

Chapter 4: Compliance to rules and procedures

Audit examined whether there was compliance to rules, regulations and procedures framed under Customs Act 1962, PIR 1986, notifications and instructions issued by the CBEC from time to time. Audit observed that there were cases of incorrect grant of project imports concession due to non-submission of requisite documents; cases finalised even in absence of reconciliation statements and other documents, thus indicating laxity in compliance to the prescribed provisions.

4.1 Contracts finalised in absence of requisite documents

As per Regulation 7 of PIR, 1986 read with the Paragraph 5 of Chapter 5 of Customs Law Manual, the importer is required to submit the requisite documents²⁵ to customs authority within three months from the date of clearance of last consignment or within such extended time for finalisation of assessments. PSV is to be carried out by the central excise authority concerned in selective cases.

4.1.1 Cases finalised in absence of reconciliation statements and other documents

Audit scrutiny revealed that five contracts under JNCH, Mumbai Commissionerate, Kandla and ACC New Delhi Commissionerates were finalised by the customs authorities even though importer did not submit the requisite documents or submitted deficient documents. Duty concessions of ₹ 9.60 crore were availed by the importers.

An illustrative case is detailed below:

A contract²⁶ registered (July 2010) in Kandla Commissionerate, involving 24 BEs (₹ 29.38 crore) was finalised in July 2014 by the Commissionerate. However, the importer did not submit the reconciliation statement and copy of four BEs²⁷ for consignments imported through Mumbai in December 2010. The customs authority, Mumbai had sought certain clarification from Kandla Customs, but without clarifying the concern to Mumbai Customs, Kandla Customs finalised the contract.

DoR has furnished Commissionerate wise factual information (December 2016) to the above observations which was under examination.

²⁵Reconciliation statement showing the description, quantity and value of the goods along with installation certificate from registered/certified Chartered Engineer, copies of Bills of Entry (BEs), invoices, final payment certificate etc.

²⁶M/s FLSmith, Chennai.

²⁷Bills of entry Nos. 2426943 dated 13.12.10, 691304 dated 13.01.11, 631221 dated 28.12.2010 and 2589460 dated 15.01.2011.

4.1.2 Finalisation of project contracts without installation certificate/plantsite verification

In 11 cases under five Commissionerates involving duty concession ₹ 45.15 crore, audit scrutiny revealed that these contracts were finalised by the Commissionerates without taking the installation certificate on record or by accepting the certificate issued by authority other than the competent authority (**Appendix 4**).

DoR has furnished (December 2016) Commissionerate wise factual information which was under examination.

4.1.3 Finalisation of project contracts without verifying expansion of capacity

As per Regulation 3(c), substantial expansion of installed capacity of a plant means expansion which will increase the existing installed capacity by not less than 25 per cent. As per MoF's letter No. 521/192/90-Cus TU dated 12 March 1992, documentary evidence like Central Excise Certificate, books of account etc. are required to be submitted by the importers in support of their claim of substantial expansion. Audit observed cases of finalisation of the project without verifying the expansion as detailed below.

(i) In Kandla, Mundra and NCH-Mumbai Commissionerates audit observed that five contracts²⁸ of CIF value ₹ 87.44 crore were finalised by customs between July 2011 and March 2016 without verifying the substantial expansion as proposed by the importers resulting in incorrect availing of Project Import benefits of ₹ 2.62 crore.

(ii) In two contracts²⁹ of CIF value of ₹ 20.25 crore registered (May 2011 and February 2012) under Hyderabad and Ludhiana Commissionerates, audit observed from the central excise records, i.e. Annual Installed Capacity Statement (ER-7 Returns) submitted for the years 2011-12 to 2014-15, that the installed capacity remained same as it was prior to the project imports. Since the documentary evidence did not prove that any expansion of the plant capacity took place after the import of machinery, the benefits availed under Project Imports were irregular. Thus, duty concessions of ₹ 59.95 lakh availed on imported machinery need to be recovered.

DoR has furnished (December 2016) Commissionerate wise factual information which was under examination (**Appendix 4A**).

²⁸ M/s Sunshine Tiles Co. Pvt. Ltd, M/s Somany Ceramics Ltd., M/s Ramoji Granite Ltd., M/s SentosaGranitoPvt. Ltd. And M/s Llyod Steel India Ltd.

²⁹ M/s SNJ Synthetic Ltd. and M/s Avon Ispat & Power Ltd.

4.2 Inadmissible imports allowed under the scheme

As per Paragraph 2.4 of Chapter-5 of Customs Manual, at the time of clearance of goods, the custom authority is required to check the description, value and quantity of the goods registered.

4.2.1 Incorrect grant of duty concession to excluded categories of machinery

Ministry of Finance (TRU) vide OM No. F. No.354/2/2012-TRU dated 9 January 2012 clarified that Tunnel Boring Machines (TBM)/spares parts required for Metro rail projects are not eligible for import under the Scheme, since the imported machineries were not essential for maintenance of the plant or project .

In contravention to above clarification, in ICD Commissionerate Bengaluru, an importer³⁰ registered two contracts in January 2011 and July 2011 for import of Tunnel Boring Machines and spare parts respectively and allowed duty concessions of ₹ 7.08 crore. Both the contracts were finalised in September 2015 by the customs.

DoR stated (December 2016) that the TBM is a separate machine and Segment mould is a separate machine. The former is for tunnelling while the latter is to manufacture precast concrete segments for the lining of the tunnel. Without the help of TBM, Bengaluru Metro Rail Project cannot come into existence.

Reply of DoR is not tenable as it does not address the issue of incorrect grant of duty concession to TBMs as per the MoF OM stated above. The concessional rate of duty under PIR, 1986, is available, provided, the machinery was handed over to the project authorities as a part of the infrastructure by importer. But in the instant case the machinery was retained by the importer.

4.2.2 Discrepancies between goods permitted to be imported and actually imported

In three cases of imports with CIF value ₹ 24.03 crore and involving duty concessions of ₹ 1.86 crore, audit observed discrepancies in goods permitted to be imported under Project Import and actually permitted by the importers. Two cases are detailed below:

In Kolkata Port Commissionerate, an importer³¹ had registered a contract to import goods required for supply of two *Electric Walking Dragline*, to the Amlohri coal mining expansion project of Northern Coalfields Ltd. The

³⁰M/s Continental Engineering Corporation.

³¹M/s Heavy Engineering Corporation Ltd.

importer had submitted copies of nine purchase orders and a list of items approved by the Ministry of Coal.

Scrutiny of the import documents enclosed in the file revealed that the motors (hoist, propel, swing, drag), covered by purchase order dated 30 March 2011 executed with M/s General Electric, Canada, imported under two BEs were of different model numbers than that in the purchase contract, approved for registration. Additionally, the firm had imported six *hoist motors* as against four *hoist motors* (for two draglines) agreed in the purchase contract.

As the imported motors were not of the specifications agreed in the approved purchase contract, these were not eligible for concessional rate of duty. Incorrect extension of benefit under CTH 9801 had led to incorrect availing of exemption of ₹ 1.67 crore on CIF value of ₹ 18.38 crore.

DoR in their reply (December 2016) stated that the merit of the case is being judged and a final reply will be forwarded.

In another case, one importer³² under NCH Commissionerate, Mumbai had registered (March 2014) its contract for initial setting up of Cement plant in Karnataka for CIF value of ₹ 121.40 crore. The importer imported two drilling machines of CIF value ₹ 5.54 crore and availed duty exemption of ₹ 16.62 lakh on them.

Since the drilling machines were essentially meant for quarry blast hole drilling for mining operations and not directly for setting up of the cement plant, these were not eligible for concessional duty.

Ministry of Commerce allowed (October 2015) the importer to shift one drilling machine to its other plant in Telangana State subject to the condition that the importer will deposit customs duty with interest and other dues to the concerned Customs Authority. However, neither shifting of the machinery nor payment of duty and interest was not on record.

Ministry's reply is awaited (December 2016).

4.3 Import of spares in excess of ceiling

As per the provisions of Chapter heading 9801 of First Schedule to the Customs Tariff Act 1975, in addition to project import goods, spare parts and consumables upto 10 per cent of the assessable value of goods can also be imported.

³²M/s Orient Cement Ltd.

Audit observed that in six contracts registered (between December 1997 and May 2014) in five Commissionerates³³ importers imported spares/consumables in excess of prescribed ceiling of 10 per cent resulting in irregular availing of duty exemption of ₹ 1.31 crore.

Few cases are detailed below:

(i) In Cochin Customs Commissionerate, one importer³⁴ registered a Project Contract No.2/1997 for setting up of (1x50 MW) Kuttiyadi Hydro Electric Project. The goods registered for a value of ₹ 64.69 crore included additional spares of ₹ 7.35 crore. The value of additional spares of ₹ 7.35 crore exceeded the permissible limit of 10 per cent value of machinery of ₹ 6.47 crore resulting in excess import of spares of ₹ 87.95 lakh.

The contract was finalised in December 2013 without accounting for the excess imports. Duty concession of ₹ 27.65 lakh was allowed in excess value of spares.

(ii) In NCH, Mumbai Commissionerate, an importer³⁵ registered contract in April 2006 for import of goods for initial setting up of 1100 MW Sugen Combines Cycle Power Plant in Surat at Gujarat. The importer claimed 'nil' rate of duty under Sl. No. 400 of notification dated 1 March 20012. The goods were imported through 398 BEs and contract was finalised by customs in August 2013.

Verification of the documents furnished by Chartered Engineer vide certificate dated 30 December 2009 revealed that total value of imported plant and machinery was USD 29,51,60,346 and of spares was USD 3,14,31,685. The permissible ten percent of allowable spares was USD 2,94,63,383 thus resulting in excess import of USD 19,68,302 (₹ 8.86crore). The importer paid duty on imports valuing USD 16,39,737 (₹ 9.39crore). On balance excess imports of USD 3,28,565 (₹ 1.48 crore), no duty was paid. The excess imports of ₹ 1.48 crore attracted customs duties of ₹ 42.34 lakh.

DoR's reply (December 2016) to the above observations was under examination.

4.4 Incorrect clearance of goods

As per Regulation 4 read with Regulation 5 of PIR, 1986, the assessment under project import is available only to those goods which are imported against a specific contract, registered with the appropriate customs house before issue of any order for clearance of the goods for home consumption

³³ACC New Delhi, Chennai Sea Customs, Cochin, Kandla and Mumbai (NCH)

³⁴M/s Kerala State Electricity Board (KSEB).

³⁵M/s Torrent Power Ltd.

and the importer has to apply for registration at the port where the goods are to be imported on or before their importation.

Audit observed that in two cases, goods were cleared before registration of contracts and in three cases; the goods were already imported on or before making applications for registration of contracts. This resulted in irregular availing of project import concessions of ₹ 5.39 crore as detailed below:

Table No. 6: Incorrect clearance of goods

Comm.	Contract No.	Duty concessions (₹ in lakh)	Remarks
Cochin	1/2013	12.41	Contract was registered in February 2015, but part shipments were cleared in January 2015.
NCH, Mumbai	S/5-17/ 2012/CC	109.57	Goods imported on 18.12.2012. Applied on 21.12.2012 and contract was registered on 02.02.2013, but the goods were cleared on 28.12.2012.
Tuticorin	3/2003	362.00	The contract was registered on 10.07.2013, wherein goods were already imported on 30.07.2012.
Hyderabad	S20/Proj. Imp/01/2011-ICD	7.45	Applied for registration between September 2010 and January 2012 but goods were already warehoused in January/March 2010.
Vishakhapatnam	S13(A)/02/2013-AP	47.26	Applied for registration on 17.07.2013 but cargo had already arrived on 22.06.2013.

The above cases of clearance of goods against the violation of PIR depicted the improper monitoring for clearance of the Project Import goods.

DoR has furnished (December 2016) Commissionerate wise factual information which was under examination.

4.5 Application of incorrect rate of duty

Under Project Import, the importer is required to pay customs duties (BCD, CVD, SAD) as per the prevailing rate/exemption notified from time to time.

Audit observed in case of nine contracts in seven Commissionerates incorrect application of rate of duty due to mis-classification of goods/project and non-levy of duty amounting to ₹ 3.03 crore resulted in non/short payment of customs duties.

Table No. 7: Incorrect rate of duty

Comm.	No. of case(s) noticed	Remarks	Value of goods (₹ in lakh)	Short/Non levy of duty (₹ in lakh)
Kandla	2	SAD was not levied in one case and in another case 'lubricating oil' was misclassified and CVD was short levied	119.32	8.62
Mundra	6	Lubricating oil was misclassified and CVD was short levied	2694.31	123.85
Chennai	2	Safeguard duty on 'Disk insulators' was not levied	216.14	75.65

Comm.	No. of case(s) noticed	Remarks	Value of goods (₹ in lakh)	Short/Non levy of duty (₹ in lakh)
Cochin	4	Safeguard duty on 'Seamless pipes' was not levied	190.01	28.94
Kolkata	2	Duty concessions claimed treating the project as 'mechanised handling systems/pallet racking systems in mandis/warehouses' instead as 'cold storage system'	262.05	39.82
NCH, Mumbai	1	Misclassification of 'filter bags'	496.86	23.00
JNCH, Mumbai	3	Lift irrigation project treated as water supply project	14.66	3.07

In addition to the above cases, analysis of the project import data provided by DG (System) revealed the short/non levy of duty as detailed below:

Table No. 8: Short/non levy of duty

No. of cases noticed	Remarks	Value of goods (₹ in lakh)	Short levy noticed (₹ in lakh)
70 BEs of nine ports ³⁶	Safeguard duty on 'Electrical insulators' was not levied	18508.33	6385.35
22 BEs of five ports ³⁷	Lubricating/Transformer oil/insulating oil was misclassified resulting short levy of CVD	4219.88	123.79
105 BEs of six ports		Short levy could not be ascertained due to incomplete data.	

DoR has furnished (December 2016) Commissionerate wise factual information which was under examination.

4.6 Loss of revenue due to non-levy of anti-dumping duty on import of rubber chemical

As per notification 94/2005 dated 20 October 2005-Customs various category of rubbers chemicals attracted anti-dumping duty on goods imported from the European Union, People's Republic of China, Chinese Taipei and the United States of America.

In Kolkata Commissionerate, an importer³⁸ registered (January 2007) a contract for import of raw materials for manufacture of 22,000 meter of Steel Cord Belt required for coal mine expansion project of M/s Neyveli Lignite Corporation Ltd.

Test check of the details of imports made under the contract revealed that the firm had also imported (January 2007) rubber chemicals like MOR, 6PPD and TDQ originating in People's Republic of China and Chinese Taipei on which anti-dumping duty was payable in terms of notification 94/2005 dated 20 October 2005. However, anti-dumping duty amounting to ₹ 7.53 lakh was neither collected at the time of provisional assessment of the BEs nor considered at the time of finalization of the assessment.

³⁶Kolkata Sea, Kanakpura (Jaipur ICD), Mandideep, Nagpur, Nhava Sheva Sea, KLPL-ICD/Panki, Paradip, Raipur, Bangalore ICD

³⁷Bombay Sea, Kolkata Sea, Nhava Sheva Mumbai, ICD Tughlakabad, Vizac Sea

³⁸M/s Phoenix Conveyor Belt India (P) Ltd formerly M/s Phoenix Yule Ltd.

On this being pointed out (June 2016), DoR stated (December 2016) that matter has been taken up with importer and final reply would be given on receipt of clarification from importer.

4.7 Incorrect rate of interest in ICES 1.5

As per NT notification dated 1 March 2011, interest at the rate of 18 per cent is payable on non/short levy customs duty.

In Ahmedabad Commissionerate (ICD Khodiyar), audit observed that a project contract No.01/2012 was registered (December 2012) for import of goods for CIF value ₹ 293.44 crore by one importer³⁹ for its new vehicle Plant at Sanand, Gujarat.

In case of four consignments imported during April, 2013, the importer imported goods in excess of the quantity permitted by the sponsoring authority. The importer paid full duty without availing project concession on the excess quantity along with interest vide EDI generated challan no. 371 dated 26 October 2013 and intimated the payment particulars to customs through letter dated 24 May 2013.

Interest was calculated and paid at the rate of 15 per cent (applicable for Section 47 of the Customs Act, 1962) considering this as general late payment of duty instead of 18 per cent (applicable for Section 28) to be paid on short/non-levy of customs duty resulting in short payment of interest of ₹ 1.03 lakh.

Thus, there is a need to update the interest calculation field of ICES 1.5v, so as to apply the applicable rate of interest rate in such cases of short levy of duty.

DoR in their reply (December 2016) stated that the importer has been directed to pay the differential duty. However DoR's reply is silent about the modification required in the ICES.

4.8 Delay/non adjudication of SCN issued in Project Import cases

According to Section 28(9) of Customs Act 1962, the adjudication order, where it is possible to do so, should be passed by the adjudicating authority within six months in normal course and within one year in case of collusion, wilful misstatement, suppression of facts, fraud etc. from the date of issue of SCN/demand notice.

In Chennai Sea, ACC, New Delhi and NCH, Mumbai Commissionerates, audit observed 34 cases of non-adjudication of SCNs involving duty ₹ 12.61 crore issued between July 2011 and February 2015 as illustrated below.

³⁹M/s Ford India Private Ltd.

4.8.1 Chennai Sea Commissionerate: In 25 cases of Project contracts (2004-2010) involving CIF value of ₹ 460.22 crore, SCNs were issued, for non-submission of requisite documents for finalisation. These SCNs issued during 2011 to 2012 were pending for adjudication upto July 2016. Out of the 25 SCNs, four SCNs were pending adjudication for more than five years and 21 SCNs were pending adjudication for more than four years. Out of 25 case, in 11 cases, the duty demanded was ₹ 12.06 crore and for the remaining 14 cases, the details of duty demanded were not furnished by the Commissionerate.

DoR in their reply (December 2016) stated that SCNs have been issued for non-submission of required documents and the adjudication will be completed after following due process.

4.8.2 In ACC, New Delhi Commissionerate audit observed that three SCNs were issued (February 2015) to one importer⁴⁰ for non-submission of requisite documents for finalisation. After conducting (March 2016) personal hearing, the Commissionerate, granted extension to the importer for submitting documents upto April 2016. However, Audit observed that the documents had not been submitted by the importer upto June 2016 and adjudication proceedings were pending.

DoR in their reply (December 2016) stated that SCNs was issued to the importer in 2015 and shall be adjudicated soon.

4.8.3 In NCH, Mumbai Commissionerate verification of SCN register in the contract cell revealed that 61 SCNs issued after April, 2011 were pending for adjudication as on date of audit (June/July 2016). Out of 61 SCNs, 58 SCNs were pending adjudication beyond six months. Audit found that common reasons for pendency were:-

- (a) delayed action/pending finalization of BEs from other ports or pending PSV from Central Excise Authorities;
- (b) departmental inaction, monitoring lapses, non- follow up and untraceable files.

In JNCH, Mumbai neither the SCN register nor did statistics of issuance/pendency of SCNs were furnished to audit.

DoR in their reply (December 2016) stated that in NCH, Mumbai Commissionerate, out of 58 SCNs pending beyond six months, 23 SCNs have been adjudicated till date. Efforts are on for early adjudication for pending cases by contacting the Central Excise Authorities for expediting the required

⁴⁰M/s NBCC Ltd.

reports in these cases. In JNCH, Mumbai Commissionerate, SCN register is now being maintained.

4.9 Non recovery of confirmed demands

Section 28(10) of Customs Act, 1962 provides that where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

4.9.1 ACC Commissionerate, New Delhi: Audit observed (June 2016) that in two contracts involving CIF value of ₹ 44.86 lakh, contractors failed to submit documents required for finalization. The Commissionerate adjudicated (November 2014 and January 2015) SCNs and confirmed differential duty of ₹ 10.81 lakh and penalty of ₹ 2.70 lakh respectively. The recovery was, however, pending as on June 2016.

DoR in their reply (December 2016) accepted the non recovery of the confirmed demand.

4.9.2 In case of provisional assessment, importer can pay duty with interest in advance; awaiting finalization of assessment and such payment is to be adjusted in final assessment⁴¹.

In Kolkata Commissionerate one importer⁴² registered (May 2011 and January 2012) two contracts to import goods required for initial setting up of transmission line associated with Sasan Ultra Mega Power Plant. After registration of the contracts, the importer intimated (between December 2012 and May 2013) Customs Department that as per the price escalation clause in the purchase contract, the foreign supplier had raised supplementary invoices against some of the supplies and hence additional duty may be assessed thereon. Subsequently, the Department assessed, between April and July 2013, the customs duty payable against the supplementary invoices and issued letters asking the firm to pay the duty along with applicable interest.

It was, however, observed (June and July 2016) that out of the two contracts in one case registered in January 2012, the firm paid the differential duty of ₹ 1.09 crore against total differential duty of ₹ 1.42 crore. Further, the firm had not paid interest on the differential duty against both the contracts. The Commissionerate had not taken any action to collect the balance differential

⁴¹As provided in Board's circular No.40/2011-Customs dated 09 September 2011

⁴²M/s Power Grid Corporation of India Ltd.

duty of ₹ 32.85 lakh and the interest, against both cases totaling ₹1.80 crore (₹ 37.81 lakh plus ₹ 1.42 crore) resulting in blockage of Government revenue.

DoR in their reply (December 2016) that a letter was sent to the importer and a reply has been received in the Commissionerate along with relevant enclosures. Final reply will follow.

4.10 Conclusion

Audit observed instances of weak or incorrect compliance to the existing provisions. Contracts for substantial expansion of project being allowed without actual verification, delay in submission of documents, inadmissible imports of goods and clearance of undedicated goods revealed deviation from the procedures of PIR, 1986.

