Chapter VI

Effectiveness of Tax Administration and Internal Controls (Central Excise)

6.1 Introduction

Internal controls in an organisation are designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives are being achieved:

- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.

6.2 Results of Audit

During the course of examination of 51,610 Central Excise returns submitted by the assessees in the audited 744 ranges, we came across several shortcomings in compliance to the Act, Rules, provisions, instructions etc. in place. As discussed in paragraph 2.3 and 2.4 of the this report regarding audit universe, sample and findings, out of 263 draft paragraphs issued to the Ministry, 93 paragraphs pertaining to Central Excise on the issues of return scrutiny, internal audit of assessees and functioning of jurisdictional officers are included in this chapter.

Out of 93 draft audit paragraphs, we communicated audit observations indicating lapses of Departmental officials of 42 Commissionerates, to the Ministry through 67 draft audit paragraphs (Appendix III) having financial implication of ₹ 45.65 crore. The Ministry admitted the lapses in 27 cases. In 22 cases, the Ministry admitted the issues partly, for revenue lapses and taking remedial action for recovery of revenue. The Ministry did not admit audit observations in 18 cases.

We also issued 26 draft audit paragraphs (Appendix IV) having financial implication of ₹ 129.65 crore on account of non/short payment of Central Excise duty/interest and irregular availing/utilization of CENVAT credit by the assessees in 18 Commissionerates. In 25 cases, observations have been admitted by the Ministry/Department and recoveries made/recovery proceedings have been initiated/completed. The Ministry did not admit observation in one case.

The observations are discussed in the following paragraphs under four major headings:

- Scrutiny of Returns
- Non-conduct of Internal Audit
- Non-detection of lapse by Internal Audit
- Other lapses

6.3 Scrutiny of Central Excise Returns

The Board introduced self-assessment in respect of Central Excise in 1996. With the introduction of self-assessment, the Department also provided for a strong compliance verification mechanism with scrutiny of returns. Assessment is the primary function of Central Excise officers who are to scrutinise the Central Excise returns to ensure correctness of duty payment. As per the manual for the Scrutiny of Central Excise Returns, a monthly report is to be submitted by the Range Officer to the jurisdictional Assistant/Deputy Commissioner of the Division regarding the number of returns received and scrutinised. Scrutiny is done in two stages i.e. preliminary scrutiny by Automation of Central Excise and Service Tax (ACES) and detailed scrutiny, which is carried out manually on the returns marked by ACES or otherwise.

6.3.1 Preliminary Scrutiny of Returns

Preliminary scrutiny of all returns is to be done online in ACES and the returns having certain errors are marked for Review and Correction (RnC). These have to be processed accordingly by the Range Officers. The purpose of preliminary scrutiny of returns was to ensure completeness of information, timely submission of return, payment of duty, arithmetical accuracy of the amount computed and identification of non-filers/stop filers. In case any discrepancy was found by the ACES, all such returns were marked for RnC. The returns marked for RnC by ACES should be validated in consultation with the assessee and re-entered into the system. The preliminary scrutiny of returns and RnC was to be completed within three months from the date of receiving the returns.

Table 6.1 depicts the performance of Department in respect of preliminary scrutiny of Central Excise returns.

Table 6.1: Preliminary scrutiny of Central Excise returns

Year	No of returns filed in ACES	No. of returns marked for RnC*	% of returns marked for RnC	No. of returns cleared after RnC	No. of returns pending for RnC	% of marked returns pending correction
FY16	20,59,541[58]	16,28,408	79.07	9,17,264	7,11,144	43.67
FY17	17,66,749	15,95,570	90.31	9,92,952	6,02,618	37.77
FY18	7,16,016	6,35,182	88.71	2,69,494	3,65,688	57.57

Source: Figures furnished by the Ministry

It is observed that a very high percentage (88.71 per cent) of returns, scrutinised by ACES were marked for RnC in FY18. Marking of high percentage of returns for RnC and resultant high number of returns pending corrective action, are indicative of deficiencies in the ACES system. The Department could not rectify the errors despite being pointed out continuously by us.

It is also observed that though the number of returns filed in ACES has come down drastically in FY18 (7.16 lakh) compared to FY17 (17.66 lakh), the Department could only clear 42.43 per cent returns, leaving 57.57 per cent returns pending for RnC in comparison to 37.77 per cent returns pending in FY17.

During the test check of scrutiny of records at departmental units during FY18, we came across instances of non-conducting/non-clearance of returns marked for RnC/detailed scrutiny, etc. One instance (included in section A of Appendix-III), where due to inadequacies in the system of preliminary scrutiny, irregular availing/utilisation of CENVAT credit was not detected, is illustrated below.

6.3.1.1 Non-detection of Irregular utilization of CENVAT credit during Preliminary Scrutiny

As per Section 35 F of the Central Excise Act, 1944, as amended with effect from 06 August 2014, the Tribunal shall not entertain any appeal under sub-section (1) of section 35, unless the appellant has deposited seven and half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute in pursuance of a decision or an order passed by an officer of Central Excise. CESTAT in its Circular F.No.15/CESTAT/general/2013-14 dated 28 August, 2014 clarified that pre-deposit of the amount of Excise duty, Service Tax or Customs duty can be made through reversal of CENVAT credit apart from payment made in cash

[58] Data furnished (November 2018) by the Ministry for FY16 does not match with data furnished earlier (2016) for the same year.

but pre-deposit of the penalty amount to be made in cash before registering appeal. Further, Sub-rule 4 of rule 3 of CENVAT Credit Rules, 2004 indicates the kinds of duty that can be paid through CENVAT credit account, where pre-deposit of penalty is not one of them. Therefore, pre-deposit of penalty is to be made through cash.

During audit of accounts of Range Rupnarayanpur of Asansol-II Division under Bolpur Commissionerate and subsequent verification of documents relating to Central Excise in respect of an assessee, we observed that a demand as being a penalty of ₹ 39.51 crore was confirmed in December 2015 against the said assessee. The assessee filed an appeal against the said O-I-O before CESTAT, Kolkata in April 2016 and paid pre-deposit of ₹ 2.96 crore being 7.50 per cent of penalty amount in March 2016 utilizing the CENVAT credit, violating rule 3(4) of CENVAT Credit Rules, 2004. This has resulted in irregular utilization of CENVAT credit of ₹ 2.96 crore for FY16 and thereby non-deposit of cash in Government exchequer to that extent.

The utilization of CENVAT credit was apparent from the return submitted by the assessee. The assessee had made a remark in the return regarding utilization of CENVAT credit towards payment of said pre-deposit and the return was marked for RnC by the ACES. Although the said return was checked by the Range, the irregularity remained undetected even after special mention made by the assessee in this regard.

When we pointed this out (February 2017), the Ministry admitted the observation (August 2018) and stated that SCN for ₹ 2.96 crore had been issued to the assessee. For lapse of Range Officers it stated that clarification was being sought from erring officer.

6.3.2 Detailed Scrutiny of Returns

Board vide circular No. 1004/11/2015-CX, dated 21 July 2015 stipulated that Detailed Scrutiny of a minimum of two per cent and maximum of five per cent of the total Central Excise returns received in a month should be conducted regularly by the proper officers in the field following the procedure already prescribed. Selection of assessees by the Commissionerates for detailed scrutiny shall be based on risk score and procedure for using it, as forwarded by DG (Audit) vide letter F. No. 381/20/2015 dated 18 May 2015. Chief Commissioners and Commissioners shall also have powers to manually select returns for detailed scrutiny using such criteria as deemed fit to further complement the list of assesses selected on the basis of risk.

Despite our best pursuance, the Ministry/Department did not provide data relating to detailed scrutiny of returns for FY16 to FY18. We also observed that like Service Tax returns, there is no system established by the Board to submit details of scrutiny of the Central Excise returns by field formations to the Board and same is not being monitored by the Board.

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

As, in self-assessment regime, scrutiny is the main tool and also the function of the Department to ensure correctness of tax assessment, non-maintaining data of scrutiny and monitoring of the same reflect a significant weakness in the system of assessment and collection of Revenue.

Apart from the instances of non-conducting of detailed scrutiny as mentioned in para 5.6 of this report, one instance (included in section A of Appendix-III), where excess availing of CENVAT credit was not detected, though detailed scrutiny of the returns was conducted, is illustrated below.

6.3.2.1 Non-detection of Excess availment of CENVAT credit in detailed scrutiny

Rule 14 of CENVAT Credit Rules, 2004 states that where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same alongwith interest at the rate of 15 per cent per annum (Notification No. 15/2016-CE(NT) dated 1 March 2016) shall be recovered from the manufacturer or the provider of the output service under the provisions of Sections 11A and 11AA of the Central Excise Act.

During the Audit of Central Excise Range-II of Hazaribagh Division under Ranchi Commissionerate and subsequent examination of Central Excise records and returns of an assessee, who is a manufacturer of sponge iron, non-alloys steel ingots etc., we observed that the assessee purchased 45,530.98 MT of imported coal during FY16 and availed the credit of additional duty amounting to ₹ 33.03 lakh on it. Further, it was noticed that out of 45,530.98 MT of the said coal, the assessee removed 19,369.56 MT of coal as such without reversal of CENVAT credit amounting to ₹ 14.05 lakh.

Hence, amount of CENVAT credit of ₹ 14.05 lakh with applicable interest of ₹ 1.67 lakh (upto January 2017) was recoverable from the assessee.

The Department carried out (January 2016) the detailed scrutiny of the returns pertaining to November 2015 but could not detect the lapse.

When we pointed this out (August 2016), the Ministry admitted the observation (August 2018) and intimated that the assessee had reversed credit of ₹ 14.05 lakh with interest of ₹ 3.04 lakh. It was also stated that explanation was being called for from the officers responsible for scrutiny.

6.4 Internal Audit

Internal Audit helps to measure level of compliance by the assessees in light of the provisions of the Central Excise Act and Rules made thereunder. Board issued detailed procedure of Internal Audit in the form of Central Excise and Service Tax Audit Manual, 2015 (CESTAM 2015).

As detailed in para 5.7 of this report, despite our best pursuance, the Ministry/Department did not provide data related to units due for audit during FY18 for the reasons mentioned in the para.

The failure to furnish this data reveals major shortcoming in data keeping of the Department.

The results of the audit, conducted by the Department during FY18, all depicted in table 6.2 below:

Table 6.2: Amount objected and recovered during FY18

(₹ in crore)

Year	Category	Total units audited	Short levy detected	Total recovery	Recovery as % of Total detection
FY18	Large Units	2,836	1,760	380	21.57
	Medium Units	5,467	328	162	49.46
	Small Units	7,382	134	90	66.95
	Total	**15,685**	**2,222**	632	**28.42**

Source: Figures furnished by the Ministry

It is observed that amount of short levy detected and recovered in large units is significantly higher than other units but the total amount recovered in comparison to detected amount is higher in the Small and Medium units. The Department may look into the reasons for less recovery in large units.

6.4.1 Non-conduct of Internal Audit

During the course of audit, we attempted to check the adequacy of coverage of assessees and the likely impact of non-conduct of Internal Audit by the Department in case of assessee units due for audit. We detected lapses

involving money value of ₹ 7.04 crore in case of nine assessees (included in Section B of *Appendix-III*), which were due for audit as per departmental norms but not audited by Internal Audit Parties (IAPs) in nine Commissionerates. Of these, seven cases were admitted/partly admitted by the Ministry. In two cases, observations were not admitted by the Ministry. Two instances are illustrated below:

6.4.1.1 Non-detection of irregular availing of CENVAT credit

Rule 2(l) of CENVAT Credit Rules, 2004, defines input service inter alia, as any service used by a provider of taxable service for providing an output service; or used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal and includes services viz., modernisation, renovation, advertisement, market research, accounting, auditing etc., but excludes services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness center, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

As per Para 3.1.2 of the extant Audit Manual, mandatory units (paying revenue more than ₹ 3 crore) were to be audited annually.

During the Audit of Range II of Division VII (Shirur) under Pune-I Commissionerate and subsequent verification of records of an assessee, who was engaged in manufacturing excisable goods under Chapter 87 of CETA 1985, we observed that the assessee had availed CENVAT credit amounting to ₹ 1.22 crore in respect of outdoor catering services during the period for FY15 to FY17, which was not admissible and required to be reversed along with interest.

Though assessee was a mandatory unit for Internal Audit as per existing norms but it was not audited for the period since April 2010. This resulted in non-detection of the lapse.

When we pointed this out (June 2017), the Ministry admitted the observation (August 2017) and stated that SCN for ₹ 1.22 crore had been issued to the assessee. For not conducting Internal Audit, the Ministry regretted the lapse and stated that Internal Audit could not be conducted due to manpower constraints.

6.4.1.2 Non-detection of Irregular Availment of CENVAT credit on time barred invoices

According to Rule 4(1) of CENVAT Credit Rules, 2004, as effective during the period from 1 September 2014 to 28 February 2015, manufacturer or provider of output service is not eligible to take CENVAT credit on invoices issued more than six months (one year with effect from 01 March 2015) back.

As per Para 3.1.2 of the extant Audit Manual, mandatory units (paying revenue more than ₹ 3 crore) were to be audited annually.

During audit of accounts of Range-III of Durgapur-III division under Bolpur Commissionerate and subsequent verification of documents relating to Central Excise in respect of an assessee, we observed that the assessee had taken CENVAT credit of ₹ 43.49 lakh in September 2014 relating to the invoices pertaining to the period before August 2013 and of ₹ 5.20 lakh in February 2015 relating to the invoices pertaining to the period on or before 1 February 2014. The input invoices on which credit was taken were more than one year old. This had resulted in irregular availing of CENVAT credit to the tune of ₹ 48.70 lakh for FY15.

The Department did not conduct audit of the assessee since March 2010 although the assessee was a mandatory unit as per the extant norms due to which the lapse remained undetected.

When we pointed this out (July 2016), the Ministry admitted the observation (July 2018) and intimated that SCN for ₹ 1.16 crore was under process of issuance. For not conducting Internal Audit since March 2010, it stated that Audit of the assessee was scheduled in August 2017 and the assessee was asked to provide the relevant documents but the assessee failed to comply and Department was in process of issuing summon under section 14 of the Central Excise Act, 1944.

The reply of the Ministry was silent regarding non-conducting of Internal Audit since March 2010.

6.4.2 Non-detection of lapses by IAPs

The IAPs carry out the audit of assessee units in accordance with the Audit Plan and as per the procedures outlined in the Central Excise Audit Manual, 2008 replaced with Central Excise and Service Tax Audit Manual, 2015 (CESTAM-2015) with effect from October 2015.

During the course of audit, we attempted to examine the quality of audits undertaken by the IAPs by auditing a sample of assessees already audited by IAP. Of the 43 instances in 30 Commissionerates, involving revenue of ₹ 31.38 crore, where we pointed out omission of IAPs to detect certain significant cases of non-compliance by assessees, the Ministry admitted/partially admitted 30 cases (Section C of *Appendix -III*). In 13 cases, the Ministry contested the audit observation. Three instances are illustrated below:

6.4.2.1 Incorrect availing and utilization of CENVAT credit

According to Rule 3(I) (ixb) of the CENVAT Credit Rules (CCR), 2004, credit of Service Tax paid on any input service received by a manufacturer of final products or a provider of output service shall be allowed to be taken. Input services such as those provided in relation to outdoor catering, beauty treatment, health services, health and fitness centre, life insurance, health insurance etc., however, was specifically excluded from definition of 'input service' vide Rule 2(I)(BA)(c) of CCR 2004.

During the audit of Petroleum Products Range of Ernakulam II Division under Kochi Commissionerate and subsequent verification of records of an assessee, we observed that the assessee availed (August 2015 and February 2016) CENVAT credit of ₹ 1.19 crore relating to payment of SBI Life Insurance premium, based on Input Service Distributor (ISD) invoices during FY16. This resulted in availing and utilization of ineligible credit of ₹ 1.19 crore which was required to be reversed with applicable interest.

Internal Audit of the assessee was conducted in June 2016, covering the period from March 2014 to March 2016, but it failed to detect the lapse.

When we pointed this out (February 2017), the Ministry admitted the observation (June 2018) and intimated that SCN for ₹ 1.19 crore lakh had been issued to the assessee. For the lapse of Internal Audit, it stated that clarification was being sought from IAP.

6.4.2.2 Short reversal of CENVAT credit under Rule 6(3) of CENVAT Credit Rules 2004

As per Rule 6 (2) of the CENVAT Credit Rules, 2004, where a manufacturer avails inputs and input services and manufacture taxable as well as exempted goods, shall maintain separate accounts for receipt, consumption and inventory of inputs used and receipt and consumption of input services in or in relation to the manufacture of exempted goods and take CENVAT credit

only on that quantity of input or input service, which are intended for use in the manufacture of taxable goods. Rule 6(3) states that the manufacturer of goods or provider of output service, opting not to maintain separate accounts, shall either pay an amount equal to six per cent of value of exempted goods and services; or pay an amount as determined under sub rule (3A). Further, explanation I below rule 6(3) envisages that if the manufacturer of goods or the provider of output service, avails any of the option under this sub rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

During the audit of Range V of Division IV under Pune-I CGST Commissionerate and subsequent verification of records of an assessee, who was engaged in manufacturing of dutiable goods, trading of manufactured goods and providing of taxable as well as exempted services, we observed that the assessee did not compute the amount to be reversed under Rule 6(3) of CENVAT Credit Rules, 2004 correctly for FY16. While calculating the exempted value of services, the assessee did not take into consideration the income from operating lease. Only 10 per cent of value of traded goods was considered for calculating the exempted value of services. Further, it was noticed that during the half year period from October 2015 to March 2016, no amount under Rule 6(3) had been reversed as verified from the ST-3 Return pertaining to that period. This resulted in short reversal of CENVAT credit of ₹ 33.21 lakh during FY16.

Internal audit of the assessee unit was conducted for the period March 2014 to June 2016. However, this issue was not pointed out in the internal audit.

When we pointed this out (July 2017), the Ministry admitted the observation (August 2018) and intimated that the assessee had paid ₹ 74.20 lakh including interest and penalty. For the lapse of Internal Audit, it stated that Commissioner had been asked to call for explanation from erring officers.

6.4.2.3 Non-payment of Central Excise duty in respect of goods found short

Section 3(1)(a) of the Central Excise Act, 1944, stipulates that Central Excise duty is payable on all excisable goods manufactured in India at the rates prescribed under Central Excise Tariff Act, 1985. According to Rule 10(1) of Central Excise Rules, 2002, every assessee shall maintain daily production

records (DPRs), indicating the particulars regarding the quantity of goods manufactured and removed.

Rule 3(5B) of CENVAT Credit Rules, 2004 stipulates that if the value of any input on which CENVAT credit has been taken, is written off fully or partially, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said inputs. The rule is equally applicable to semi-finished goods as clarified by the Board vide Circular No. 907/27/2009–CX dated 7 December 2009.

An assessee under the jurisdiction of Belagavi Commissionerate, is a manufacturer of articles of iron and steel falling under Chapter 72 of the First Schedule of Central Excise Tariff Act, 1985. Verification of the Central Excise records of the assessee revealed that the assessee identified certain shortage in the stock of semi-finished goods and finished goods during stock-taking conducted during FY15 and FY16. The assessee accounted the value of these goods found short in the expenditure side of the Profit and Loss Account (P&L) for the respective years as manufacturing expenses. Since the said goods have undergone the process of manufacture, the assessee was liable to pay Central Excise duty on the finished goods found short. However, the assessee did not pay ₹ 1.80 crore on the value of ₹ 14.46 crore of finished goods found short during the said period. Similarly, the assessee was liable to reverse the CENVAT credit on the semi-finished goods worth ₹ 636.85 crore found short during the same period. In the absence of the necessary details, audit could not quantify the value of CENVAT credit to be reversed.

The internal audit conducted by the Department in March-April 2016, covering the period from April 2012 to January 2016, failed to detect this non-payment of Central Excise duty and non-reversal of CENVAT credit.

When we pointed this out (August 2016), the Ministry stated (August 2018) that the assessee was accounting the estimated quantity in the software system and same was accounted for later by physical verification and any short/excess quantity was adjusted in ER returns in form of captive consumption and availing the exemption for the same under notification 67/95-CE dated 16 March 1995.

The Ministry's reply is not tenable because the procedure followed by the assessee is incorrect as material consumed captively needs to be recorded for claiming of exemption and goods found short should not be treated as captive consumption. Finished goods found short is subject to Central Excise duty. It also creates a possibility of clandestine removal of goods. The

procedure adopted by the assessee indicates a serious control weakness. The Ministry needs to examine the issue and take effective steps to plug the lacuna.

6.4.3 Cases where details of internal audit were not provided

After formation of separate Audit Commissionerates, conducting of internal audit has become the responsibility of Audit Commissionerates. The results of internal audit are communicated to Executive Commissionerates and they are required to have the information of the assessees audited. However, in five instances involving revenue of ₹ 1.47 crore (included in Section D of *Appendix -III*), the details of Internal Audit such as selection of these units for audit, conduct of audit, IAP Report etc. were not provided to us. Hence, we were unable to examine the efficacy of internal audit in these cases. Two such cases are illustrated below:

6.4.3.1 Excess availing of input service credit distributed by ISD – ineffective mechanism to deal with Internal Audit Report

As per Para No. 8.2.2 of CESTAM 2015, Monitoring Committee Meeting (MCM) should be convened by the Audit Commissionerate, to which the Executive Commissioner or his representative shall be invited to attend. The decision taken by the Audit Commissioner, with regard to settlement of audit observations after recovery of all dues or dropping of the unsustainable audit observations, shall be final. Approved audit observations, including those in which show cause notices are proposed to be issued, should be conveyed to the Executive Commissioner in the form of minutes of the MCMs, who shall respond to these observations conveying his agreement/disagreement within 15 days of the receipt of the minutes of the MCM. Further, Annexure X (CE & ST) of CESTAM 2015 provides the format in which the assessee will write to Executive Commissionerate regarding audit observation raised by the IAP which are acceptable to the assessee and objected amount had been paid so that Executive Commissionerate may not issue SCNs on those cases.

(i) Section 4(1) (a) of Central Excise Act, 1944 and Explanation thereunder provides that price-cum excise duty of the excisable goods sold by the assessee, in case the duty is chargeable with reference to their value, shall be the price actually paid to him for the goods sold and the money value for the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of goods.

Audit observed that an assessee falling under Range III, Division I, Gandhinagar Commissionerate, had sold 'CNG gas' to its dealers and also to its retail consumers through its "Mother CNG Station". We noticed that the assessee collected some 'other charges' (separately shown in its invoices) from its retail customers in addition to the price on which Excise duty was not paid. The differential Excise duty payable by the assessee on the amount of 'other charges' collected between 01 April 2012 to 15 June 2016 amounted to ₹ 12.69 lakh, which was required to be recovered alongwith applicable interest of ₹ 3.90 lakh (calculated upto June 2016).

When we pointed this out (July 2016), the Ministry admitted the observation (August 2018) and stated that SCN for ₹ 17.54 lakh has been issued to the assessee. For not furnishing Internal Audit report, it stated that audit report could not be located due to re-organisation of Commissionerate. The Ministry also furnished (August 2018) a copy of old report from which it had been observed that last Internal Audit was conducted for FY12 only.

Thus, no internal audit was conducted after March 2012 which resulted in non-detection of the lapse.

(ii) Rule 7 of CENVAT Credit Rules, 2004 stipulates manner of distribution of credit by input service distributor (ISD) with a condition that credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of turnover of such units to the total turnover of all its units during the relevant period.

During the audit of Range-IV, Division-XI, Vadodara-II Commissionerate and subsequent verification of records of an assessee, we observed that the assessee had received CENVAT credit of Service Tax attributable to common services distributed by its Mumbai Office and Mohali Office as ISD. Mumbai Head office of the assessee took sales turnover of the FY15 into consideration for distribution of credit for the FY16, proportion of which arrived at 5.74 per cent for the assessee (Panoli unit). Accordingly, Mohali office also issued ISD invoices for distribution of common credit attributing 5.74 per cent to the assessee. However, it was noticed that CENVAT credit was actually distributed to the assessee at 7.77 per cent. This resulted in incorrect distribution of credit by ISD and consequent excess availing of credit by the assessee to the tune of ₹ 59.56 lakh which was required to be recovered from the assessee.

Though, Internal Audit of the assessee was conducted by the Department, covering the period up to December 2016, despite our best pursuance, the details of internal audit were not furnished. Although the same should have been available with the Executive Commissionerate as per the provisions ibid.

When we pointed this out (May 2017), the Ministry admitted the observation (August 2018) and intimated that SCN was issued to the assessee. For not providing details of Internal Audit, it stated that Internal Audit was conducted during January to May 2017 and para was approved in MCM held in June 2017 and minutes of the MCM were also shared with Executive Commissionerate.

The fact remained that details of internal audit were not provided to Audit due to which effectiveness of internal audit could not be commented upon.

6.5 Disposal of Refund Claims

Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund. The term refund includes rebate of Excise duty paid on excisable goods exported out of India as well as of Excise duty paid on material used in the manufacture of goods exported out of India. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months from the date of application of refund. The Central Excise Manual prescribed that the Department should accept refund claims only when accompanied with all supporting documents as refund claims without requisite documents may lead to delay in sanction of refunds.

Table 6.3 depicts the status of disposal of refund claims by the Department. The delay depicted is in terms of time taken from the date of receipt of refund applications till the final processing of the claims.

Table 6.3: Disposal of refund claims in Central Excise

(₹ in crore)

Year	Opening Balance		Receipts (during the year)		Disposal (during the year)				No. of cases disposed within 3 months	Cases where interest has been paid	
					Refunds sanctioned		Refunds rejected				
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.		No.	Amt.
FY16	82,146	7,878	3,36,614	27,829	3,65,485	27,593	7,577	1,763	3,24,340	3	0.01
FY17	45,719	6,356	3,18,462	27,903	3,13,487	25,874	6,471	2,342	17,957	3	0.09
FY18	44,223	6,042	42,886	8,348	37,602	6,638	4,018	3,114	38,694	25	1.16

Source: Figures furnished by the Ministry.

It is observed that number of new cases of refund claims reduced substantially during FY18. However, the Department disposed only 41,620 cases in FY18 out of 87,109 cases. The Department also paid interest of ₹ 1.16 crore in 25 cases in FY18 in comparison to ₹ 9 lakh in three cases in FY17.

Table 6.4 depicts an age-wise analysis of pendency of refund claims during the last three years.

Table 6.4: Age-wise pendency of Central Excise refund cases as on 31 March

(₹ in crore)

Year	Total number of Refund claims pending as on 31 March		Refund claims pending for			
			Less than one year		Over one year	
	No.	Amt.	No.	Amt.	No.	Amt.
FY16	45,719	6,356	45,592	6,273	127	83
FY17	44,223	6,042	44,211	6,039	12	3
FY18	9,140	1,772	9,119	1,593	21	179

Source: Figures furnished by the Ministry.

Closing balance figure of FY18 does not appear to be correct. The correct figure as per the data provided by the Ministry, by calculating opening balance plus new refund cases minus total disposal should be 45,489 cases but the figure furnished by the Ministry is 9,140 cases. The Ministry may look into the reasons for this discrepancy.

6.6 Call Book

Board's Circular No. 162/73/95-CX.3, dated 14 December 1995 read with Circular Nos. 992/16/2014-CX, dated 26 December 2014 and 1023/11/2016–CX dated 08 April 2016, envisage that cases that cannot be adjudicated due to certain reasons such as the Department having gone in appeal, injunction from courts etc. may be entered into the Call Book. Member (CX), vide his D.O. F.No. 101/2/2003-CX-3, dated 3 January 2005, had emphasised that Call Book cases should be reviewed every month. Director General of Inspection (Customs and Central Excise) has reiterated the need for monthly review in his letter dated 29 December 2005 stating that review of Call Book may result in substantial reduction in the number of unconfirmed demands in Call Book.

Table 6.5 depicts the performance of the Department in respect of Call Book clearance in Central Excise during recent years.

Table 6.5: Call Book cases pending on 31 March

Year	Opening balance	New Cases transferred to Call Book during the year	Disposals during the year	Closing balance at the end of year (No.)	Revenue involved (₹ in Cr)	Age-wise break up of pendency at the end of the year			
						Less than 6 months	6-12 months	1-2 years	More than 2 years
FY16	36,587	7,437	7,994	36,030	64,260	5,157	2,479	6,262	22,132
FY17	36,030	13,418	19,768	29,682	58,648	5,601	2,457	4,244	17,380
FY18	29,682	9,196	10,460	25,649	62,483	4,951	1,789	3,901	15,008

Source : Figures furnished by the Ministry

It is observed that the number of cases pending in Call Book in FY18 were 25,649 involving revenue of 62,483 crore. Out of these, 15,008 cases were pending for more than two years. Closing balance figure of FY18 does not appear to be correct. The correct figure as per the data provided by the Ministry, by calculating opening balance plus new Call Book cases minus total disposal should be 28,418 but the figure furnished by the Ministry is 25,649. The Ministry may look into the reasons for this discrepancy.

During test check of records related to Call Book, we observed that in six Commissionerates[59] and five Divisions[60] Call book cases were not reviewed. In Mumbai zone and in three Divisions[61], 216 cases involving revenue of ₹ 284.64 crore were kept pending in Call Books irregularly. In Division III of Pune ST Commissionerate, Call Book Register was not maintained in the prescribed format and all the entries were not filled in. Monthly abstracts were also not prepared and no review was conducted. In Division IV of Ahmedabad Commissionerate, total 71 cases were pending in Call Book as on 31 March 2017. However, only 30 cases were entered in Call Book Register.

Three cases are illustrated below:

6.6.1 Irregular Retaining of SCN in Call Book

(i) During verification of Call Book in Division XII Umbergaon of Daman Commissionerate, we observed that SCN was issued in October 1991 to an assessee and the same was transferred to Call Book on the ground of filing of review petition by the Department in CESTAT. The review petition was disposed-off by CESTAT in October 1998 by remanding the matter back to the

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[59] Belgaum, Bharuch, Daman, Kutch, Mumbai West and Vadodara-I

[60] Tirunelveli, Division I and Tutikorin (Salem), Division I (Vadodara) and Division V (Bharuch)

[61] Division I (Bengaluru ST-I), Udupi (Mangalore) and Division XII (Daman)

adjudicating authority. The case was required to be retrieved from Call Book and decided afresh in compliance to CESTAT orders. However, we noticed that the Department could not trace the case files and the SCN was kept in Call Book for more than 19 years. The non-retrieval of SCN from Call Book resulted in delay in adjudication and blockage of revenue. Moreover, it was not found to be reviewed by the Commissioner.

When we pointed this out (February 2018), the Ministry admitted the observation (October 2018) and stated that the SCN had been retrieved from the Call Book for further adjudication. The case file had been traced out and the same would be decided within a month.

Thus, non-review of Call Book resulted in irregular pendency of case in Call Book for 19 years. The Ministry need to examine the reasons and take rectificatory action to avoid such lapses.

(ii) During the audit of the office of the Commissioner of Central Excise, Belgaum, we noticed that 132 SCNs were pending in Call Book. Of these, we test checked 17 cases and found that an SCN issued to an assessee, was pending for want of instructions from the Board regarding appointment of common adjudicating authority. The SCN was issued to the assessee, a Clearing and Forwarding Agent (CFA) of a service recipient, in January 2012 demanding ₹ 21.04 lakh towards Central Excise duty. Since similar SCNs were issued to other CFAs of the service recipient, the Additional Director General (DGCEI), Chennai requested the Director General (DGCEI), New Delhi to take up the issue with the Board for appointing a common adjudicating authority on the basis of a plea made by the service recipient. Hence, the Commissioner of Central Excise, Belgaum Commissionerate decided to transfer the SCN to Call Book (March 2013) on the grounds that orders were awaited from the Board regarding appointment of common authority. Although the Board had appointed the Commissioner of Chennai III Commissionerate as the common adjudicating authority in July 2013 itself, the SCN was not taken out of Call Book for transferring to the common adjudicating authority till audit observed the same in February 2017. The Commissionerate did not detect this irregular retention of SCN in Call Book during the periodical reviews of Call Book cases carried out subsequently.

When we pointed this out (February 2017), the Ministry admitted the observation (July 2018) and stated that due to oversight, SCN was not transferred from Call Book to common adjudicating authority.

(iii) Scrutiny of the pending Call Book cases with Kutch (Gandhidham) Commissionerate revealed that five SCNs issued to two assessees involving total duty amount of ₹ 78.75 lakh were pending in Call book without adequate follow up/action for a period ranging from seven months to more than eight years as illustrated below:

a) Department issued (June 2007) four SCNs for recovery of rebate sanctioned by Appellate Authority vide its OIA (December 2005) to an assessee as Revision Application was filed (March 2006) by the Department before Revision Application Unit (RAU), Ministry of Finance, Dept. of Revenue, New Delhi and transferred (January 2008) these SCNs to Call Book.

   Audit noticed (July 2016) that the Commissionerate was not having any information on the status of the Revision application filed for more than 10 years. Further, no documents were found on record of the Commissionerate evidencing any efforts made to obtain the status of the same from RAU, New Delhi although the 'Adjudication Section' of the Commissionerate wrote several letters to 'Review, Revision and Appeal (RRA) section' of the Commissionerate seeking status of the Review Application filed by the Department. Due to non-compliance to requests of 'Adjudication section' and non-follow up by the 'RRA Section', these SCNs were pending in Call Book till date of audit. We also noticed that even the 'Adjudication section' had followed up the case only 5 times with 'RRA section' in 10 years with a period of 4 months to more than 3 years between two follow up letters. Last follow-up was made in December 2015.

   Inadequate efforts by the Department and lack of co-ordination within the different sections of the Commissionerate resulted into pendency of these SCNs in Call Book for more than 8 years.

b) Show-Cause-Notice issued (September 2010) to an assessee was transferred to Call Book (March 2014) after the assessee filed (February 2014) an application with Settlement Commission.

   Audit noticed that after receiving intimation (November 2014) of the final Order passed by the Settlement Commission, the Commissionerate requested (December 2014) the assessee to pay the penalty imposed by the Commission. However, we noticed that although the assessee provided (December 2014) the details of

payment of the said penalty amount, the Commissionerate did not initiate any action to retrieve the case from the Call Book and dispose-off the SCN till July 2016.

When we pointed this out (July 2016), the Ministry admitted (August 2018) the observation and stated that delay in retrieval of Call Book cases was due to bifurcation of Commissionerates and transfer of files. Cases have been retrieved from Call Book and have been disposed-off accordingly.

The Ministry needs to ensure proper monitoring of review of Call Book cases and compliance of instructions by field formations.

6.7 SCN and Adjudication

Section 11A(4) of Central Excise Act, 1944 stipulates that where any Excise duty has not been levied or paid or has been short levied or short-paid or erroneously refunded, by reasons of fraud; or collusion; or any wilful mis-statement; or suppression of facts; or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

Adjudication is the process through which departmental officers determine issues relating to tax liability of assessees. Such process may involve consideration of aspects relating to, inter alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

Table 6.6 depicts an age-wise analysis of Central Excise adjudications.

Table 6.6: Cases pending for adjudication with departmental authorities

(₹ in crore)

Year	Opening Balance		Receipt (during the year)		Disposal (during the year)		Closing Balance		Age-wise breakup of pendency		
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	3-6 months	6-12 months	Above 1 year
FY16	27,674	25,107	46,551	44,599	51,211	40,352	23,014	29,355	14,649	4,728	3,637
FY17	23,014	29,355	55,520	50,219	68,166	59,098	10,347	20,474	6,320	1,934	2,093
FY18	10,347	20,474	28,876	50,513	30,321	53,776	8,534	17,402	5,909	1,424	1,201

Source: Figures furnished by the Ministry

It is observed that 8,534 cases involving duty of ₹ 17,402 crore were pending as on 31 March 2018 for adjudication. It was also observed that 1,201 cases were pending for more than one year. Closing balance figures do not appear to be correct and need to be reconciled. The Ministry may initiate measures for adjudication of pending cases as after implementation of GST, pendency of adjudication of legacy cases may lose priority.

During our audit we observed three instances in three Commissionerates (included in section F of Appendix-III) where lapses in issuance of SCNs were noticed. The Ministry did not admit any of the observations. Two instances are illustrated below:

6.7.1 Non-issue of SCN resulting in demand being time-barred

During the course of audit of Range-III of Haldia-II Division under Haldia Commissionerate, we observed that Department issued an SCN in September 2015 to an assessee covering period upto March 2014 invoking extended period for issue of SCN in respect of irregular availing of Input Service Credit on the bills raised by its Job Worker for carrying out different processes like packing/repacking, printing of labels etc. Such SCN was issued on the basis of the CAG observation raised in March 2015. Scrutiny of records of the assessee revealed that the Job Worker had continued the same job from April 2014 to March 2016 as per the agreement with the assessee and the assessee was found to have availed Input Service Credit of ₹ 26.80 lakh on the bills raised by the Job Worker during the period from April 2014 to September 2014. It was also observed that no SCNs covering the period subsequent to March 2014 had been issued to the assessee till the date of audit (December 2016) although the assessee had continued availing Input Service Credit on job charge bills raised by Job-Worker as earlier and filed ER-1 returns within due dates. Non-issue of SCN for the period

subsequent to March 2014 till the date of Audit (16 November 2016) has resulted in loss of revenue of ₹ 26.80 lakh being ineligible Input Service Credit as issuance of SCN for the period from April 2014 to September 2014 was time barred in terms of the judicial decision mentioned above.

When we pointed this out (December 2016), the Ministry did not admit the observation and stated (July 2018) that there are number of judgments on the issue and it was held that when a job worker/manufacturer has paid Central Excise duty or Service Tax when it was not legally payable as per law and credit was availed by the recipient manufacturer then, payment of duty is sufficient and no further reversal is required. It was further stated that job worker was continuously paying Service Tax and the same was accepted by the Department hence, credit reversal was not required.

The Ministry's reply is not tenable as audit observation is not on technicality of duty payment but on non-issuance of SCN for subsequent period when the Department had already issued SCN for a lapse. The Ministry's reply is silent on timely issuance of SCN and the reasons for delay in SCN and action taken for the lapse.

6.7.2 Delay in levy of duty resulting in loss of revenue to Government

Section 11A of Central Excise Act, 1944 stipulates that a show cause notice shall be issued within one year in normal course and in case of fraud, collusion, wilful, mis-statement suppression of facts etc. with intent to evade duty within a period of five years from the relevant date.

During the audit of the office of Chief Commissioner of Central Excise and Service Tax Zone, Chandigarh, we observed that an assessee, who was manufacturing pencils under Chapter heading 96091000 of the Central Excise Act, 1944, was also manufacturing pencil slats falling under Chapter Heading 44219040 and the same were being cleared without payment of Central Excise duty since 2003. Accordingly, the assessee was issued two show cause notices for ₹ 1.17 crore.

The noticee replied that the impugned SCN dated 6 February 2014 pertaining to the period from 1 December 2009 to 31 March 2012 was barred by limitation, as the noticee had informed the Department (February 2010) that it was not paying duty in view of the fact that pencil slats were exempt and charge of alleging suppression of facts and the extended period was not sustainable. In view of reply and personal hearing of the noticee, the

Adjudicating Authority adjudicated the SCN vide order dated 19 March 2015 with the remarks that it was in the notice of the Department (February 2010) so the charge of suppression or mis-statement with intention to evade payment of duty cannot be made against noticee. In view of this position, demand would not sustain for extended period of limitation. However, the noticee was liable to pay duty alongwith interest for the period of demand i.e. one year. So, out of demand of ₹ 1.17 crore, only demand of ₹ 28.45 lakh for the period January 2013 to December 2013 was confirmed and demand of ₹ 88.64 lakh on account of demand beyond one year was dropped. Since the Department failed to take timely action to decide that item was dutiable, it failed to recover ₹ 88.64 lakh. Had the Department been vigilant to raise the demand within the time frame as per the extant statute, loss of ₹ 88.64 lakh to the Government exchequer could have been avoided.

When we pointed this out (May 2017), the Ministry contested the observation (August 2018) stating that the Department was of the view that pencil slat is not dutiable due to the process not being manufacture. Also there were divergent practices in other states about dutiability of pencil slat. Therefore, extended period was not invokable in the case.

The Ministry's reply is not tenable as despite being informed by the assessee in February 2010 that it was not paying duty due to pencil slats being exempted, no proper cognizance was taken by the Department to examine the dutiablity of pencil slats. The Ministry's reply also indicates that there were divergent practices on the issue across the country. However, it is not mentioned whether any action had been taken by the Ministry to clarify the ambiguity. The fact remained that due to improper examination of assessee claims about dutiablity of the products, no action was taken to issue the demand and revenue became time barred.

6.8 Other lapses

We noticed three observations involving revenue of ₹ 1.41 crore, indicating shortcomings in functioning of jurisdictional Commissionerates (Section G of Appendix-III). The Ministry admitted/partially admitted two observations while one observation has not been admitted. Two cases are illustrated below:

6.8.1 Non-initiation of action in Central Excise duty evasion case and consequent non-registration and non-payment of Central Excise duty

According to Section 6 of the Central Excise Act, 1944 read with Rule 9 of Central Excise Rules, 2002, as amended, every person who manufactures excisable goods shall get registered. As per Rule 4 of Central Excise Rules, 2002, every person who manufactures excisable goods shall pay the duty leviable on such goods in the manner provided in Rule 8 and no excisable goods on which duty is payable shall be removed without payment of duty from any place, where they are manufactured. Rule 6 stipulates that the assessee shall himself assess the duty payable on any excisable goods, except in the case of cigarettes.

Central Excise Scrutiny Manual provides, inter alia, that the three important prongs of compliance verification system in a self-assessment regime of tax administration are scrutiny of returns, audit and anti-evasion. The Preventive and Investigation Manual stipulates that the Preventive Wings of the Central Excise and Service Tax Commissionerates have to take measures for combating evasion of duty by collection of intelligence about evasion, keeping secret track of duty payment records of individual assessees, engaging informers, making surprise visit to the factories, whether registered or not and taking effective steps to thwart any attempt for evasion.

During the audit of Kochi Commissionerate, Audit observed that based on information passed on by Trivandrum Commissionerate regarding evasion of Service Tax, Kochi Commissionerate booked an offence case against an assessee and issued (August 2016) summons. After verification of the relevant documents substantiating the evasion of Service Tax produced by the entity, the proceedings were completed by issuing SCN (January 2017).

However, during the verification the Department failed to notice that the unit was engaged in manufacture of excisable goods viz. text books, ledger books, cash books, diaries, file folders etc. classified under Chapter 48 & 49 of Central Excise Tariff Act, 1985. The unit was engaged in the manufacture and removal of excisable goods from the year 1978, without taking Central Excise registration and payment of duty. During the period FY13 to FY15, goods with an assessable value of ₹ 3.66 crore were cleared without payment of duty. Details of clearance of goods for FY16 were not furnished and in FY17, the assessable value of goods cleared was ₹ 2.90 crore. This resulted in non-

payment of Central Excise duty of ₹ 62.76 lakh during the period FY13 to FY15 and FY17. The Commissionerate not only failed to take action for registration of a manufacturing unit since 1978 but also failed to take proper cognizance of information passed on by Trivandrum Commissionerate and detection of non-payment of duty.

When we pointed this out (September 2017), the Ministry admitted the observation partially. For non-payment of Central Excise duty, it stated that SCN for ₹ 74.91 lakh had been issued to the assessee. For lapse of the Department, it stated that Preventive wing investigated evasion of Service Tax for which SCN was issued in January 2017. During the course of scrutiny, receipts of printing material were noticed and detailed records were called for. These records were examined by CAG Audit. After detailed examination, SCN was issued for recovery of Central Excise duty. Further, the assessee was not registered with the Department, hence departmental officers had no opportunity to examine the activity of the unit.

The Ministry's reply is not tenable as though records regarding printing activities were called for by the Department and even investigation of evasion of Service Tax was concluded in January 2017, Department failed to take any action for evasion of Central Excise duty till Audit pointed this out in September 2017. The Department also failed to take cognizance of the facts that assessee was the biggest multi color offset printing unit in Kerala and involved in printing since 1978, and was not registered with the Department.

6.8.2 Avoidable Excess expenditure towards payment of Government duty on electricity charges

According to Article 287 of the Constitution of India, unless the Parliament so decides, no law of a State shall impose or authorize the imposition of a tax on consumption or sale of electricity (whether provided by a Government or other persons) which is consumed by the Government of India or sold to the Government of India for consumption by that Government. Further, as per sub-section 3 of Section 3 of the Bengal Electricity duty Act, 1935, electricity duty shall not be leviable on the net charge for energy consumed or the units of energy consumed as recorded in the meter by any Government except in respect of premises used for residential purposes.

During the audit of accounts of Kolkata-I Commissionerate (presently Kolkata North Commissionerate), scrutiny of records revealed that the monthly electricity bills as preferred by Calcutta Electric Supply Corporation (India)

Ltd. (CESC) also comprised Government duty at the rate of 17.50 per cent of monthly electricity charges. Since the Commissionerate is an office of the Government of India, it is exempted from payment of State Government duty on the electricity charges as per the provisions mentioned above. The Commissionerate paid the avoidable duty to the tune of ₹ 51.27 lakh for the period from March 2014 to March 2017 to CESC. Similar avoidable excess expenditure of ₹ 12.17 lakh and ₹ 2.26 lakh were also observed in case of Durgapur-I Division of Bolpur Commissionerate and Durgapur Commissionerate (presently Bolpur Commissionerate). This had resulted in avoidable excess expenditure of ₹ 65.70 lakh.

Internal Audit of the Kolkata-II Commissionerate for FY16 was also conducted in May 2016. However, the lapse was not detected.

When we pointed this out (February 2017 to August 2017), the Ministry admitted the observation (August 2018) and stated that Bolpur Commissionerate had requested Durgapur Project Ltd. for exemption from payment of electricity duty and to adjust the already paid duty.

New Delhi **(SATISH SETHI)**

Dated: 30 May 2019 **Principal Director (Goods and Services Tax-II)**

Countersigned

New Delhi **(RAJIV MEHRISHI)**

Dated: 31 May 2019 **Comptroller and Auditor General of India**