

Audit observed (July 2016) from the terms of the Purchase order placed by the importer with overseas supplier<sup>19</sup> that the import of the machinery was to be completed by March 2011. However, the last import of machinery for commissioning of Unit 1 of the Project was imported on 29 May 2013. It was further observed that the importer had applied between December 2010 and July 2015 for registration of 86 additional contracts of CIF value of ₹ 6,611.79 crore for import of various capital goods which were stated to be essential for the project. The importer was importing various items under project import for more than six years and as per records available in project file, the project imports were still going on as on July 2016. However as per the website of importer, all the units were commissioned by 11 October 2014.

Further, in the case referred above, against the additional contracts, the goods mostly spares involving CIF value of ₹ 34.16 crore and duty foregone of ₹ 8.83 crore were imported through 126 consignments beyond commissioning of plant.

***Recommendation: Audit recommends that the Ministry may consider amending the PIR 1986, to provide for the condition of time bound completion of imports to be incorporated in the contracts registered under Project Import scheme.***

The Board during the exit meeting (19 December 2016) and DoR in their response (26 December 2016) stated that they were considering a time limit for completion of imports under Project Imports in consultations with other ministries.

Comminsonerate wise response of DoR(December 2016) was under examination.

### **3.3 Multiple sponsoring authorities**

As per Regulation 5 of PIR, an importer claiming assessment under CTH 9801, has to submit an application along with prescribed documents which includes a recommendatory letter from concerned sponsoring authority as referred in Regulation 3 (b) of PIR for the particular project. Since the sponsoring authority is technically aware of the capital goods required for a project and issues essentiality certificates for goods to be imported under concessional rates, the regulations should clearly specify which administrative department

---

<sup>19</sup>M/s Sichuan Machinery & Equipment Import & export Company Ltd.

will be considered as the sponsoring authority for the entire project. However, Audit observed that the regulations lacked clarity in defining the appropriate sponsoring authority especially in cases of composite projects involving captive power projects (CPP), and other composite projects. This resulted in multiple sponsoring authorities being involved in the same project, which not only diluted the role of the main administrative department responsible for sponsoring the project, it also led to increased volume of documentation and difficulties in monitoring of contracts registered through various sponsoring authorities under one project.

Some illustrative cases are given below:

### 3.3.1 Sponsoring Authority for Captive Power Plants

Under PIR 1986, sponsoring authority for power plants is the Secretary to the State Government dealing with the subject of power or electricity. However, the regulations do not clarify the appropriate sponsoring authority for a captive power plant. Audit observed that project imports related to captive power plants were recommended by diverse ministries like the Ministry of Heavy Industry or Ministry of Petroleum and Natural Gas. The cases noticed by audit are listed below:

**Table No. 4: Sponsoring Authority for captive power plants**

₹ in lakh					
Comm.	Importer	Contract No.	Recommendatory letter obtained from	CIF value	Duty foregone
Chennai	BHEL	S/37/20/2011 dtd. 27.05.11	Ministry of PNG/Ministry of Heavy Industries and Public Enterprises.	3292.47	98.23
Chennai	BHEL	S/37/31/2012 dtd. 09.10.12	Ministry of PNG.	1938.66	58.93
NCH, Mumbai	Shree Cement Ltd.	S/5-01/2013-14/cc 29.03.2013 dtd.	MoCI.	7947.00	152.00
NCH, Mumbai	Ultratech Cement Ltd	S/5-25/2011 dtd 24.04.12	MoCI.	1350.00	29.28
NCH, Mumbai	BHEL	S/5-33/2010 (December 2010)	Ministry of Heavy Industries and Public Enterprises subsequently Ministry of PNG.	33267.00	

Comminsonerate wise response of DoR (December 2016) to the above observations was under examination.

### 3.3.2 Sponsoring Authority for composite projects

Sasan Power Limited (SPL) entered into contract with Reliance Infrastructure (importer) for supply of mining equipment for the Ultra Mega Power Project

with captive coal mines. For the import of machinery related to captive coal mines, the contract was registered (June 2011) in NCH, Mumbai Commissionerate. The Secretary, Department of Energy, Government of Madhya Pradesh issued recommendation letter dated 21 June 2011.

Audit observed that from initial registration to subsequent additional registrations upto April 2012, concessional duty for imported goods was claimed treating captive coal mines as a part of power project as there was no tariff rate difference for power project and mining project. However, consequent to grant of exemption from BCD to mining project from March 2012, the importer on 31 July 2012 sought amendment and re-classification of the project as mining project.

Commissionerate referred the matter to the Board and Coal Ministry (December 2012) to which the Coal Ministry clarified (3 June 2013) that State Governments are empowered to lease, develop, monitor mining of captive coal mines etc. and hence they are administrative authority to issue recommendation letter. Based on this clarification, the Commissionerate accepted the re-classification of project as a mining project.

Due to the absence of appropriate sponsoring for composite projects as above in the PIR, 1986 and provision for re-classification of the projects midway, the importer was allowed to change the classification of the project to avail higher benefit. The importer had imported mining equipment of ₹ 2,245.80 crore (upto June 2014), availing duty concession of ₹ 176.03 crore.

In another case, a contract of one importer<sup>20</sup> engaged in the manufacturing of Soda Ash was registered in NCH, Mumbai Commissionerate in June 2006 for CIF value of ₹ 21.30 crore for its substantial expansion of existing water treatment plant capacity. The water treatment plant was claimed as an independent plant by the importer though it was meant for utilisation in its industrial plant and full duty exemption available for water supply project was availed. In this case, the recommendation letter was issued by the District Collector concerned who is sponsoring authority for water supply project.

In three cases under Chennai Sea Commissionerate, water supply projects related to non-mega power projects were treated as separate projects since more duty concessions were available to water supply projects separately. Under Kandla Commissionerate, two cases were noticed, where the recommendatory letters were by authorities other than those designated under the PIR, 1986. These cases are detailed overleaf:-

---

<sup>20</sup>M/s Nirma Ltd.

**Table No. 5: Sponsoring Authority for composite projects**

₹ in lakh

Importer	Contract No(s).	CIF value	Duty foregone	Remarks
BHEL- under Chennai Sea Commissionerate	S/37/9/2011	25185.00	529.27	Water supply projects related to non-mega power projects were treated as separate projects.
Driplex Water Engineering Ltd. under Chennai Sea Commissionerate	S/37/33/2008	20.70	3.37	
Doshion Veolia Water Supply Projects under Chennai Sea Commissionerate	S/37/42/2011	900.00	176.25	
Subhash Projects and Marketing Ltd. Kolkata under Kandla Commissionerate	15/2008, 17/2008 and 18/2008	471.91	112.76	Recommendatory letter was issued by Chief Executive Engineer and countersigned by Principal Secretary PHED, Rajasthan, Jaipur instead of Certificate from the District Collector of the District.
Jindal Saw Ltd. Under Kandla Commissionerate	5/2009	687.58	19.93	Recommendatory letter was issued by MoCI instead of Ministry of PNG. The customs authority, Kandla, also objected (October 2012) to this but took no further action and contract was finalised.

Thus, it can be concluded that in the absence of clarity on the definition of an appropriate sponsoring authority for a project, the importers treated each contract as an independent project or as a sub-project under the main project in an attempt to avail duty concessions which were most beneficial. The regulations do not provide for any restriction on change of sponsoring authority mid-way through a project which resulted in importers changing the classification of the project under the project import scheme to avail maximum concessions.

Having multiple sponsoring authorities in cases of mega projects like oil refinery and coal mines meant an increased requirement for documentation. In addition, it was not clear to Audit as to which administrative ministry, as a sponsoring authority, will be responsible for the monitoring of completion of projects.

DoR in respect of M/s Subhash Projects and Marketing Limited stated (December 2016) that project was a drinking water supply project of the Government of Rajasthan. Since it is a Government project located in more than one district of Rajasthan and the Authority i.e. Principal Secretary who has countersigned the certificate is senior to District Collector/Magistrate and can legally exercise the power of his sub-ordinate.

**Recommendation: Audit recommends that the provisions regarding sponsoring authority in the PIR 1986 may be clarified to establish a primary**

***sponsoring authority for composite/integrated projects to avoid any scope for undue benefits and for better monitoring of projects.***

The Board during the exit meeting (19 December 2016) and DoR response (December 2016) stated that recommendation made by audit is being examined and suitable amendment/clarification would be issued in consultation with the administrative ministry.

**3.4 Absence of provisions in PIR for shifting of machinery**

In terms of Regulation 5 (3) of PIR, the applicant shall specify the location of the plant or project in application seeking benefits under the Scheme. Further, the project import concessions are available subject to the certification of installation of machinery by Chartered Engineer (CE)/Plant Site Verification (PSV) by central excise authority. There are no provisions in PIR for shifting of machinery from specified location to some other location.

Audit observed instances of shifting of machinery by the importers in Chennai Sea Customs Commissionerate, Air Cargo Commissionerate, New Delhi and NCH, Mumbai.

**3.4.1** A contract<sup>21</sup> was registered (2011) in Chennai Sea Customs Commissionerate for initial setting up of 'Industrial Plant for manufacture of radial tyres - car and truck' required for the plant at Kolathur, Tamil Nadu. In the application, location of the plant and project was shown as 'SH-110 Sriperumbudur, Tambaram Road., Kolathur Village, Sriperumbudur Taluk, Kancheperum Dist., TN.

Mould and machinery imported (August and September 2011) of assessable value of ₹ 51.48 lakh and ₹ 3.02 crore respectively under Project Imports was however, removed as such by importer to its other plants located at Banmore and Mysore respectively in September 2011 and March 2012. The removal of mould/machinery in contravention to the provisions of PIR, 1986, resulted in incorrect availing of duty concession of ₹ 10.60 lakh. The contract was however, finalised in June 2015 without recovering the irregular concession availed by the importer.

DoR stated (December 2016) that the importer was advised to submit all facts in writing. The importer has also accepted to pay the differential duty along with applicable interest.

**3.4.2** Similarly, in ACC New Delhi Commissionerate, an importer<sup>22</sup> registered (July 2014) Project Import contract of CIF value of ₹ 3.68 crore for automatic fare collection system used in Mass Rapid Transport System consisting of AVM and system design & specification documents for DMRC

---

<sup>21</sup>M/s J.K. Tyre & Industries Ltd.

<sup>22</sup>M/s Delhi Metro Rail Corporation Ltd.-(DMRC)

project, Phase-III. The importer imported 273 ticket reader-cum-add value machine along with system design & specification documents having CIF value of ₹ 3.66 crore and availed custom duty exemption of ₹ 21.96 lakh.

Audit scrutiny revealed (June 2016) that imported goods were installed at the stations of the Phase-I & II projects instead of stations of Phase-III projects as approved in essentiality certificate of sponsoring authority. This resulted in irregular grant of duty exemption ₹ 21.96 lakh. Contract is pending for finalisation by the customs.

Ministry's reply is awaited (December 2016).

**3.4.3** In NCH Mumbai Commissionerate, an importer<sup>23</sup> registered contract in February 2006 to import goods for setting up a new cement plant at Baga and Bagheri, District Solan, Himachal Pradesh along with recommendation letter for CIF value of ₹ 189.09 crore. Subsequently, additional contracts were registered three times between July 2008 and September 2011 for CIF value of ₹ 61.04 crore.

Audit observed that importer shifted the capital goods which was imported in November 2006 and January 2007<sup>24</sup> (₹16.35 crores), from plant of Himachal Pradesh to another new cement plant of the importer in Uttar Pradesh. However there were no details about payment of duty concessions of ₹ 82 lakh availed on importation under Project Import.

DoR stated (December 2016) that the importer has been advised to submit the details of imports made under the Project Import which is awaited. Appropriate action shall be initiated in case satisfactory details are not submitted within fortnight.

### **3.5 Conclusion**

*Review of the existing legal provisions of the scheme reveals that considerable ambiguities have been introduced in the scheme due to later notifications and amendments. Thus, the assessments are being done in an inconsistent manner leading to under/over valuations and incorrect levy of duty. Lack of appropriate provisions in the regulations to monitor completion of imports, have resulted in many projects lingering over indefinite periods, and undue advantage of concessional imports being extended to importers even after the commencement of projects. Due to lack of clarity in ascertaining the primary sponsoring authority for captive power plants and other composite projects, there are multiple sponsoring authorities for a single project without clear administrative responsibilities for monitoring completion of the projects.*

---

<sup>23</sup>M/s Jaiprakash Associates Ltd.

<sup>24</sup>Imported vide BE NO. 722026 dated 09.11.2006 and 741242 dated 22.01.2007