

CHAPTER III

Subject Specific Compliance Audit on Levy of Anti-Dumping Duty (ADD) on Imports

3.1 Introduction:

3.1.1 Where any article is exported by an exporter or producer from any country to India at less than its normal value, then, upon the importation of such article into India, the Central Government by the authority of **Section 9A of the Customs Tariff Act, 1975** read with **Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995** may, by notification issued by Central Board of Indirect Taxes and Customs (CBIC), impose an anti-dumping duty (ADD) not exceeding the difference between its export price and its normal value. “Normal value, means the comparable price, in the ordinary course of trade, for the like article when consumed in the exporting country as determined in accordance with the rules made under sub-section (6) of the aforesaid Section 9A of the Customs Tariff Act, 1975. The difference in these two prices is also called “margin of dumping”.

3.1.2 The notification is generally effective for a period of five years (unless revoked, superseded or amended earlier).

3.1.3 Anti dumping measures in India are administered by Directorate General of Trade Remedies (DGTR), (earlier the Directorate General of Anti dumping and Allied Duties) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry and the same is headed by the “Designated Authority”, in this case the Director General. The Designated Authority’s function, is to conduct the anti dumping duty investigations and make recommendation to the Government for imposition of anti dumping measures. Such a duty is finally imposed/ levied by a notification of the Ministry of Finance, Department of Revenue. Thus, while the Department of Commerce recommends the Anti-dumping duty (ADD), it is the Ministry of Finance, which levies such duty.

3.1.4 Accordingly, ADD is being imposed by the Central Government, on the basis of final findings published by the designated authority after due investigation, from time to time. In India, ADD investigations have been initiated into 377 products during 1992-2017.⁸

3.1.5 On the other hand, India has been impacted by anti-dumping duties imposed by countries like China, European Union, and 130 products have been

⁸ PHD Chamber of Commerce and Industry (PHD, CCI)survey conducted on the topic “Impact of Anti-Dumping duties on Industry in India”

subjected to anti-dumping levies during 1995-2017. During the period 2015-16 to 2017-18, ADD of ₹ 3169 crore⁹ was collected on the imports.

3.2 Major product categories covered under ADD notifications during 2015-16 to 2017-18

3.2.1 As of 31 March 2018, 484 anti-dumping notifications were in force covering 205 products. These products could be categorised mainly into following product categories;

Table 3.1: Product Group wise Anti-dumping notifications

Product Group	Number of notification issued	Number of Commodities covered
Inorganic Chemicals	214	88
Plastics, Rubber and articles thereof	63	22
Textiles and Textile articles	48	16
Mechanical appliances and Electrical machinery & Eqpt.	48	20
Iron Steel, Aluminium and articles thereof	32	17
Articles of stones, Ceramic products, Glass and Glassware	26	11
Pharmaceuticals, Fertilisers, and Misc. Chemical Products	14	11
Others ¹⁰	39	18
Total	484	205

3.2.2 Some of the commodities whose imports grew in the three year period, despite an imposition of ADD were carbon black, soda ash, acetone, PVC rolls and adhesive films, viscose filament yarn, cold rolled stainless steel products and plastic machinery including injection moulding machinery (**Annexure 2**).

3.3 Audit Objective

Subject specific compliance audit of levy and collection of anti-dumping duties in Customs was carried to assess the department's compliance with the conditions of the anti-dumping notifications, relevant provisions under the Act, Rules and regulations involving anti-dumping duty and the internal control and monitoring mechanism to guard against misuse of ADD notifications.

⁹ Source: Finance Accounts

¹⁰ Mineral Products, Bituminous substances, Vehicles and accessories thereof, Optical, Photographic, measuring instruments, Wood and articles of wood, wood charcoal, Paper and Paperboard and articles thereof, Food industries, Furskins and artificial fur, Footwear and the like; Parts of such articles and Project Imports

3.4 Audit methodology

3.4.1 During FY 2017 imports under 12 Chapters¹¹ accounted for 26.87 per cent of total imports on which ADD was levied. Statistics for import of major commodities on which ADD has been imposed under the 12 chapters shows that the total imports of these commodities increased from ₹ 19.68 lakh crore to ₹ 22.61 lakh crore, i.e. 15 per cent during the three years from FY16 to FY18.

The audit was focussed on these 12 Chapters of Customs Tariff which accounted for a major proportion of ADD.

Audit requisitioned from CBIC pan-India transaction data of imports on which ADD had been levied for three years from 2015-16 to 2017-18. However, the data was provided by CBIC with much delay.

In the absence of data, audit was limited to 18 out of 67 Commissionerates which had largest imports of commodities under the 12 Chapters mentioned above (**Annexure 3**).

3.4.2 Random sample method was used to select the sample of bills of entry which were categorised into three strata based on assessable value. Thus Bills of entry with assessable value of more than ₹ 5 crore, between ₹ 1 to 5 crore and less than ₹ 5 crore were selected as a percentage of each strata. Total bills of entry on which ADD was levied under the 12 chapters selected for audit, was 6,44,828 during 2015-16 to 2017-18. Out of these 1,82,431 (29 per cent) BsE were selected as sample.

3.5 Audit Findings

3.5.1 Lacunae in the system based assessments in levying ADD

Payment of duties of customs and any other levies and surcharges is on self-declaration basis. After the importer files a bill of entry providing details of the imported goods, the consignments are assessed by the Indian Customs EDI system or ICES. The ICES uses Risk Management System, (RMS) to identify transactions which require additional scrutiny by the assessing officer. The business rules in ICES are expected to be updated at all times so that the applicable duty and levies are automatically charged once the BE passes through the system.

¹¹ Chapter 28- Inorganic Chemicals,29(Organic Chemicals),38 (Miscellaneous Chemical products),39(Plastics and articles thereof),44 (Wood and articles of wood, Wood Charcoal), 54 (Manmade filaments and textile materials),69 (Ceramic products),70 (Glass and Glassware),72 (Iron and Steel-Primary materials products),73 (Articles of Iron or Steel),84 (Machinery and Mechanical appliances) and 87 (Vehicles and accessories thereof).

3.5.1.1 In many of the test checked cases of non/short levy reported in following sections, Audit noticed that the bills of entry had been subject to the RMS based clearance in the ICES. It was noticed that the **RMS was unable to detect the specific conditions of ADD** especially if the product name or description varied from the notification or if the levy of ADD depended on product specifications like thickness or weight.

3.5.1.2 We also noticed that **filing of Producer/Manufactures' name not made mandatory** in the Indian Customs EDI System (ICES). The names of the 'Producer/ Manufacturer' and 'Supplier/Exporter' beside country of origin are critical for deciding rates of ADD applicable on import of specified commodities because different rates are prescribed for different manufacturers/exporters or combination thereof. However, though majority of BEs filed are passed through the Risk Management System in ICES, Audit noticed that the ICES did not have the provision for mandatory filling up the field for 'Name of Producer/ Manufacturer'.

In Kandla Commissionerate, it was noticed that 'exemption from ADD was claimed in 53 cases of import of Phenol¹², originating and exported from Korea RP and Singapore although these commodities are subjected to ADD when imported from Korea and Singapore. The field of 'manufacturer' was kept blank in the import documents filed in the system by the importer. Further, Audit could not find any comments of assessing officers in the system nor relevant files were made available to audit, due to which correctness of admissibility of exemption of ADD of ₹ 91.28 lakh, to these imports could not be ascertained.

This was brought to the notice of the Ministry in March 2019 their reply is awaited (October 2019).

3.5.2 Levy of ADD even after lapse of validity of ADD Notification

ADD is leviable from the date of imposition of publication of the notification by CBIC and is effective for a maximum period of five years unless revoked, superseded or amended earlier.

3.5.2.1 Imports of Di-Isocyanate classifiable under CTH 29291020 are leviable to ADD under notification No. 25/2017-Cus (ADD) dated 5 June 2017. The notification was valid for six months only i.e. upto 4 December 2017. Similarly, imports of Phosphoric acid, Vistamaxx 6202 propylene, Glazed/Unglazed porcelain/vitrified tiles etc. are leviable to ADD under notifications 19/2012 dated 4 April 2012, 119/2010 dated 19 November 2010 and 12/2016-Cus (ADD)

¹² Import of 'Phenol' (CTH 29071110) with various combinations of Country of origin/ export, Exporter/ Producer attracts ADD at prescribed rates (Notification No. 6/2016-Cus (ADD) dated 8 March 2016.

dated 29 March 2016 respectively with validity of five years and six months respectively.

In four Commissionerates¹³, audit noticed that the department had recovered ADD of ₹ 1.17 crore in 72 cases of Di-Isocyanate, Phosphoric acid, vistamaxx, phenol and Glazed/Unglazed porcelain/vitrified tiles imports after expiry of the prescribed notifications. Accordingly, recovery of ADD without any existing notification was irregular **(Annexure-4)**.

This was brought to the notice of the Ministry in March 2019; their reply is awaited (October 2019).

3.5.3 Non-compliance with the conditions of the ADD notifications

The ADD is levied on specific commodities and is source specific. The notification of ADD provides conditions for levy of ADD which are mainly the country of origin/country of export, name of the manufacturer, classification of imported commodity and nature of the imported good. Imports which meet all of some of these conditions, as laid down in the notifications, are leviable to ADD.

3.5.3.1 Audit observed that there was non/short levy of ADD amounting to ₹ 63.60 crore in 1205 cases **(Annexure-5)** imported through 15 Commissionerates during 2015-16 to 2017-18, due to incorrect application of ADD notification provisions. The commodities which escaped the duty as seen in the test check of transactions fell under product categories like plastics and plastic products, textile and nylon yarn, chemicals, metals and ceramics and glassware.

3.5.4 Non levy of ADD in contravention to the condition of country of origin

The levy of anti-dumping is both exporter specific and country specific. It extends to imports from those countries in respect of which duty has been notified by the Customs on recommendation by the designate authority.

During test check of transactions, Audit noticed several instances of non-levy of ADD on imports from countries in respect of which ADD was leviable. Few instances are discussed below;

(i) Machinery and Mechanical appliances

All kinds of Plastic Processing machines or Injection moulding machines also known as injection presses having clamping force not less than 40 tonnes and equal to or less than 3200 tonnes falling under CTH 84771000 originating in or

¹³ JNCH, Kandla, Kolkata and Mundra

exported from **PR China, Chinese Taipei, Philippines, Malaysia and Vietnam** attract ADD at 29 per cent of landed value.¹⁴

In five Commissionerates¹⁵, 24 consignments of injection moulding machines imported from China, Taiwan and Vietnam although correctly classified under CTH 84771000 were cleared without levy of ADD of ₹ 2.95 crore in contravention to the aforesaid notifications.

This was brought to the notice of the department in January/August 2018; their reply is awaited (October 2019).

(ii) Textiles, Fabrics and Yarn

(a) Nylon filament yarn produced by any producer originating in, or exported from **China, Taiwan, Malaysia, Thailand, Korea RP and Indonesia** and imported into India is leviable to ADD¹⁶ at the rate varying between USD 0.20 to 1.51 per kg depending upon combination of producer and exporter.

Twenty three consignments of Nylon filament yarn imported (July 2015 to January 2018) from **PR China, Korea RP and Indonesia** through Chennai Sea Commissionerate and ICD, Patparganj although correctly classified under Chapter heading 54 were cleared without levy of applicable ADD of ₹ 1.33 crore.

This was brought to the notice of the department in June 2018; their reply is awaited (October 2019).

(b) Mulberry Raw Silk Grade 3A grade and below with any specification falling under CTH 50020010, originating in or exported from **China** by any producer/exporter is subject to ADD¹⁷ at 1.85 US Dollar per kg.

In Chennai Sea Commissionerate, 5 consignments of Mulberry Raw Silk Grade 3 imported from China were cleared without levying applicable ADD of ₹ 13.67 lakh although similar imports through the same port were subjected to ADD.

This was brought to the notice of the department in March 2017; their reply is awaited (October 2019).

¹⁴ {Notification No. 57/2015 – Cus (ADD) dated 4 December 2015 and Notification No. 9/2016-Cus. (ADD) dated 15 March 2016}.

¹⁵ Chennai Sea, JNCH, Tuticorin Sea, ICD Bengaluru and ICD Patparganj

¹⁶ Notification No. 3/2012- Cus. (ADD) dated 13 January 2012, as amended by notification No.4/2017 dated 19January2017

¹⁷ Notification No 01/2016- Cus. (ADD) dated 28-01-2016 (S. No.1).

(iii) Metals and Articles of Metals

Import of 'Aluminium foil' from **China** is leviable to ADD at the rate of USD 1.63 per Kg if the combination of producer and exporter was 'any' other than those prescribed under notification¹⁸ dated May 2017.

Eight consignments of aluminium foil were imported through ICD- Tughlakabad and JNCH, Mumbai Commissionerates, from China. The imported goods were facilitated clearance through RMS without levying ADD. Non-adherence to provisions of notifications resulted in non-levy of ADD of ₹ 1.12 crore. On this being pointed out, ICD, Tughlakabad authorities reported recovery of entire non-levy of ₹ 75.11 lakh from three importers. Reply from JNCH, Mumbai is awaited (October 2019).

(iv) Chemicals and chemical products

(a) 2 Ethyl Hexanol (2EH) falling under CTH 29051620, where country of origin of the imported goods is **European Union** attracts ADD¹⁹ at prescribed rate of USD 113.47 per MT.

300 MT of 2EH imported from Romania were cleared without levy of Customs duty from Kandla Commissionerate though Romania is a member of the European Union. Imported goods were cleared without levy of ADD of ₹ 23.10 lakh.

On this being pointed out, the department reported recovery of ₹ 23.10 lakh.

(b) Imports of 'Phenol' classified under CTH 29071110, originating in or exported from **USA**, attracts ADD²⁰ at the prescribed rate of USD 159.63 per MT. As per Section 30 of Special Economic Zone (SEZ) Act, 2005, any goods removed from an SEZ to Domestic Tariff Area (DTA) shall be chargeable to duties of customs including antidumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported.

Audit noticed that an SEZ Unit under Development Commissioner, Kandla Special Economic Zone (KASEZ) cleared 168 MT of Phenol (October 2016) in DTA without payment of ADD. Audit further noticed that the Phenol cleared in DTA was imported from USA which attracts anti-dumping duty. Therefore ADD was required to be levied in terms

¹⁸ No. 23/2017-Cus. (ADD) dated 16 May 2017

¹⁹ Notification No. 10/2016-Cus. (ADD) dated 29 March 2016).

²⁰ Notification No. 43/2014-Cus (ADD) dated 30 September 2014

of aforesaid notification on DTA clearances. This resulted in non-levy of anti-dumping duty to the tune of ₹ 18.13 lakh.

On this being pointed out (June 2017), the department reported (June 2017) recovery of ₹ 18.13 Lakh.

(v) Others

(a) Graphite electrodes

Imports of Graphite Electrodes of all diameters falling under CTH 8545, originating in or exported from China PPR are leviable to ADD²¹ @ USD 922.03 Per MT.

In JNCH, Mumbai and Vishakhapatnam Commissionerate, four consignments of Graphite Electrodes imported from China PR were cleared without levying ADD of ₹ 66.07 lakh.

(b) Measuring tapes (Steel tapes)

Imports of 'Measuring tapes' classifiable under Customs tariff heading (CTH) 90178090, originating in, or exported from Malaysia is leviable to ADD²² at the prescribed rate of USD 2.60 per Kg

One consignment (18250 kgs) of "Measuring Tapes (Steel tapes)" classifiable under CTH '90178090-Other instruments' imported from Malaysia (September 2016) through Chennai Sea Customs was cleared without levying ADD of ₹ 32.15 lakh.

On this being pointed out (February 2017) the department stated (November 2017) that demand notice has been issued. Further progress is awaited (October 2019).

3.5.5 Non levy of ADD on account of contravention of product specific conditions

In some cases, anti-dumping duty on the imported commodity is levied due to a specific characteristic of a product like thickness, weight or chemical composition. During test check of transactions, audit noticed that the duty was not levied on imports of these commodities even though the product specific conditions were met.

(i) Float Glass :As per various ADD notifications ²³issued during the period 2014 to 2017, import of clear float glass of nominal thickness ranging from 2 mm to 12 mm and imported from UAE, Saudi Arabia, Iran, Pakistan and China are leviable to ADD at the prescribed rates. The notifications prescribe that nominal thickness

²¹ Notification No 04/2015-Customs(ADD) SI No. 14 dated 13 February 2015,

²² Notification No. 16/2016-ADD dated 02.05.2016

²³ Notification Nos (i) 48/2014 dated 11.12.2014 (ii) 47/2015 dated 8.9.15 and (iii) 19/2017 dated 12.5.17

should be measured as per Bureau of Indian Standard (BIS) 14900:2000. As per this BIS Standard, the nominal thickness is to be considered within tolerance level thickness ranging from ± 0.20 mm to ± 80 mm. Thus, float glass of thickness 1.80 mm to 2.20 mm will be considered as of thickness 2mm.

In three Commissionerates²⁴ audit noticed imports of 42 consignments of clear float glass of thickness varying between 1.80mm to 12.80 mm and imported from specified countries which were cleared without levying ADD on the premise that nominal thickness of the glass was different from prescribed thickness of 2 mm, to 12 mm. This resulted in non levy of ADD amounting to ₹ 2.83 crore.

In two Commissionerates JNCH, Mumbai and Noida the department has not levied ADD on four consignments of Clear float glass of thickness 4 mm to 12 mm imported from Saudi Arabia and Iran respectively amounting to ₹ 20.83 lakh in contravention to the prescribed notifications (ADD notification no.48/2014-ADD and 19/2017-ADD).

This was brought to the notice of the department in June 2018; their reply is awaited (May2019).

(ii) Jute Sacks : Antidumping duty was leviable on import of Jute Products namely, Jute yarn/twine, Hessian fabric, and Jute sacking bags, in all forms and specifications, originating in, or exported from Bangladesh²⁵. In Petrapole Land Customs Station, department allowed clearance, without levy of ADD, of 416 consignments of 12766.7 MT of Jute fabrics for making sacks/bags for assessable value of ₹ 83.54 crore between January and June 2017 which were classified as “Sacking Fabrics” under CTH 53101012 and were imported from Bangladesh, without levying anti dumping duty amounting to ₹ 29.79 crore.

On this being pointed out, department did not agree with the audit contention on the ground that “jute sacking cloth” is not specifically mentioned in the notification of January 2017 quoted above. In their further reply (February 2018) the Department had forwarded test reports, in support of their contention and stated that reports revealed the goods imported were hessian cloth and not Jute product.

The department’s replies are not acceptable as in Indian trade parlance “Hessian” is used synonymously with Jute and as per the findings of Designated investigating authority, the intention of Indian Industry as well as investigating authority was to include all the major Jute products which were in product chain viz yarn, fabrics and bags of Jute that are being imported from Bangladesh in large quantity. Moreover, the ADD notification specifies CTH code only up to 4 digits implying that all items falling under the specified heading i.e. 5307, 5310,

²⁴ Chennai Sea, Tuticorin and, Kochi Customs

²⁵ Notification No. 01/2017-Customs (ADD) dated 5th January, 2017

5607 or 6305 are covered in definition “all forms and specification”. Accordingly, the imported commodity “Sacking Fabrics” by virtue of being classified under CTH 53101012 by the assessing officer will be leviable to ADD.

(iii) Flexible slab stock of Polyol is a polyether which forms polyurethane foams on reaction with catalysts and additives, which are then used in packaging, pillows, mattresses, transport seating. Import of flexible slab stock of polyol of molecular weight of 3000 to 4000 originating from European Union, Australia and Singapore is leviable to ADD²⁶ at the rate varying between USD 67.79 MT to 154.94/MT.

Thirty four consignments of Flexible slab stock of Polyol of molecular weight of 300 to 4000 under the description of Arcol Polyol 5613 and Voranol EP 1900 Polyol imported from Singapore and Spain were cleared without levy of ADD by two Commissionerates²⁷ even though, the department had levied ADD on the similar items with same grade and nomenclature in other import consignments. This resulted in short levy of ₹ 53.54 lakh.

This was brought to the notice of department in July 2008; their reply is awaited (October 2019).

(iv) Homo polymer of vinyl chloride is used in flooring, packaging sheets, bottles etc. Homo polymer of Vinyl Chloride Monomer (Suspension grade), classifiable under CTH3904, when originating and exported from European Union, Mexico and Taiwan is leviable to ADD²⁸, at the rate varying between USD 39.65/ MT to 189.99/MT.

In two Commissionerates ²⁹two consignments of PVC Resin Norvinyl Grade (Suspension grade) Lacovyl PVC Axiall CT-1110 Mass PVC Resin {synonyms for Homo polymer of Vinyl Chloride Monomer (Suspension grade)} were cleared without levy of ADD although the department had levied ADD on the similar item with same grade and nomenclature in other import consignments. The literature from the website of the producer revealed that all these grades are polyvinyl chloride homo polymer produced by suspension process. This resulted in non levy of ADD of ₹ 13.19 lakh.

This was brought to the notice of department in July 2018; their reply is awaited (October 2019).

(v) Ascorbic Acid : Import of Vitamin C , and commonly used synonyms of Vitamin C like Ascorbic Acid, L-Xylo ascorbic Acid, 3-Oxo-L gulofuranol actone

²⁶ notification No.9/2015-Cus (ADD) dated 7 April 2015}.

²⁷ JNCH and Mundra

²⁸ Notification No.26/2014-Cus (ADD) and 27/2014-Cus (ADD) dated 13 June 2014

²⁹ JNCH and Tuticorin Sea.

(Enol form), L-3-Keto threohexuronic Acid Lactone etc., as described under entry number” 867 of **MERCK INDEX**³⁰ classifiable under CTH 29362700 originating and exported from China is leviable to ADD³¹ @ USD 3.74 per Kg.

Five consignments of Sodium Ascorbate a ‘synonym of Vitamin C’ imported from China through Sea Customs Chennai, were cleared without levying ADD of ₹ 3.31 crore.

On this being pointed out, the department contested that Sodium Ascorbate could not be construed as a synonym of Vitamin C, because as per the Merck Index these were classified as two distinct compounds.

Reply of the department is not tenable because the notification clearly states that the ADD is applicable to all synonyms of Vitamin C including the most commonly used synonyms of Vitamin C as described under entry number 867 of Merck Index, meaning thereby, that ADD is leviable on import of all forms of Vitamin C. Moreover, sodium ascorbate is one of the mineral salts of ascorbic acid (Vitamin C).

Similar non levy on Sodium Ascorbate imports was pointed out in the Audit Report No. 8 of 2015 (Para No. 4.9), wherein Ministry had admitted the audit observation and issued demand notices.

In addition to the sample check, an analysis of ICES data the year 2016-17³² revealed non-levy of ADD amounting to ₹ 13.18 crore on import of several commodities like plastic injection moulding machines, cold rolled seamless pipes, glass fibre, float glass, rubber chemicals, carbon black and others. These commodities were imported through ICD, Whitefield-Bangalore, Noida Commissionerate, Kolkata (Sea), Kolkata (Air), Custom House (Pipav)-Gujarat, and Custom House, Hazira-Gujarat (**Annexure 6**). This was pointed to the Customs Commissionerates in December 2018 and January 2019, their response is awaited (October 2019).

3.5.6 Incorrect computation of ADD

- (i) Plastic processing or injection moulding machines imported under CTH 8477 1000 from People’s Republic of China/Taiwan attract ADD³³, at 29 per cent of the “Landed Value³⁴”. Landed value’ means Assessable value plus Basic customs duty.

³⁰ *The Merck Index* is an encyclopaedia of chemicals, drugs and biological published online by the Royal Society of Chemistry.

³¹ Notification No.38/2015-Cus (ADD) dated 6 August 2015.

³² ICES data relating to ADD was available only for 2016-17 at the time of audit

³³ Notification no. 057/2015-ADD dated 4 December 2015 and 9/2016-Customs (ADD) dated 15 March 2016,

³⁴ “landed value” means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied under sections 3,3A,8B,9 and 9A of the said Act.

In two Commisionerates³⁵ , in 37 consignments the department incorrectly computed the ADD at the assessable value instead of landed value. This resulted in short levy of ADD of ₹ 15.24 lakh. Of 37 consignments, in 31 consignments imported through ICD, Tughlakabad ADD was calculated by the system and the clearance was also facilitated through the system.

This was brought to the notice of the department in January/August 2018; their reply is awaited (October 2019).

- (ii) Imports of “Purified Terephthalic Acid” classifiable under CTH ‘29173600’ originating in and exported from Thailand and Korea RP is leviable to ADD³⁶ at the rate of USD 45.43 per MT (PMT) when the producer and exporter combination is Indorama Petrochem or TPT Petro Chem Public Ltd. and at the rate of USD 62.55 PMT in any other combination of producer and exporter.

Twenty one consignments of “Purified Terephthalic Acid” imported through JNCH were cleared levying ADD at the rate of USD 45.43 PMT instead of USD 62.55 PMT as the producer and exporter were other than mentioned aforesaid. This resulted in short levy of ADD amounting to ₹ 1.55 crore.

This was brought to the notice of department in June/November 2017; their reply is awaited (October 2019).

3.5.7 Incorrect resorting to provisional assessments

As per para 3.1 of Chapter 7 of Customs Manual provisional assessments must be finalized expeditiously, well within six months.

- (i) Under Proviso to Section 15 of the Customs Act, 1962, the date for determination of rate of duty and tariff valuation of imported goods is the date of entry inward of the vessel, even if the bill of entry has been filed before the date of entry inwards of the vessel.

An importer imported (July 2016) through JNCH, Mumbai two consignments of Purified Terephthalic Acid from China. Two advance bills of entry were filed on 4 July 2016 while the date of entry inward of the vessel was 5 July 2016. Import of Purified Terephthalic acid classifiable under CTH 29173500 is leviable to ADD³⁷ from 5 July 2016 at prescribed rate of USD 97.60 per MT, if the country of origin and export is China PR.

³⁵ ICD, Tughlakabad and Chennai Sea Commisionerate

³⁶ Notification No. 23/2015-Cus. (ADD) dated 27 May 2015.

³⁷ Notification No.28/2016-Cus (ADD),Sl. No.2 dated 5 July 2016).

Both the consignments were provisionally assessed and cleared without levy of ADD and with departmental comments “till further clarification of applicability of ADD”.

Despite clear provisions in Section 15 of Customs Act, 1962 to consider the date of entry inward of the vessel (i.e. 5 July 2016) as the date of presentation of the BE, these consignments were provisionally assessed without levying applicable ADD. As the date of entry inward of the vessel was 5 July 2016 and notification No.28/2016 was issued with effect from 5 July 2016, ADD was required to have been levied. This resulted in postponement of ADD of ₹ 1.34 crore in provisional assessments. Moreover, audit noticed that the provisional assessments have not been finalised despite expiry of more than six months (October 2018).

On this being pointed out, the department stated that the matter has been taken up with the importer for payment of ADD. Further progress is awaited (October 2019). (**Annexure 7, SI No. 1**).

- (ii) Import of Vinyl Chloride Monomer (Suspension Grade) classifiable under CTH 3904 attract ADD³⁸ at the prescribed rate, if the country of origin and export is Indonesia. Two consignments of “PVC Resin Grade FJ-65R” imported (September 2016) through JNCH (BsE No.6571736 and 6622177 dated 1 and 6 September 2016 respectively) by M/s Kriti Industries India Ltd. were provisionally assessed pending test reports and were cleared without levy of ADD of ₹ 48.15 lakh. These assessments were pending finalisation despite expiry of more than 6 months.

Audit also noticed that similar imports by other importers through JNCH, Mumbai were subjected to ADD during the relevant period.

Reasons for non finalisation of the provisional assessments within stipulated period of six months and status of the test report was enquired from department in July 2018; their reply is awaited (October 2019) (**Annexure 7, SI No.2**).

3.6 Conclusion

The conclusions in this chapter were based on limited audits carried out in the field. However, the gamut of issues brought out even in this limited audit point to systemic deficiencies that need to be addressed by the department. The test check revealed several instances of escapement of levy and instances of non-compliance with the conditions of the anti-dumping which resulted in non/short levy of anti-dumping duty amounting to ₹ 86.69 crore. The department

³⁸ notification No.27/2014-Cus (ADD) dated 13 June 2014, SI No.29

accepted observation amounting to ₹ 53 crore and reported recovery of ₹ 1.20 crore. Due to the obvious limitation of test check methodology, cases mentioned in this chapter are illustrative. Department is advised to carry out a review of similar imports which attract ADD to ensure compliance to the conditions of ADD notifications.

Department of Revenue may review the assessment process being followed in all cases where audit's test check has pointed out lacunae in the assessment procedures resulting in short or non-levy. Further, Audit has brought forth systemic deficiencies in the Customs EDI system wherein the declaration of producer/manufacturer's name which is an essential condition in imposition of the levy, has not been made mandatory. This deficiency may be addressed.