

## Chapter II

### Levy and collection of Central Excise duty on Plastics and articles thereof

#### 2.1 Introduction

Plastic<sup>11</sup> refers to those materials capable either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, and extruding, rolling or other process, into shapes which are retained on the removal of external influence. Plastics also include vulcanized fibre.

Plastic<sup>12</sup> also known as Polymers, is one of the major end products of the Petrochemicals Industry (Upstream Industries). The plastic industry chain can be classified into two primary segments, viz. the upstream, which is the manufacturing of polymers, and the downstream, which is the conversion of polymers into plastic articles. The downstream plastic processing industry is highly fragmented and consists of micro, small and medium units with majority falling in the small scale sector.

Plastics and articles thereof are classifiable under Chapter 39 of the first schedule, under the Central Excise Tariff Act 1985, effective from 28 February 1986.

The production of polymers has increased from 5,060 thousand MT in 2008-09 to 8,839 thousand MT in 2015-16 (Compound Annual Growth Rate (CAGR) of 8.3%) while its consumption has increased from 5,977 thousand MT to 12,055 thousand MT for the corresponding period (CAGR of 10.5%).

#### 2.1.1 Why we chose this topic

Plastic has been one of the top revenue yielding commodities under Central Excise during the last three years with a revenue contribution of ₹ 6,092 crore in FY 16. Currently, Indian plastics industry comprises of more than 30,000 processing units, of which 85 to 90 per cent are small and medium enterprises (SMEs). The total turnover from plastic industry in FY 15 was ₹ 1,33,245 crore of which 80 per cent was contributed by small scale units under the downstream segment. Import of plastic and articles thereof was ₹ 74,566 crore during 2015-16 which constituted 2.99 per cent of the total

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<sup>11</sup> Chapter Note 1 under Chapter 39 of Central Excise Tariff Act 1985

<sup>12</sup> Chemicals and Petrochemicals statistics at a glance 2016-Ministry of Chemicals and Fertilizers

import of ₹ 24,90,298 crore during the same year<sup>13</sup>. Products from the Indian plastic industry are exported to more than 150 countries across the globe. Export of plastic and articles thereof during 2015-16 was ₹ 34,338 crore which was 2.00 per cent of the total export of ₹ 17,16,378 crore.

## **2.2 Audit objectives**

The subject specific compliance audit sought to assess the adequacy of and compliance with the rules, regulations, notifications, circulars/instructions/trade notices etc., issued from time to time, including internal controls, in relation to levy, assessment and collection of excise duty relating to plastic sector and monitoring thereof.

## **2.3 Scope and Audit coverage**

Audit collected revenue data related to plastic and articles thereof for the period 2013-14 to 2015-16 from ACES<sup>14</sup> data provided by the Board and sample units were selected from this data for the said period, based on parameters including total revenue collection, number of cases of non/short payment of duty in the unit, use of CENVAT credit etc. Accordingly, Audit selected 25 Commissionerates out of the total of 119 Commissionerates dealing with Central Excise and 25 Divisions and 50 Ranges under these Commissionerates. Audit also selected 308 assessees falling within the jurisdiction of these selected Commissionerates based on parameters including detailed scrutiny due but not done/scrutiny done, internal audit due but not done/ internal audit done, non/short payment of duty by the assessee etc. Besides, Audit also examined the records of eight selected 100 per cent Export Oriented Units (EOU) and 20 additional assessees whose records were examined at the respective Divisions/Ranges only and who dealt with import/export of plastic and articles thereof (total 336 assessees). These assessees manufactured plastic goods as well as imported plastic raw materials. The period covered in this SSCA was 2013-14(FY 14) to 2015-16 (FY 16). Data relating to plastic manufacturers was also obtained from the respective State Pollution Control Board/Pollution Control Committee, Commercial Tax Department and compared with ACES data for identifying unregistered assessees.

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<sup>13</sup> Department of Commerce- Export Import Data Bank ([www.commerce.gov.in/EIDB.aspx](http://www.commerce.gov.in/EIDB.aspx))

<sup>14</sup> Automation of Central Excise and Service Tax

## 2.4. Audit findings

### 2.4.1 Trend of revenue collection from plastic commodity

Table 2.1 depicts growth of revenue from Plastic sector as compared to total Central Excise revenue for the period 2013-14 to 2015-16.

**Table No.2.1: Share of revenue from Plastic sector in total Central Excise revenue (₹ in crore)**

Sl. No.	Year	CE revenue	Revenue from Plastic	Plastic revenue as per cent of CE revenue
1	2013-14	1,69,455	4,298	2.54
2	2014-15	1,89,038	5,150	2.72
3	2015-16	2,87,149	6,092	2.12

Source : Figures furnished by the Ministry

### 2.4.2 Trend of revenue collection in selected Commissionerates

Audit collected revenue data relating to plastic sector from the selected Commissionerates for the period from 2013-14 to 2015-16. Comparison of Personal Ledger Account (PLA) revenue of 2015-16 with PLA revenue from 2014-15 indicated the following:

- (i) 18 Commissionerates showed positive growth. Out of this, four Commissionerates viz., Gurgaon-II (269.64%), Faridabad (148.11%), Guwahati (76.39%) and Kolkata-II (74.71%) showed more than 50 per cent growth.
- (ii) Four Commissionerates, Hyderabad IV (-14%), Indore (-7%), Chennai IV (-6%) and Silvassa (-3 %), showed negative growth during the year 2015-16 in comparison to the year 2014-15. Chennai IV Commissionerate stated that production decreased due to decrease in sales, leading to less payment of duty.
- (iii) Two Commissionerates, Bengaluru II and Noida I either did not provide any data or provided incomplete data, while data provided by Belapur Commissionerate showed same revenue figures for all three years. Hence Audit was not in a position to comment on the performance of these Commissionerates.
- (iv) Daman Commissionerate (₹ 179.45 crore) and Silvassa Commissionerate (₹ 160.46 crore) were the highest revenue contributor from PLA during the year 2015-16.

### 2.4.3 Non/delayed filing of returns

Rule 12(1) of Central Excise Rules, 2002 stipulates that a monthly return (Form ER-1) is to be submitted by every assessee (other than Small Scale Industries (SSI) ) indicating, inter alia, details of production and removal of goods by the 10<sup>th</sup> of the next month following the month for which such return is due. SSI units are required to file ER-3 returns indicating the above details on a quarterly basis within 10 days after the end of the quarter. Though no specific penalty is prescribed for non/late filing of returns, rule 27 of the said Rules, prescribes a general penalty of up to a maximum of ₹ 5,000 for violating any rule, which is applicable to non/delayed filing of return.

Details of ER-1/ER-3 returns submitted by manufacturers of plastic articles obtained from 50 Ranges revealed that there were 128 cases of non-filing in 11 Ranges and 1,296 cases of late filing of returns in 29 Ranges. The Department levied penalty in only 487 cases (37.57 per cent) in 27 Ranges for an amount of ₹ 8.31 lakh for late filing of returns and recovered ₹ 0.32 lakh in 46 cases. The Department had neither taken any action nor imposed any penalty in the 128 cases of non-filing and in 809 cases of late-filing of returns. Four Ranges where cases pending for action were more than 50 returns are listed below:

**Table 2.2: Non/delayed filling of returns**

S. No.	Name of Commissionerate	Name of Division	Name of Range	No. of cases of non/delayed filing of returns pending for action			
				2013-14	2014-15	2015-16	Total
1	Kolkata II	Howrah IV	Range III	24	44	33	101
2	Ahmedabad III	Kalol	AR II	5	54	7	66
3	Delhi I	Division I	Range V	8	18	38	64
4	Kolkata V	Bishnupur	Range III	16	20	18	54

The non-initiation of action for non/delayed filing of returns indicates slackness of monitoring mechanism.

Audit pointed this out between November 2016 and March 2017.

Ministry in reply (September 2017) stated as follows:

- Ministry admitted the objections in 367 cases. Out of this, in 36 cases, penalty of ₹ 2.20 lakh had been recovered, in 331 cases Show Cause Notice issued/action had been initiated.

- Reply in respect of remaining 570 cases was awaited (September 2017).

#### 2.4.4 Preliminary Scrutiny of returns - Pendency of Review and Correction cases

After the introduction of ACES, preliminary scrutiny of returns is being done by the system itself. The purpose of preliminary scrutiny of returns is to ensure completeness of information, timely submission of returns, payment of duty, arithmetical accuracy of the amount computed and identification of non-filers/stop filers. Where discrepancy is found by the ACES systems, all such returns are marked for Review and Correction (R&C)<sup>15</sup>. These returns marked for R&C by ACES should be validated in consultation with the assessee and re-entered into the system. The preliminary scrutiny of returns and R&C is to be completed within three months from the date of receiving the returns.

Audit obtained data from the selected 50 Ranges in respect of preliminary scrutiny of returns related to plastic sector. Analysis of the data revealed that out of 29,520 returns received, preliminary scrutiny was done in 26,204 returns while in respect of 3,316 returns (11.23 per cent) preliminary scrutiny was pending during the period 2013-14 to 2015-16, despite the fact that preliminary scrutiny is to be done automatically by ACES. Audit also observed that out of 25,898 returns marked for R&C by ACES, the Department could correct 22,998 (88.80 per cent) returns within the stipulated three months. Thus, 2,900 returns were pending for R&C. Ranges under Bengaluru II and Gurgaon II Commissionerates did not provide data for 2013-14. Range-24 under Noida I Commissionerate and Range I and II under Thane-I Commissionerate did not provide the data for all three years. Thus, Audit was not able to comment on the performance of these Commissionerates. Ranges where returns were pending for R&C, are listed below:

**Table 2.3: Preliminary scrutiny – Pendency of R & C Cases**

Sl. No.	Name of Commissionerate	Name of Division	Name of Range	No. of returns where R&C was pending			
				2013-14	2014-15	2015-16	Total
1	Delhi I	Division I	Range V	154	388	749	1,291
2	Delhi I	Division I	Range IV	56	229	473	758
3	Coimbatore	Coimbatore II	Coimbatore II A	120	129	120	369
4	Kolkata V	Bishnupur	Range III	105	111	126	342
5	Kolkata II	Howrah IV	Range IV	68	72	0	140
<b>Total</b>				<b>503</b>	<b>929</b>	<b>1,468</b>	<b>2,900</b>

<sup>15</sup> The process of resolving discrepancies in respect of marked returns is called R&C

Pendency of R&C cases in Range IV and V under Delhi I Commissionerate and Range III under Kolkata V Commissionerate had an increasing trend during the three years. There was a pendency of 749 and 473 R&C cases respectively during the year 2015-16 in these two ranges. The position of pendency increased from 13.86 per cent to 78.31 per cent in Range IV and from 24.64 per cent to 76.43 per cent in Range V in respect of the total returns received during 2013-14 to 2015-16.

We pointed out the above pendency in October 2016.

Ministry replied (September 2017) as follows:

- In respect of Delhi I, Coimbatore and Kolkata V Commissionerates, it was stated that action was taken and pendency cleared (2,760 returns).
- In respect of Kolkata II Commissionerate, it was stated that action was taken for one return. Reply for remaining 139 pending returns was awaited.

The delay in carrying out R&C is not only indicative of poor monitoring of scrutiny of returns, but may also lead to possible revenue escapement because of cases getting time barred.

#### **2.4.5 Inadequacy in detailed scrutiny of returns**

Central Board of Excise and Customs (CBEC) in circular No. 818/15/2005-CX dated 15 July 2005 had laid down detailed guidelines for manner of scrutiny of ER -1 and ER -3 returns.

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure the correctness of valuation, availing of CENVAT credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc. Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, which have been identified on the basis of risk parameters developed from the information furnished in the returns submitted by the taxpayers.

Para 4B read with para 4.1A of Manual for the Scrutiny of Central Excise Returns, 2008 provides for selection upto five per cent of total returns received for a detailed scrutiny of assessment based on risk parameters. CBEC issued revised guidelines for scrutiny of Central Excise returns in Circular No.1004/11/2015-CX dated 21 July 2015 prescribing a range of 2 to 5 per cent of total returns filed for conducting detailed scrutiny.

Audit obtained data in respect of returns received and returns subjected to detailed scrutiny from the selected 50 Ranges and observed that out of a total of 1,05,212 returns, the Ranges selected 1,992 (1.89 per cent) returns for detailed scrutiny. Out of these 1,992 returns, 278 returns were related to plastic sector. From the scrutiny conducted, the Department was able to detect revenue implication of ₹ 1.93 crore in 32 cases.

Audit also noticed that during the years 2013-14, 2014-15 and 2015-16, 31, 34 and 11 ranges who had provided data, did not select any returns for detailed scrutiny despite the fact that large number of returns were received as detailed below. Data was not provided by 9, 10 and 3 Ranges during these years.

**Table 2.4: Number of returns filed year-wise**

Number of returns ranged between	Number of ranges		
	2013-14	2014-15	2015-16
Upto 1000	24	28	31
1001 to 2000	9	10	6
2001 to 3000	2	1	5
3001 to 4000	2	3	2
Above 4001	-	-	1

Five Ranges where highest number of returns were filed but no return was selected for detailed scrutiny are detailed below:

**Table 2.5: Ranges with high returns and no returns selected for detailed scrutiny**

Sl. No.	Commissionerate	Division	Range	No. of returns filed			
				2013-14	2014-15	2015-16	Total
1	Delhi I	Division I	Range V	3,308	3,483	4,000	10,791
2	Delhi I	Division I	Range IV	2,066	2,096	2,495	6,657
3	Chennai II	Division II	Ambattur II	1,813	1,942	2,145	5,900
4	Bengaluru II	Peenya II	Peenya P	654	629	711	1,994
5	Rajkot	Rajkot I	AR IV	419	465	537	1,421

We pointed this out in February and March 2017.

Ministry replied (September 2017) as follows:

- In respect of Gurgaon II and Rajkot Commissionerates, it was stated that objections are noted for future compliance. In respect of Coimbatore, Bengaluru and Kolkata II Commissionerates detailed scrutiny of returns has since been completed.
- In respect of Delhi I Commissionerate (2013-14 to 2015-16) and Hyderabad III and IV Commissionerate (2013-14), it was accepted that no detailed scrutiny was conducted. In respect of Daman and Guwahati Commissionerates, it was stated that no detailed scrutiny was pending. However as per data provided, no returns were selected for detailed scrutiny during 2013-14 and 2014-15.
- In respect of remaining 15 Commissionerates involving 28 Ranges reply was awaited (September 2017).

Detailed scrutiny being the first line of compliance verification, non-selection of returns for detailed scrutiny during the respective years by the above Commissionerates indicates weakness in compliance verification mechanism.

#### **2.4.6 Internal Audit**

Internal audit is an additional mechanism available with the Department for ensuring correctness of assessment of duty paid and records maintained by the assesseees. This is ensured through a scientific selection of assesseees based on risk analysis by emphasising on pre-preparation: by scrutinising business records against statutory records and by monitoring of audit points. As per Central Excise Audit Manual 2008, the selection of units was based on the duty payment norms and units paying more than ₹ 3 crore were to be audited annually mandatorily. The norms have been revised and according to revised norms effective from 27 February 2015, the Audit Commissionerate would release an Annual Plan by 31<sup>st</sup> May of every year indicating the name of assesseees that are proposed to be audited during the course of the year.

#### **2.4.7 Non-conducting of Internal Audit resulting in non-detection of lapses**

Audit examined the records of 29 assesseees which were due for audit as per the extant norms, but had not been covered by internal audit of the Department and noticed lapses in 24 cases for 17 assesseees involving short payment of duty, irregular availing of CENVAT credit etc. amounting to ₹ 1.06 crore. These cases could have been detected had these units been subjected to audit as per rules.



An illustrative case is given below:

#### **2.4.7.1 Short payment of duty due to undervaluation of goods**

As per Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as amended, where the excisable goods are sold under Section 4(1) (a) of Central Excise Act, 1944 on a value where the price is not the sole consideration for such sale, the value shall be deemed to the aggregate value including the value of additional consideration received in the form of free supply of material from the buyer.

Audit observed that M/s Ultima Plastics Industries falling under Aurangabad Commissionerate received moulds free of cost from M/s Videocon Industries Ltd.(buyer) during the period 2013-14 to 2015-16 and cleared manufactured goods without adding the amortised cost of moulds supplied free of cost. Thus non-inclusion of value of moulds received free of cost amounting to ₹ 63.16 lakh in the value of goods removed resulted in short levy of duty of ₹ 7.80 lakh. The internal audit of this unit covering the above period was not conducted by the Department.

We pointed this out (December 2016) and the Ministry stated (September 2017) that letter had been addressed to assessee in August 2017 calling for documents. Further Report was awaited (September 2017).

In respect of remaining 23 cases:

- Ministry admitted the audit objections in 17 cases. Out of this, in 16 cases, duty amount of ₹ 79.85 lakh was recovered with interest. In one case, misclassification pointed out by audit was rectified.
- In 6 cases, Ministry stated that reply would follow.

#### **2.4.8 Lapses remained undetected despite conducting of Internal Audit**

Audit examined the records of 44 assessees which were covered by internal audit of the Department and noticed lapses in 36 cases pertaining to 20 assessees involving short payment of duty, irregular availing of CENVAT credit etc. amounting to ₹ 67.54 lakh. Thus, despite internal audit being conducted, these 36 lapses were not detected. A few illustrative cases are given below:

##### **2.4.8.1 Non-inclusion of retained VAT remission amount in the transaction value**

As per section 4(3)(d) of Central Excise Act, 1944, “transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale at any point of time. It is thus, evident that taxes such as sales tax

which are collected but not paid or payable would be part of transaction value, which was upheld by Hon'ble Supreme Court in case of M/s Super Synotex India Ltd.

M/s Lalit Polly Weave LLP under Guwahati Commissionerate availed remission under the Assam Industries (Tax Exemption) Scheme 2009 under which it had retained 99% of the VAT collected and paid only 1% of the same to the State Government. The assessee did not pay Excise duty on retained VAT amount for the period 2013-14 to 2015-16 (up to May 2015). However, the assessee started paying Excise duty on the retained VAT from June 2015 onwards. This resulted in undervaluation of the goods cleared leading to short-levy of duty of ₹ 22.84 lakh during 2013-14, 2014-15 and 2015-16 (upto May 2015). Interest was also recoverable under section 11AA of the Act.

Internal audit was conducted in June 2015 covering the period 2014-15 but the irregularities remained undetected.

We pointed out this (December 2016) and the Ministry reported (September 2017) recovery of duty of ₹ 22.54 lakh. The Ministry's reply was silent on the lapse of Internal Audit.

#### **2.4.8.2 Misclassification of finished goods resulting in short levy of duty**

As per Section 3 of Central Excise Act, 1944, Excise duty is leviable on all excisable goods which are produced or manufactured in India as, and at rates, set forth in the first schedule to the Central Excise Tariff Act, 1985. The effective rate of duty for sacks and bags of polymers of ethylene falling under tariff sub heading 39232100 (sacks and bags of polymers of ethylene), other than those for industrial use, was increased to 15 per cent from 12.5 per cent ad valorem from 01 March 2015 by notification No. 12/2015-CE dated 1 March 2015.

M/s Manbhari Plastic Private Limited under Kolkata II Commissionerate manufactured 'Polythene Bags' from polymers of ethylene and cleared 320.43 MT of such bags between April 2015 and February 2016 to non-industrial customers paying duty at the rate of 12.5 per cent instead of 15 per cent by wrongly classifying the same under tariff sub heading 39232990 (sacks and bags other than polymers of ethylene) instead of sub heading 39232100. This resulted in short levy of duty amounting to ₹ 10.85 lakh besides interest to be recovered. Though internal audit of this unit was conducted in February 2016 covering the period 2014-15, this lapse was not detected.

We pointed out this (November 2016 and March 2017) and the Ministry reported (September 2017) recovery of duty and interest of ₹ 14.10 lakh.

In respect of remaining 34 cases:

- Ministry admitted the audit objections in 31 cases. Out of this, in 21 cases duty amount of ₹ 9.17 lakh was recovered with interest and in 10 cases, Show Cause Notices were issued/action was taken.
- In 2 cases, Ministry stated that reply would follow.
- In respect of Praspac Industries Private Limited under Ahmedabad III Commissionerate, Ministry stated that the review mechanism for ascertaining the legality of sanction of rebate lies with the Executive Commissioner.

However, the fact remains that the outcome of such review was awaited (September 2017).

#### **2.4.9 Other deficiencies noticed in the audit of departmental units**

Audit also observed 46 cases of lapses in the selected Ranges/Divisions which were not detected by the Department, involving short payment of duty, irregular availing of CENVAT credit and non-ensuring of end use for intended purpose in respect of imported goods etc., with a revenue impact of ₹ 2.97 crore.

A few illustrative cases are given below:

##### **2.4.9.1 Delay in adjudication of Show Cause Notice**

Sub-Section 11(b) of Section 11A of the Central Excise Act, 1944, as amended stipulates that the Central Excise Officer shall determine the amount of duty of excise within one year from the date of notice, where it is possible to do, in respect of cases involving fraud, suppression etc.

Audit noticed from the records of Howrah IV Division under Kolkata II Commissionerate that a Show Cause Notice involving suppression was issued in March 2012 in respect of M/s Weil Burger Coatings India Private Limited for an amount of ₹ 5.87 lakh but the said SCN was yet to be adjudicated.

We pointed out this (December 2016) and the Ministry reported (September 2017) that SCN was under adjudication process.

The reply of the Ministry was not tenable since the SCN issued in this case in March 2012 was required to be adjudicated within the stipulated time of one year. However, the same was pending adjudication till date (September 2017).

##### **2.4.9.2 Incorrect selection of unit for detailed manual scrutiny**

CBEC in Para 4.1B of the Guidelines for Manual for Detailed Scrutiny of Returns, 2008 specifically stated that the final selection of returns for

detailed scrutiny would be based on availability of staff in the Range and also the objective of ensuring that the units selected exclude those were mandatorily audited in the previous financial year or are likely to be audited in the current year. This would avoid duplication of effort and optimise the use of administrative resources available in the Range.

Audit examination of the data relating to internal audit/detailed manual scrutiny (DMS) conducted by the Department during 2014-15 revealed that M/s Euro Label Industries falling under Ambattur I Range under Chennai II Commissionerate was selected for internal audit to be conducted in December 2014. However, the same unit was also selected for DMS during January 2015, irrespective of the unit having been audited in December 2014. The selection of M/s Euro Label Industries for internal audit and DMS during the same financial year 2014-15 is in contravention of Board's instructions.

We pointed out this (February and March 2017) and the Ministry stated (September 2017) that reply would follow.

#### **2.4.9.3 Non-observance of prescribed procedure and omission to ensure end use**

Notification No.25/1999-Cus dated 28 February 1999 exempts certain specified goods, when imported into India for use in the manufacture of specified finished goods, from so much of that portion of the duty of customs leviable thereon, as is in excess of either Nil rate of duty or 5 per cent ad valorem, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

In terms of Rule 5(2), after such import, the Assistant Commissioner/Deputy Commissioner of Customs shall forward copy of the Bill of Entry containing the particulars of import, including the details of goods imported under the concessional rate of duty to the jurisdictional Assistant/Deputy commissioner of Central Excise and this provision existed up to March 2016. Rule 8 of said Rules stipulates that the Assistant/Deputy Commissioner of Central Excise has to ensure that the goods imported are used by the manufacturer for the purpose of manufacturing and in case they are not so used, take action to recover the duty foregone consequent on extension of such concessional rate of duty along with interest.

Audit noticed that in 20 cases, the manufacturers had imported goods falling under Chapter 39 without payment of Basic Customs duty (BCD) under the said notification based on the application submitted to the Divisional office. However, the details of imported goods under concessional rate of duty as per rule 5(2) along with copies of Bills of Entry were not received from the

concerned Assistant/Deputy Commissioner of Customs, Sea Port/Airport, in 16 cases, as was required up to March 2016. Though, end use of the goods in these cases was verified based on records provided by the assessee, the same was not cross verified with data of actual import as no such data was provided by the Customs authorities. Duty involved in these 16 cases was ₹ 2.27 crore.

In the remaining 4 cases, neither any data was received from Customs authorities nor any action was taken for verification of end use. Duty forgone in these 4 cases was ₹ 50.70 lakh.

The procedure of forwarding of Bills of Entry to the jurisdictional AC/DC of Central Excise by the AC/DC of Customs, Sea Port/Airport was withdrawn from April 2016 in terms of Notification No. 32/2016-CE (NT). However, no mechanism has been put in place to enable the jurisdictional AC/DC of Central Excise to independently verify the import of goods at concessional rate of duty.

We pointed these out between December 2016 and March 2017 and the Ministry stated in respect of M/s Advance Cable Technology Private Limited, Bengaluru that the action lies at the end of Customs formation through which the goods were imported. Unless the bills of entry were submitted by the Customs formation to the jurisdictional Central Excise authority, the question of acknowledging the same does not arise. However, the importer had submitted the Bill of Entry and it is only a procedural deficiency. Ministry further stated that a letter had been sent in June 2017 to the Assistant Commissioner (Customs), Chennai in this regard.

It is evident from the reply that the jurisdictional Central Excise authority could not acknowledge the genuineness of the import due to non-receipt of Bills of Entry from the Customs formation. This indicates system weakness in ensuring the proper receipt and use of imported goods in the manufacture.

Ministry need to establish a procedure such as online transmission of details of import to the jurisdictional AC/DC of Central Excise by the AC/DC of Customs, so that verification of import details could be done independently.

In respect of remaining 43 cases:

- Ministry reported recovery of ₹ 8.77 lakh in 4 cases
- Reply in respect of 19 cases involving non-observance of procedure for import of goods and remaining 20 cases was awaited (September 2017)

#### **2.4.10 Cross verification of VAT data with registered assessees under ACES**

As per Section 6(a) of the Central Excise Act, 1944 read with Rule 9(1) of Central Excise Rules, 2002, every person, who produces, manufactures, carries on trade, holds private store room or warehouse or otherwise uses excisable goods, shall get registered.

Cross verification of data obtained from the Commissioner of Commercial Taxes, West Bengal, Commercial Tax Department, Tamilnadu/Gujarat and the registration details of manufacturers of plastic registered with the Central Excise Department as per ACES data revealed that 117 units whose turnover was more than ₹ 1.5 crore (SSI limit) were not found to be registered with the Central Excise Department. The Department was requested to examine the details of clearances made by them for the period from 2013-14 to 2015-16 and report the outcome of such verification to audit.

An illustrative case is given below:

M/s Gayatri Plastics under Coimbatore Commissionerate reported a turnover of ₹ 0.43 crore as per Tamil Nadu VAT requirements during 2014-15, after allowing SSI exemption limit of ₹ 1.50 crore (Total turnover - ₹ 1.93 crore). However, the unit did not register with the Central Excise Department.

We pointed out this (November 2016) and the Ministry stated (September 2017) that reply would follow.

In respect of remaining 116 cases, the Ministry (September 2017)

- Accepted the audit objections in 104 cases. Out of this, it was stated that three units had taken registration after being pointed out by Audit and duty amount along with interest of ₹ 4.00 lakh was recovered in one case. In respect of 101 Units, it was stated that action was initiated.
- Stated that in respect of 12 cases, reply would follow.

It is evident from Audit's independent investigation and Ministry's reply that there were no serious efforts by the Department to cross verify Central Excise data with State Commercial Tax databases to widen the tax net.

#### **2.4.11 Other issues**

Audit also observed 190 cases of non-compliance by the assessees, involving non/short payment of duty, interest and incorrect availing of CENVAT credit etc., with a revenue implication of ₹ 7.68 crore.

A few illustrative cases are given below:

**2.4.11.1 Incorrect adoption of assessable value leading to excess credit passed on**

As per rule 8 of the Central Excise Valuation Rules, 2000, as amended, where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

Audit observed from the records of M/s Motherson Sumi Electric Wires (MSEW) falling under Chennai IV Commissionerate and M/s Ajay Poly Private Limited under Noida II Commissionerate that these assessee's stock transferred semi-finished goods to their sister units during 2013-14 to 2015-16 by adopting a value which was found to be higher than 110 per cent of cost of production which was required to be adopted as per rule cited supra. The adoption of a value higher than 110 per cent value in violation of rules resulted in payment of duty in excess to the tune of ₹ 1.72 crore. This in turn led to passing on of excess CENVAT credit to their sister units, which is an unintended benefit and avoidable.

We pointed this out (February and March 2017), the Ministry in respect of M/s Motherson Sumi Electric Wires, Chennai and M/s Ajay Poly Private Limited, Noida stated (September 2017) that the audit objection is not accepted for the reason that due to fluctuation of cost of inputs, the assessee adopted notional value for payment of duty initially and after Cost Accounting Standards (CAS) 4 value was determined, the same was adopted. The notional value was marginally higher than CAS 4 value leading to excess payment of duty. It further stated that the assessee did not claim refund for excess duty paid and there was no unnecessary passing of excess credit to sister units.

The reply of the Ministry was not acceptable since CAS 4 valuation was required to be adopted for clearance to sister units. Audit noticed adoption of higher value for all the 3 years (2013-14 to 2015-16). There was scope for adoption of correct CAS 4 value by resorting to provisional assessment for payment of duty which was not done in these cases. Adoption of higher value than CAS 4 for clearance to sister units would have a bearing on the ultimate cost of the final product.

**2.4.11.2 Non-inclusion of outward freight in assessable value of goods cleared under Freight on Road (FOR) contract**

As per Section 4(3) (d) of the Central Excise Act, 1944, "transaction value" for the purpose of levy of duty means the price actually paid or payable for the

goods when sold and includes any amount that the buyer is liable to pay to the assessee in connection with sale whether payable at the time of sale or at any other time, including the transport insurance charges etc.

The amended Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, further clarifies that if the factory is not the place of removal, the cost of transportation from the factory to the place of removal such as depot, consignment agent's premises etc. cannot be excluded for the purpose of determining the value of the excisable goods.

Audit noticed from the records of four assessees (Table 2.6) that they had contract/ agreement with their buyers to deliver the goods at the buyers' destination. Audit ascertained that the outward freight paid during 2013-14 to 2015-16 was on account of freight from factory gate to the buyers' premises, and thus the same needed to be included in the sale price and duty was leviable on such freight, in terms of the provisions cited above.

**Table 2.6: Short payment due to non-inclusion of freight**

				( ₹ in lakh)	
S. No.	Commissionerate	Name of assessee	Amount of outward freight	Excise duty leviable	
1	Noida I	M/s Integrated Caps Ltd.(Unit II)	633.19	78.53	
2	Noida II	M/s East India Technologies Pvt. Ltd.	478.19	59.38	
3	Noida II	M/s Ajay Poly Pvt. Ltd.	130.15	16.15	
4	Noida II	M/s Uptodate Plastics & Packagings Pvt. Ltd.	17.78	2.21	
<b>Total</b>			<b>1,259.31</b>	<b>156.27</b>	

Non-inclusion of outward freight in assessable value of goods in the above four cases resulted in short levy of excise duty of ₹ 1.56 crore.

We pointed this out (February 2017) and the Ministry replied (September 2017) as follows:

- In respect of M/s Integrated Caps Ltd (Unit II), Show Cause Notice had been issued.
- In respect of M/s East India Technologies Private Ltd., M/s. Ajay Poly Private Ltd. and M/s. Uptodate Plastics & Packagings Private Ltd. under Noida II Commissionerate, it was stated that the goods were cleared by adopting transaction value which was inclusive of freight. Hence the value adopted for payment of duty was correct.

Reply of the Ministry was not acceptable since it was noticed that in the case of M/s East India Technologies Private Ltd., Noida II, the assessee had entered into contract with buyers and outward freight was a separate



element of cost. Hence the same was includible in the assessable value. In respect of M/s Ajay Poly Private Ltd. and M/s Uptodate Plastics & Packagings Private Ltd., the outward freight was separately collected and therefore includible in the assessable value. Moreover, Department had issued SCN on the same issue in respect of M/s Integrated Caps Ltd (Unit II), Noida I Commissionerate, which confirms the Audit stand.

#### **2.4.11.3 Irregular availing of CENVAT Credit on the basis of debit notes**

Rule 9(2) of the CENVAT Credit Rules, 2004 provides that no CENVAT credit shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document.

Audit noticed that M/s Balaji Multiflex Private Limited in Rajkot Commissionerate had cleared excisable goods to M/s Balaji Wafers Pvt. Ltd. during 2013-14 to 2015-16. Some damaged goods were returned by M/s Balaji Wafers Pvt. Ltd for which they issued debit notes to the assessee which did not contain the Excise duty details. M/s Balaji Multiflex Private Limited took credit of ₹ 36.38 lakh on the basis of these debit notes during 2014-15 which was in contravention to the rule cited above.

We pointed this out (November 2016) and the Ministry stated (September 2017) that a Show Cause Notice was issued covering the period from December 2011 to March 2016 for wrong availing of CENVAT credit and the amount of ₹ 36.38 lakh was recovered.

#### **2.4.11.4 Non-reversal of CENVAT due to non-maintenance of separate account**

Where a manufacturer or provider of output service avails CENVAT Credit in respect of common inputs or input services without maintaining separate account and manufactures such final products or provides such output service which are chargeable to tax as well as exempted goods/service, then, the manufacturer or provider of output service shall pay an amount as per the formula specified under Rule 6(3)(i) of the CENVAT Credit Rules, 2004.

Further, Rule 6 (3D) (c) of the CENVAT Credit Rules, 2004, stipulates that the value of exempted service in the case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.

Audit noticed that M/s Kavita Industries under Service Tax Noida Commissionerate engaged both in manufacturing and trading activities but

neither maintained separate accounts nor paid 6 per cent amount as per the above cited provisions, which resulted in non-payment of ₹ 16.67 lakh.

We pointed this out (February 2017) and the Ministry stated (September 2017) that the assessee agreed to pay the proportionate credit. It further stated that on receipt of documents, draft Show Cause Notice would be issued.

In respect of remaining 182 cases, Ministry

- Admitted the objections in 175 cases. Out of this, in 133 cases, an amount of ₹ 2.96 crore was recovered along with interest. In remaining 42 cases, Show Cause Notice had been issued /action had been initiated
- Stated that in 7 cases, reply would follow.

## **2.5 Conclusion**

Audit observed inadequacies in the compliance to rules and procedures by the Department in relation to levy, assessment and collection of Central Excise duty in the plastic sector. This is indicated by inadequate monitoring of returns and scrutiny of returns, deficiencies in Internal Audit and monitoring mechanism.