

CHAPTER III

Non-Compliance to provisions of Customs Act, Customs Tariff Act and Tariff Notification

3.1 Goods imported in a vessel/aircraft into India attract Customs Duty and unless these are not meant for customs clearance at the port/airport of arrival and are intended for transit to another customs station or to any place outside India, detailed customs clearance formalities of the landed goods have to be followed by the importers. The importer is required to file a Bill of Entry (BE) giving details of the cargo, imported tariff classification and applicable duty, and other required information. Under self-assessment, BE can be filed electronically through ICEGATE¹¹ into the Indian Customs Electronic Data Interchange (EDI) system, referred to as ICES¹². In the non-EDI system, the BE is filed manually by the importer along with a prescribed set of documents.

3.2 The assessment function of the Customs authorities is to determine the duty liability, taking due note of any exemptions or benefits claimed under different export promotion schemes. They also have to check whether there are any restrictions or prohibitions on the goods imported and if they require any permission/license/permit etc., and if so, whether these requirements have been met. Assessment of duty essentially involves proper classification of the goods imported vis-a-vis the Customs tariff, having due regard to the rules of interpretations, Chapter and sections notes etc., and determining the duty liability. It also involves correct determination of value where the goods are assessable on ad valorem basis.

3.3 Bills of entry (BsE) filed electronically into ICES through a Customs House Service Centre or web based ICEGATE are transmitted by ICES to the RMS¹³. The RMS processes the data through a series of automated steps

¹¹ICEGATE stands for the Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway. ICEGATE is a web based portal through which the department offers a host of services, including electronic filing of the BE (import goods declaration), Shipping Bills (export goods declaration), e-payment, on-line registration and other data and links to various other important websites/information pertaining to the Customs business

¹²The Indian Customs EDI System (ICES) has two aspects: (i) Internal Automation of the Custom House for a comprehensive, paperless, fully automated customs clearance system (ii) Online, real-time electronic interface with the trade, transport, Banks and regulatory agencies concerned with customs clearance of import and export cargo through ICEGATE.

¹³Risk Management System is an IT driven system with the primary objective to strike an optimal balance between facilitation and enforcement and to promote a culture of self-compliance in customs clearances. It uses automated solution to identify the relevant criteria for assessing the risk associated with trade transactions and applies criteria in a systematic manner to determine the level of risk for each transaction and assigns the level of customs intervention according to the level of risk and available resources.

and results in an electronic assessment. This assessment determines whether the BE will be taken-up for action, i.e. manual appraisal by assessing officer or examination of goods, or both, or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. Where necessary, RMS will provide instructions for the Appraising Officer, Examining Officer or the Out-of-Charge Officer. Additionally, the Local Risk Management (LRM) committee may decide to put additional interventions in place at the local level for interdiction of imports. The system of clearances of imports through RMS based ICES and/or assessment by Customs authorities should ensure that the conditions prescribed in the applicable notifications are fully met before exemptions could be granted.

3.4 Limited access to Customs data

The fully automated procedures of ICEGATE have facilitated comprehensive and paperless customs procedures. Pan-India transaction data generated at different Customs Commissionerates is available in electronic format in a centralised database maintained at the Directorate of Systems (DG/Systems) under CBIC.

Pan India data requisitioned (June 2019) by audit for import and export transactions for the FY 19, 20 and 21 was not received, despite repeated requests. In the absence of Pan India transactional data, audit was conducted through CRA and ICRA module interfaces of ICES, which had its limitations. The limitations in the CRA and ICRA modules were also communicated to the CBIC. Accordingly, the conclusions in this Chapter on compliance audit were based on limited audits carried out by physically visiting the 41 Commissionerates.

3.5 Audit Sample

During FY 20, a total of 1.21 crore BsE and 1.37 crore SBs were generated, out of which Jurisdictional Audit offices, based on local risks, selected a sample of 4.11 lakh BsE (3.39 *per cent*) and 8.12 lakh SBs (5.93 *per cent*) for physical audits. The samples were selected at the level of individual field formations through local audits in the absence of pan-India data, which is sub-optimal. Significant audit observations (102 cases) with revenue implication of ₹10 lakh or more noticed during test check of documents in the Customs Commissionerates are covered in this Chapter. Minor observations were issued to the respective Commissionerates through Inspection Reports for corrective action.

3.6 The cases of non-compliance noticed during audit could be broadly categorized as follows:

- I. Misclassification of imports (Paragraphs 3.7.1 to 3.7.11).
- II. Incorrect application of notifications (Paragraphs 3.8.1 to 3.8.8).
- III. Other irregularities (Paragraph 3.9).

3.7 Misclassification of Imports

Classification of commodities imported is governed under the provisions of the Customs Tariff Act 1975. Levy of applicable duties is dependent on classification applied to the imported commodity.

During test check of records, Audit noticed short levy of duty due to misclassification in 8,631 BsE (67 cases). These 67 cases of misclassification, each involving revenue implication of ₹10 lakh or more, having total revenue implication of ₹107 crore, have been covered in this Chapter. Individual cases of misclassification of imports with money value less than ₹10 lakh have been reported to the local Commissionerates through field Inspection reports.

Out of the 67 cases of misclassification noticed in 16 Commissionerates, 26 cases involving total revenue implication of ₹98 crore are discussed in the following paragraphs and the remaining cases involving total revenue implication of ₹ 9 crore are listed in **Annexure 3**. The Department had accepted 67 cases involving revenue implication of ₹103 crore and reported recovery of ₹23 crore in 51 cases.

3.7.1 Battery cover decorative parts/back cover for mobile phones misclassified as goods other than parts of mobile phones

Battery cover decorative parts/back cover for mobile phones is classifiable under CTH 39209999 and attracts IGST at the rate of 18 *per cent* (serial No. 106 of schedule III of IGST Notification 01 Integrated Tax (Rate) dated 28 June 2017).

For imports made under CTH 85177090 under 11,157 BsE valued at ₹8,113 crore during the period August to November 2019 through Commissionerate of Customs- Import, NCH, New Delhi, audit filtered all the BsE in the Commissionerate for import of “battery cover decorative parts/ back cover for manufacturing of Mobile Phone” and noticed short levy of duty of ₹71.05 crore in 2,202 BsE involving imports valued at ₹685 crore.

M/s A and M/s B Pvt. Ltd. imported (August to November 2019) “battery cover decorative parts/ back cover for manufacturing of Mobile Phone”

valued at ₹685 crore under 2,202 BsE. The importers mis-classified the imported goods under CTH-85177090- as “All goods other than the parts of cellular mobile phones” and the same was accepted by the Department. The goods were cleared, after charging BCD at the rate of Nil/10 *per cent* and IGST at the rate of 12 *per cent* (Sl. No. 203 of Schedule II of Notification No.01 Integrated Tax (Rate) dated 28 June 2017).

Audit scrutiny revealed that:

- i. In terms of serial no.10 of custom notification no.57/2017 dated 30 June 2017, the goods ‘battery cover’ (which is part/sub-part or accessories of cellular mobile phones) are covered under CTH 39209999.
- ii. Further, in terms of Ministry of Electronics and Information Technology Notification F.No.33 (5)/2017-IPHW dated 1 August 2018, the item ‘back/Front cover/Camera lens/ Main lens etc’ are classified under CTH 39209999 as mechanics parts for manufacture of mobile phone.

Accordingly, the imported goods merit classification under CTH 39209999 and are leviable to IGST at the rate of 18 *per cent* (serial No. 106 of schedule III of aforesaid Notification). Thus, misclassification of the goods resulted in short levy of duty amounting to ₹71.05 crore which was required to be recovered.

On being pointed out (December 2019), the Principal Commissioner (ACC-Import), NCH-New Delhi while accepting the observation reportedly issued (September/December 2020), Demand cum Show Causes Notices to both the importers (M/s A Ltd ₹143.98 crore, M/s B Pvt Ltd- ₹86.60 crore), which included imports of other ineligible parts as well (e.g. Main lens/camera etc). Further progress was awaited (September 2021).

3.7.2 Trailers and semi-trailers not mechanically propelled misclassified as containers/other cast articles of iron or steel

As per Indian Customs Tariff Act, 1975, trailers and semi-trailers not mechanically propelled are classifiable under CTH 8716 and attracts IGST at the rate of 28 *per cent* up to 26 July 2018 {Notification 1/2017 – Integrated Tax (Rate), Schedule III, serial no.175 dated 28 June 2017 as amended}.

Imports under CTH 73102910/73102990/73259920 valued at ₹77.54 crore were made during the period July 2017 to November 2018 through ACC, NCH (Import Commissionerate), Delhi under 664 BsE for import of “Aircraft Engine Stand”. Audit noticed misclassification of imports with resultant short levy of duty amounting to ₹3.22 crore in 104 BsE involving imports valued at ₹26.47 crore.

M/s C Ltd., M/s D Ltd., and M/s E Ltd. imported (July 2017 to May 2018) 104 consignments of “Aircraft engines stands” at a combined assessable value (AV) of ₹26.47 crore through NCH (Import Commissionerate), Delhi. The goods were mis-classified under CTH 73102910 /73102990 / 73259920 as containers/other cast articles of iron or steel and assessed to BCD at the rate of 10 *per cent* and IGST at the rate of 18 *per cent* (serial no.224 of Schedule III of aforesaid notification) in 82 consignments and at 12 *per cent* (serial no.180, Schedule II of aforesaid notification) in 22 consignments.

Audit scrutiny revealed that aircraft engine stand is a kind of trailer to pull the aircraft engine from the bay area of aircraft to the workshop and vice versa etc. and thus merits classification under CTH 87163900 and leviable to IGST at the rate of 28 *per cent* instead of 18 *per cent* /12 *per cent* levied. Moreover, the exporter had correctly classified the imported goods as “aircraft engine stand” under CTH 87163900 in its invoices. However, the importers while filing BsE had mis-classified the goods under CTH 73102910/73102990/73259920 which resulted in short levy of duty of ₹3.22 crore.

On this being pointed out (November 2018), the Principal Commissioner (ACC-Import), NCH-New Delhi confirmed the demand of ₹3.22 crore against all the importers and intimated recovery of ₹23.48 lakh along with interest of ₹6.29 lakh from M/s E Ltd. Further progress is awaited(September 2021).

3.7.3 Apparatus for transmission or reception of voice, images or other data mis-classified as parts for use in manufacture of mobile phones/‘Parts for transmission or reception’

“Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as local or wide area network)” are classifiable under CTH 85176290 and attracts BCD at the rate of 10 *per cent* under Customs notification 57/2017 dated 30 June 2017.

As per the Harmonized System of Nomenclature (HSN) “Other communication apparatus” group includes Network interface cards, Modems, Routers, Multiplexers and related line equipment, data compressors/decompressors (codecs) etc. and are classifiable under CTH 85176290.

For import under CTH 8517 made under 2,19,379 BsE during the period July 2017 to July 2018 through ACC, NCH (Import Commissionerate) Delhi, Audit filtered 55,863 BsE for import of Switching cards -“100G/320G/60G/10G hybrid/pure matrix cards”, “Small form factor pluggable (SFP)”, “Thunder 6630”, “Muxponder Cards”/Transponder cards”, “Optical splitter card”,

“Optical Transceiver”, 8/ 44 Channels Mux demux board card etc.” and noticed short levy of duty of ₹6.37 crore in 187 BsE.

M/s F Ltd. and 27 others imported Control and processor cards/Switching cards etc namely “100G/320G/60G/10G hybrid/pure matrix cards”, “Small form factor pluggable”, “Thunder 6630”, “Muxponder/ Transponder cards”, etc. during July 2017 to August 2019 through ACC, NCH (Import Commissionerate) Delhi. The goods were mis-classified under CTH 85177090–parts for transmission or reception of voice, images or other data and assessed to BCD at nil rate.

Audit scrutiny revealed that the imported items are network interface cards, switches and electro optical converters like small form factor pluggable transceivers (SFP). Hence, these merit classification under CTH 85176290-other communication apparatus and leviable to BCD at the rate of 10 *per cent* instead of nil. Further, as per the explanatory notes to the Harmonized System issued by World Customs Organization, Network Interface Cards/transceivers are classifiable under CTH-851762. Thus, misclassification of imported goods resulted in short levy of duty amounting to ₹6.37 crore.

On this being pointed out (March 2018 to August 2019) the Principal Commissioner (ACC-Import), NCH-New Delhi accepted the misclassification involving revenue implication of ₹5.28 crore, of which demands of ₹4.90 crore have been confirmed and ₹1.25 crore were recovered. Further progress is awaited (September 2021).

3.7.4 “Smart watches” mis-classified as Measuring or checking instruments

All apparatus for transmission or reception of voice, images or other data in a wireless network commonly known as smart watches e.g. ‘MI Bands – Model XMSH04HM & XMSH2HIM’ merit classification under CTH 85176290 and attracts BCD at the rate of 20 *per cent*.

Against import of ‘MI Bands – Model XMSH041HM & XMSH2HIM’ valued at ₹20.71 crore made during 2017-18 through ICD, City Commissionerate, Bengaluru under 14 BsE, Audit noticed short levy amounting to ₹1.10 crore in three BsE involving imports valued at ₹6.79 crore.

M/s G Pvt. Ltd., Bengaluru imported (February 2018) MI Bands valued ₹6.79 crore through Inland Container Depot (ICD), Whitefield, Bengaluru. The goods were mis-classified and cleared under CTH 90318000 pertaining to “Other Measuring or checking instruments, appliances and machines not specified or included in the Chapter 90” and BCD levied at the rate of 7.5

per cent instead of the applicable 20 *per cent*. This resulted in short levy of duty amounting to ₹1.10 crore.

On this being pointed out (September 2019), the Ministry of Finance, Department of Revenue reported (June 2021) recovery of ₹1.38 crore which includes interest of ₹27.80 lakh.

3.7.5 Short levy of duty due to mis-classification of 'CXA steelhead appliance for Wide Area Network (WAN) server'

'CXA steelhead appliance for Wide Area Network (WAN) server' of different specifications merits classification under Customs Tariff Heading (CTH) 85176290 as "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as local or wide area network)" which is not eligible for exemption under notification no. 24/2005-Cus. dated 1 March 2005. Accordingly, the imported goods are leviable to Basic Customs Duty (BCD) at the rate of 10 *per cent*.

During the period 2017-18, a total no. of 40 BsE were filed for import of goods 'CXA steelhead with WAN server' valuing of ₹12.94 crore through Commissionerate of Customs (Airport & Air Cargo Complex), Bengaluru. Audit pointed out short levy of duty amounting to ₹59.53 lakh due to misclassification in six BsE involving imports of ₹4.90 crore.

M/s. H Pvt. Ltd, Bengaluru and M/s I Pvt. Ltd. imported 'CXA steelhead' of different specifications during October 2017 through Commissionerate of Customs (Airport & Air Cargo Complex), Bengaluru. The importer classified the imported goods under CTH 84715000- 'Processing units other than those of sub-headings- 847141 or 847149, whether or not contain in the same housing one or two of the following types of unit: storage units, input units, output unit' and cleared the goods claiming BCD exemption under the aforesaid notification.

Audit noticed that the imported goods being 'CXA steelhead appliance for improved performance & data transfer over WAN' merit classification under CTH 85176290 which is not exempted for BCD under notification no. 24/2005 dated 1 March 2005. Therefore, the imported goods were leviable to BCD at the rate of 10 *per cent*. The misclassification resulted in short levy of duty of ₹59.53 lakh which was required to be recovered from the importer along with applicable interest.

On this being pointed out (June/October 2019), the MoF, DoR intimated (June 2021) that a demand of ₹40.84 lakh has been confirmed against M/s. H Pvt. Ltd. The importer had filed an appeal against the O-I-O and also made payment of ₹40.84 lakh. In the case of another importer, M/s. I Pvt.

Ltd., a demand of ₹35.83 lakh has been confirmed which includes a demand of ₹18.68 lakh objected by Audit. Further progress is awaited (September 2021).

3.7.6 Misclassification of Navigational instruments/other apparatus for aeronautical use (CTH 85/90)

(A) Navigational instruments/apparatus for aeronautical use (CTH 85/90) misclassified as parts of helicopters/aircrafts (CTH 8803)

According to note 2 of Section XVII of the Customs Tariff Act, 1975 (Section XVII covers Chapters 86 to 89), the expression “parts” and “parts and accessories” (Whether or not they are identifiable as goods for this Section) do not apply inter alia, to articles of Chapter 82, Machines or apparatus of headings 8401 to 8479 or parts thereof, articles of heading 8481 or 8482 provided they constitute integral parts of engines or motors, articles of heading 8483, Electrical machinery or equipment (Chapter 85) and articles of Chapter 90 etc. Accordingly, such parts and accessories are not covered under Chapters 86 to 89 of the Customs Tariff.

As per HSN explanatory notes under CTH 9014, Aeronautical navigational instruments are classifiable under CTH 90142000 and attract BCD at the rate of 7.5 *per cent* and IGST at the rate of 18 *per cent* (Serial no. 411-I, 422, Schedule III of notification no. 1/2017- Integrated Tax (Rate) dated 28 June 2017).

Out of 274 BsE for imports (January 2017 to December 2018) under the CTH 88033000 having total Assessable Value (AV) of ₹64.31 crore, filed at Air cargo complex (ACC), Nedumbassery, Kerala, 45 BsE with AV of ₹35.26 crore were test checked. Mis-classification of imports was noticed in eight BsE with a total AV of ₹16.59 crore.

M/s J, Cochin imported (November 2017 to October 2018) four consignments of ‘Instruments/parts of instruments of navigation system of Aircraft/Helicopter’, three consignments of Aviation goods, engine control systems and one consignment (September/October 2018) of ‘Radar Apparatus’ through Airport Nedumbassery, Kerala. Total AV of the imported goods was ₹16.59 crore.

Though the technical write up submitted by the importer along with BsE showed the specification of the imported goods as “Aviation grade electrical/electronic items”, “Aviation grade structural items” etc., the goods were mis-classified under the CTH 8803 3000 as ‘other parts of aeroplanes or helicopters’ and assessed to IGST at the rate of 5 *per cent* (Schedule I, serial no.245 of notification no.1/2017-Integrated Tax (Rate) dated 28 June 2017 as amended).

Audit noticed that as per technical write up, the goods merited classification under CTH 9014 8090 – ‘other navigational instruments and appliances – Other’/ 90149000 – ‘parts of instrument for aeronautical or space navigation’/9032 9000 – ‘parts and accessories of automatic regulating or controlling equipment’/8525 1000 – ‘Radar Apparatus’ and attracted IGST at the rate of 18 *per cent* under the aforesaid notification dated 28 June 2017. The mis-classification resulted in total short levy of duty amounting to ₹2.12 crore.

On this being pointed out (November 2018/March 2019), the Ministry of Finance, Department of Revenue intimated (February 2021) recovery of duty of ₹2.13 crore along with interest of ₹35.66 lakh.

(B) Mis-classification of “Attitude and Heading Reference Unit (AHRU)” as “Other parts of aircrafts”

For import under CTH 88033000 valued at ₹2,712.45 crore made during the period January 2018 to March 2019 through NCH (import Commissionerate), New Delhi under 4,677 BsE, audit filtered the whole data (4,677 BsE) for import of “Attitude and Heading Reference Unit (AHRU)¹⁴” and found that in 14 BsE involving imports valued ₹12.65 crore, there was short levy of duty amounting to ₹1.68 crore involving import worth ₹12.65 crore.

M/s K Ltd., (HAL), M/s L Ltd., M/s C Ltd., and M/s M Pvt. Ltd. imported (March 2018 to February 2019) AHRU at an AV of ₹12.65 crore under 14 BsE. The goods were mis-classified under CTH 88033000 – as other parts of Aircrafts and assessed to BCD at the rate of Nil/2.5 *per cent* and IGST at the rate of 5 *per cent* (serial no. 245 of schedule I of IGST notification 1/2017).

Audit scrutiny revealed that by virtue of the aforesaid note 2 of Section XVII, the imported goods are not covered under the Section XVII (Chapters 86 to 89). Accordingly, such parts and accessories are not covered under CTH 88033000 as was cleared by the department. The imported items are “Aeronautical Navigational Instruments” and correctly classifiable under CTH 90142000 and IGST is leviable at 18 *per cent* (serial no.411-I of schedule III of IGST notification 1/2017). Thus, mis-classification of imported goods resulted in short levy of duty by ₹1.68 crore.

¹⁴ AHRU is the major component of Altitude and Heading Reference System (AHRS) for Aeronautical Navigation.

AHRU is a box that contains the essential rate gyros, accelerometers, power supplies, and other tools that are used for measuring the acceleration forces, rate of change, aircraft’s attitude, and the magnetic heading.

On this being pointed out (March 2019), the the Ministry of Finance, Department of Revenue reported (April 2021) recovery of ₹1.69 crore.

(C) Misclassification of “Gyroscopic Horizon /Directional Gyro / Accelerometer” (navigational instruments)

As per HSN explanatory notes under CTH 9014, Aeronautical Navigational Instruments are classifiable under CTH 90142000 and attracts IGST at the rate of 18 *per cent* (Serial no. 411-I, schedule III of notification no. 1/2017-Integrated Tax (Rate) dated 28 June 2017).

For import under CTH 8803 valued at ₹1,894.14 crore made during the period January to August 2019 through NCH (Import Commissionerate), Delhi under 1,849 BsE, audit filtered the whole data (1,849 BsE) for import of “Gyroscopic Horizon/Directional Gyro/Accelerometer” and found seven BsE involving imports valued at ₹3.96 crore where there was short levy of duty by ₹52.67 lakh.

M/s N Pvt. Ltd. and M/s O Ltd. imported (February to June 2019) seven consignments of “Gyroscopic Horizon/ Directional Gyro/ Accelerometer” at an AV of ₹3.96 crore through NCH (Import Commissionerate), Delhi. The goods were classified under CTH 88033000/88039000 as “Aircraft parts” and assessed to IGST at the rate of 5 *per cent* (serial no.245, schedule I of aforesaid IGST notification).

Audit scrutiny revealed that as per HSN note the imported items, being Aeronautical Navigational Instruments, merit classification under CTH 90142000 and attracts IGST at the rate of 18 *per cent* (Serial no.411-I of schedule III of aforesaid notification) and are not covered under CTH 8803 by virtue of aforesaid note 2 of Section XVII. Thus, mis-classification of imported goods resulted in short levy of duty by ₹52.67 lakh.

On this being pointed out (August 2019), the MoF, DoR intimated (July 2021) recovery of ₹61.06 lakh which included interest of ₹8.39 lakh.

(D) Ball bearings mis-classified as parts of helicopters and aeroplanes

Ball Bearings are classifiable under CTH 8482 and attract BCD at the rate of 7.5 *per cent*, Social welfare surcharge at the rate of 10 *per cent* of BCD and IGST at the rate of 18 *per cent* {IGST notification no.1/2017 –Integrated tax (Rate) dated 28 June 2017, schedule III serial no.369}.

For import under CTH 8803 valued at ₹2,282 crore made during the period January 2018 to February 2019 through NCH (import Commissionerate), Delhi under 4,828 BsE, Audit pointed out short levy of duty of ₹1.05 crore in respect of 16 BsE involving imports valued at ₹7.87 crore.

M/s P Imported (February to June 2018) 1,756 pieces of “Annular Ball Bearing/Ball Bearing” for Aircrafts at a combined AV of ₹7.87 crore. The goods were mis-classified under CTH 88033000 as parts of helicopters and aeroplanes and assessed to BCD at the rate of 2.5 *per cent* (after allowing benefit under serial no.545 of notification 50/2017-Customs), and IGST at the rate of 5 *per cent* (Serial No. 245 of Schedule I of IGST notification 1/2017).

Audit scrutiny revealed that the imported items are “Ball Bearing” and hence correctly classifiable under CTH 84829900-other “Ball Bearing” and leviable to BCD at the rate of 7.5 *per cent*, IGST at the rate of 18 *per cent* (serial no.369 of Schedule III of IGST Notification 1/2017). Thus, mis-classification of imported goods resulted in short levy of duty of ₹1.05 crore.

On this being pointed (February/May 2019), the Ministry of Finance, Department of Revenue intimated (March 2021) recovery of ₹1.28 crore which included interest of ₹23 lakh.

(E) ‘Cylinders for Aircrafts engines’ misclassified as propellers and rotors/ under-carriages and parts thereof

“Cylinders for Aircrafts” are classifiable under CTH 84091000 – Parts suitable for use solely or principally with aircraft engines and attract BCD at the rate of 15 *per cent* and IGST at the rate of 28 *per cent* (Schedule IV, serial no.116 of notification no.1/2017- Integrated Tax (Rate) dated 28 June 2017).

For import under CTH 8803 valued at ₹2,712.45 crore made during the period March 2018 to March 2019 through NCH (import Commissionerate) under 4,677 BsE, audit filtered the whole data for import of “Cylinders for Aircrafts” and noticed misclassification in three BsE involving imports valued ₹242.67 lakh. The misclassification resulted in short levy of duty of ₹56.48 lakh.

M/s K and M/s L Ltd. imported (March to October 2018) three consignments of “Cylinders for Aircrafts” through NCH, Delhi. The goods were mis-classified under CTH 88031000/88032000 as Propellers and rotors/under-carriages and parts thereof and assessed to BCD at the rate of Nil/2.5 *per cent* and IGST at the rate of 5 *per cent* (serial no.245 of schedule I of IGST notification 1/2017).

Audit scrutiny revealed that the above mentioned imported items, “Cylinders” were parts of aircraft engines and hence, as per explanatory notes to CTH 8409, such imported goods are correctly classifiable under CTH 84091000 and leviable to IGST at the rate of 28 *per cent* (serial no. 116

of schedule IV of aforesaid notification). Thus, mis-classification of imported goods resulted in short levy of duty of ₹56.48 lakh.

On this being pointed out (March 2019), the MoF, DoR reported (April 2021) total recovery of ₹56.57 lakh, which included interest, from the importers.

(F) Parts of Remotely piloted Aircraft (RPA) mis-classified as transmission apparatus for radio-broadcasting or television

‘Parts suitable for use solely or principally with apparatus of headings 8525 to 8528’ are classifiable under CTH 8529 1019 and attracts BCD at the rate of 10 *per cent*.

Twenty three BsE with items classified under the CTH 4819, 103 BsE under the CTH 8443 and 58 BsE under the CTH 8525 having total AV of ₹19.46 crore were filed in Kochi Airport, Kerala during the period 1 January 2019 to 30 June 2019. All the BsE were checked and mis-classification in one BE with total AV of ₹10.81 crore was noticed.

M/s J imported one consignment of ‘Parts required for repair of Remotely Piloted Air Craft (RPA) namely Dual Multichannel Receiver Processor, TM/TV RF Head Assembly, FOTM Assembly and Box FA MCPA PPC Type 4 with total AV of ₹10.81 crore through Airport, Nedumbassery, Kerala (BE no.2110490 dated 19 February 2019). The imported goods were classified under CTH 8525 5090/8443 9990/8443 1910 and 4819 1010 and BCD of 7.5 *per cent* was levied. Total duty of ₹2.18 crore was collected. The imported goods were parts of transmission/reception apparatus used in the Remotely Piloted Air Craft (RPA) and hence classifiable under CTH 8529 1019 as ‘Parts suitable for use solely or principally with apparatus of headings 8525 to 8528’ which attracts duty at the rate of BCD of 10 *per cent*. Accordingly total duty of ₹3.35 crore was leviable. Mis-classification of goods resulted in short levy of duty amounting to ₹53.75 lakh.

On this being pointed out (September 2019), the MoF, DoR intimated (February 2021) recovery of short levied duty of ₹53.75 lakh with interest of ₹6.05 lakh.

(G) Global positioning system receivers misclassified as ‘other parts of aero planes or helicopters’

“Global Positioning System (GPS) Receivers” are classifiable under CTH 85269190 and attract BCD at the rate of 7.5 *per cent* and IGST at the rate of 18 *per cent*.

Imports under CTH 8803 valued at ₹2,712 crore were made during March 2018 to March 2019 through NCH Import Commissionerate under

9,356 BsE. During test check, Audit found and pointed out short levy of duty by ₹50.29 lakh in six BsE involving imports of “GPS” worth ₹3.78 crore.

M/s K Ltd and M/s R Ltd imported “Global Positioning Systems (GPS)/Satellite Based Augmentation System (SBAS)/Beta - 3” at a combined AV of ₹3.78 crore. The goods were classified under CTH 88033000 ‘other parts of aero planes or helicopters’ and assessed to concessional BCD at the rate of 2.5 *per cent* (after allowing benefit under serial no. 545 of Customs notification 50/2017) and IGST at the rate of 5 *per cent* (under serial No. 245 of Schedule I of IGST notification No.1/2017).

Audit scrutiny revealed that the imported items are “GPS Receivers” and as per HSN Explanatory notes to CTH 8526 and 9014, “GPS Receivers”, are correctly classifiable under CTH 85269190 and accordingly leviable to IGST at the rate of 18 *per cent* (Serial no. 383A of Schedule III of IGST notification 1/2017) instead of at the rate of 5 *per cent*. Thus, misclassification of imported goods resulted in short levy of duty by ₹50.29 lakh.

On being pointed out (February 2019 /May 2019), the MoF, DoR intimated (August, 2021) recovery of ₹39.93 lakh from M/s K Ltd., and issued (December 2020) a Demand Cum show cause notice to M/s R Ltd. Further progress is awaited (September 2021).

3.7.7 Misclassification of motor vehicles ‘Transmission shafts’/ ‘Shock absorbers’/ ‘Gear boxes’/ ‘ window Guide for window glass’

(A) ‘Clutches’ mis-classified as machinery parts of headings CTH 84.25 to 84.30 for Lifting, handling, loading, excavating or boring etc.

Parts of clutches are classifiable under CTH 84839000 and attracts BCD at the rate of 7.5 *per cent* and IGST at the rate of 28 *per cent* (Notification No. 1/2017/Integrated Tax (Rate), Schedule IV, Sl No. 135, dated 28 June 2017).

Imports under CTH 8431 valued at ₹113 crore were made during the period July 2017 to October 2018 through ICD Patpargaj, Delhi under 1060 BsE. Audit filtered all 1,060 BsE for import of “Clutch Housing-Parts of Clutch” and noticed short levy of duty of ₹1.60 crore in 21 BsE involving imports valued ₹7.80 crore.

M/s S Ltd. imported (July 2017 to October 2018) “Clutch Housing –part of clutch” under 21 BsE at an AV of ₹7.80 crore. The imported goods were mis-classified under CTH 84314930- “Parts of other excavating, levelling tamping & excavating machinery for earth mineral/ores” and cleared after levying BCD/IGST at the rate of “zero”/ 18 *per cent* under Customs notification 152/2009, dated 13 December 2009 and Sl. No. 328 of Schedule III of IGST notification 1/2017 respectively.

Audit scrutiny revealed that CTH 8431 is meant for parts suitable for use solely or principally with the machinery of headings Nos. 84.25 to 84.30 for lifting, handling, loading, excavating or boring. The imported goods are “parts of clutch” which are correctly classifiable under CTH 84839000 and BCD is leviable at the rate of 7.5 *per cent* instead of Zero *per cent* and IGST at the rate of 28 *per cent* instead of 18 *per cent*. Thus, misclassification of imported items and subsequent incorrect grant of notification benefit resulted in short levy of duty of ₹1.60 crore.

On being pointed (October 2018), the Commissioner of Customs, ICD-Patparganj intimated (October 2020) recovery of ₹1.60 crore in respect of 21 consignments after re-assessment of BsE.

(B) ‘Shock absorbers’ for motor vehicles mis-classified as ‘Other articles of Iron and steel’ / Other mountings/fittings for furniture, doors, windows

As per Harmonized System of Nomenclature (HSN), Parts and Accessories of motor vehicles of headings 8701 to 8705 are classifiable under heading 8708, if they are identifiable as being suitable for use solely and principally with the above mentioned vehicles and are not excluded by provisions of Notes to Section XVII of the Customs Tariff Act, 1975.

Government amended Notification No.50/2017-Cus. dated 30 June 2017 through notification no.6/2018-Cus. dated 2 February 2018, according to which the effective rate of BCD on all goods other than Parts and accessories of motor vehicles falling under heading 8702 to 8704 is 10 *per cent*. This means that any importation of “Parts and accessories” of motor vehicles falling under heading 8702 to 8704 and classifiable under heading 8708 would attract merit rate of 15 *per cent* as BCD. Further, “Parts and Accessories” of Motor Vehicles falling under heading 8702 to 8705 are liable to IGST at 28 *per cent* {Sl.No.170; Schedule IV of Notification No.01/2017-Integrated Tax (Rate) dated 28 June 2017 effective from 1 July 2017}.

Accordingly, the imported goods ‘Shock absorbers’, an automotive parts of motor vehicles, are rightly classifiable under CTH 87088000 and leviable to BCD at the rate of 10 *per cent* upto 01 February 2018 and 15 *per cent* w.e.f. 2 February 2018. The goods are also subject to IGST at 28 *per cent*.

During the period November 2017 to March 2019, a total no. of 2,812 BsE had been filed for import of goods ‘shock absorber and others’ valuing ₹356.70 crore under CTH 73269099/ 83023090 through ICD, Irungattukottai under Commissionerate of Customs (Chennai-II), Customs House, Chennai.

Audit test checked 412 BsE valuing ₹166.84 crore and pointed out short levy of duty of ₹1.32 crore in 161 BsE.

M/s T Pvt. Ltd. and M/s U Pvt. Ltd. imported 161 consignments of “shock absorber” during November 2017 to March 2019 through ICD, Irungattukottai under Commissionerate of Customs (Chennai-II), Customs House, Chennai. The importer declared the goods under CTH 73269099 (Other articles of iron and steel) /83023090 (Other mountings, fittings and similar articles for furniture/doors/windows). The Department accepted the declared goods description and cleared the goods under CTH 73269099 / CTH 83023090 and assessed them to BCD at the rate of 10 *per cent* under Sl.No.377 of notification no.50/2017-Cus. dated 30 June 2017 / merit rate of 10 *per cent* respectively. Further, IGST was paid at the rate of 18 *per cent* (Sl.No.238 and 303A of Schedule III of notification no.01/2017-Integrated Tax).

Audit scrutiny revealed that ‘shock absorbers’, being automotive parts, are specifically covered under CTH 87088000 and leviable to BCD at the rate of 10 *per cent* / 15 *per cent* (merit rate) and IGST at the rate of 28 *per cent*. The misclassification of imported goods had resulted in short levy of duty of ₹1.32 crore which was required to be recovered from the importer along with applicable interest.

On being pointed out (November 2019), the Ministry of Finance, Department of Revenue accepted the observation and intimated (March 2021) recovery of differential duty of ₹1.63 crore including applicable interest.

(C) Misclassification of Gear boxes resulted in short levy of duty

As per the Harmonized System of Nomenclature (HSN), the goods “Parts and Accessories of the Motor Vehicles- Gear boxes and parts thereof” are classifiable under CTH 8708 and are leviable to BCD at the rate of 10 *per cent* / 15 *per cent*. Accordingly, the imported goods “Gear assembly and LU Gear Shift” are leviable to BCD at the rate of 10 *per cent* / 15 *per cent*.

During the period November 2017 to December 2018, a total of 1,142 BsE had been filed for import of goods “Gear assembly and LU Gear Shift and others” valuing ₹ 55.45 crore under CTH 84834000/ 73182990/ 73182910 through Commissionerate of Customs (Chennai-II), Customs House, Chennai. Audit test checked 350 BsE valuing of ₹16.98 crore and pointed out short levy of duty of ₹97.61 lakh in 84 BsE involving imports valuing of ₹6.46 crore.

M/s T Pvt. Ltd. imported 84 consignments of “Gear assembly and LU Gear Shift” during November 2017 to December 2018 through Commissionerate

of Customs (Chennai-II), Customs House, Chennai declaring the goods under CTH 84834000/73182990/73182910 (“Ball screws for use in the manufacture of CNC lathes”/ “Other Non –threaded articles of iron or steel” /“Circlips”). The Department accepted the declared goods description and cleared the goods, assessing BCD at the rate of 7.5 *per cent* for CTH 8483400 and 10 *per cent* for CTH 73182990/73182910 as per sl. no. 377 of the notification no. 50/2017-Cus dated 30.06.2017 as amended. Audit observed that the goods, being “Gear assembly and LU Gear Shift”, are classifiable under CTH 8708-‘Gear boxes and parts thereof’ and not under CTH 84834000/73182990/73182910. Thus, the imported goods are leviable to BCD at the rate of 10 *per cent* / 15 *per cent*. The misclassification had resulted in short levy of duty of ₹97.61 lakh which was required to be recovered from the importer along with applicable interest.

On this being pointed out (November 2019), the Ministry of Finance (MoF), DoR accepted the observation (March 2021) and intimated recovery of ₹1.20 crore including interest of ₹22.86 lakh.

(D) Motor Cycle parts misclassified as parts of other vehicles

Parts and accessories of Motor Cycles falling under CTH 8711 are classifiable under CTH 871410 and attract BCD at the rate 15 *per cent* (w.e.f. 2 February 2018).

Import under CTH 8714 valued at ₹124.29 crore was made during the period January 2018 to February 2019 through ICD-TKD (import Commissionerate) and ACC, NCH (Import Commisisonerate), Delhi under 937 BsE and 113 BEs respectively. Audit test checked a total of 215 BsE involving imports valued at ₹ 20.68 crore and pointed out short levy of duty of ₹ 1.38 crore in 184 BsE (ICD-TKD-102 BsE, NCH Delhi- 82 BsE)- involving import worth ₹ 19.54 crore.

M/s V and 40 others imported (February 2018 to January 2019) “Motor Cycle Alloy Wheel and various motor cycle part” at a combined AV of ₹20.68 crore through ICD TKD (Import Commissionerate, New Delhi) and ACC, NCH (Import Commisisonerate), Delhi. The imported items were misclassified under CTH-87142090-as parts and accessories of carriage of disabled persons) /87149100/ 87149290/87149400 /87149990-as part of other vehicles and levied to BCD at the rate of 10 *per cent* (under serial no.532 of notification no. 50/2017).

The imported goods are parts of motor cycles and hence merit classification under CTH 871410 and attract BCD at the rate 15 *per cent*. Thus, misclassification of the imported goods resulted in short levy of duty by ₹67 lakh.

On this being pointed out (February/August 2018) the ICD-TKD (import Commissionerate), accepting the audit observation, intimated recovery of ₹31.91 lakh from 17 importers, confirmed demands of ₹26.13 lakh against 12 importers and issued notices to ten importers. ACC, NCH (Import Commissionerate), Delhi intimated recovery of ₹0.04 lakh from one importer (M/s W -one BE) and confirmed a demand of ₹2.04 lakh against another importer (M/s X Ltd), who paid ₹0.68 lakh against demand of ₹2.04 lakh. Further progress is awaited (September 2021).

(E) Short levy of Customs Duty due to mis-classification of “Window guide” – Motor vehicle parts

A ‘Window Guide’ is a part of a motor vehicle which helps to keep the window glass in the right place and creates a seal to keep the window closed and is located inside the doorframe. Harmonized System of Nomenclature (HSN) explanatory notes says that Parts and accessories of motor vehicles of heading 8701 to 8705 are classifiable under Customs Tariff Head (CTH) 8708. Accordingly, ‘window guide’ is classifiable under CTH 87089900 “Other parts and accessories of motor vehicles of CTH 8701 to 8705” leviable to BCD at 10 *per cent* / 15 *per cent* and Integrated tax (IGST) at 28 *per cent* in terms of serial no. 170 of Schedule IV of notification no.1/2017(Integrated Tax) dated 28 June 2017 as amended.

Out of 1,464 BsE filed with an AV of ₹36.12 crore in ICD, Irungattukottai, audit checked the data of all the Bills involving import of ‘window guide’. It was found that 182 consignments of Window guide imported (November 2017 to January 2019) by M/s T Private Limited for an AV of ₹432.42 lakh were incorrectly classified under tariff item 83023090 of the Customs Tariff as ‘Other mountings, fittings and similar articles suitable for motor vehicles’ and assessed to BCD at 10 *per cent* and IGST at 18 *per cent* in terms of Sl. No. 303A of schedule III of notification no.1/2017(Integrated Tax).

Audit pointed out (November 2019) that the subject goods merit classification under CTH 87089900 as “Other parts and accessories of motor vehicles of heading 8701 to 8705”, in view of the aforesaid HSN provisions cited in para 1, attracting levy of BCD of 10 / 15 *per cent* and IGST at 28 *per cent*. The incorrect classification of the imported goods had resulted in short levy of duty of ₹71.27 lakh.

On this being pointed out (November 2019), the MoF, DoR reported (August 2021) recovery of ₹86.57 lakh from the importer, which included interest.

3.7.8 Short levy of Customs Duty due to mis-classification of fabrics

‘Woven fabrics of artificial filament yarn’ are classifiable under CTH 5408. Under this sub-heading, ‘Dyed fabrics of rayon-other’ are classifiable under CTH 54082219 and ‘printed fabric of rayon – other’ is classifiable under CTH 54082490. The applicable BCD rate for CTH 54082219 is 25 *per cent* or ₹45 per sqm whichever is higher and for CTH 54082490, the BCD is 25 *per cent* or ₹87 per sqm whichever is higher.

For imports of Man-made textile fabrics valued at ₹43.11 crore made during July 2018 to September 2019 through Hyderabad Customs Commisonerate under 103 BsE, Audit test checked 62 BsE involving imports valued at ₹35.06 crore and pointed out short levy of Customs Duty amounting to ₹1.21 crore in four BsE involving imports worth ₹2.50 crore.

M/s Y Pvt. Ltd. imported (December 2018 to September 2019) ‘Viscose woven fabric (rayon) – plain and printed through Inland Container Depot (ICD), Sanathnagar, Hyderabad. The imported goods ‘viscose woven fabric (rayon) – plain were mis-classified under CTH 55161200 as “Dyed woven fabrics of artificial staple fibres”. Imported ‘Viscose woven fabrics (rayon) printed’ was mis-classified under (i) CTH 55161410 as “Spun rayon printed shantung” and (ii) CTH 55161490 as “Other woven fabrics of artificial staple fibres”. However, as the imported goods were made up of artificial filament yarn, ‘Viscose woven fabric (rayon) – plain and printed’ merit classification under CTH 54082219 and 54082490 as these were woven fabric of rayon. Accordingly, BCD was leviable at 25 *per cent* or ₹45 per sqm whichever is higher for CTH 54082219 and for CTH 54082490, the BCD was leviable at 25 *per cent* or ₹87 per sqm whichever is higher. Thus, the mis-classification of goods resulted in short levy of Customs Duty amounting to ₹1.21 crore.

On this being pointed out (September 2019), the Ministry of Finance, Department of Revenue stated (March 2021) that a Show cause notice for an amount of ₹1.21 crore had been issued (October 2020) to the importer. Further progress is awaited (September 2021).

3.7.9 ‘Other articles of Copper’ misclassified as Copper bars, rods

‘Other articles of Copper’ are classifiable under CTH 7419 and attract BCD at the rate of 10 *per cent*, and IGST at the rate of 28 *per cent* (upto 14 November 2017)/18 *per cent* (serial no.104/253 of schedule IV/III of notification no. 01 – Integrated Tax (Rate), dated 28 June 2017).

For import under CTH 74071090 valued at ₹11.08 crore made during the period July 2017 to November 2018 through ICD Tughlakabad (Import Commissionerate) under 14 BsE, Audit test checked the whole data (14 BsE)

and noticed short levy of duty by ₹73.65 lakh in 11 BsE involving imports valued at ₹9.82 crore.

M/s Z Pvt. Ltd. imported (October 2017 to November 2018) 11 consignments of “Copper Anode Balls/Nuggets” at an assessed value of ₹9.82 crore. The imported items were mis-classified under CTH-74071090- other copper bars, rods and profiles and levied to BCD at the rate of 5 *per cent*, IGST at the rate of 18 *per cent* (serial no.245 of schedule III of aforesaid notification).

Audit scrutiny revealed that the Copper Anode Balls/Nuggets are correctly classifiable under CTH 74199990- other articles of copper and attract BCD at the rate of 10 *per cent* and IGST at the rate of 28 *per cent* (upto 14 November 2017) instead of 18 *per cent*. Thus, mis-classification of imported goods resulted in short levy of duty by ₹ 73.65 lakh.

On being pointed out (March 2019), the ICD, Tughlakabad authorities reported (January 2020) recovery of ₹73.65 lakh and interest of ₹9.56 lakh.

3.7.10 Power bank imports misclassified as ‘Electrical accumulators – Lithium-ion’

A Power bank is a portable charger designed to recharge electronic gadgets such as cell phones, tablets, portable speakers, cameras and even laptops. Power Bank, being an Electrical Accumulator, is classifiable under CTH 85078000 – ‘Other accumulators’ and is leviable to IGST at 28 *per cent* vide Notification No. 01/2017-Integrated Tax dated 28 June 2017 (serial no.139/Schedule IV- Electrical accumulators, including separators therefor, whether or not rectangular (including square other than Lithium-ion battery and other Lithium-ion accumulators). Tax Research Unit, CBIC vide their circular dated April 2017 (File No. 354/29/2017- TRU dated 26 April 2017) had clarified that ‘Power Bank’ has to be classified under CTH 85078000.

Out of 100 BsE valued at ₹48.23 crore filed under CTH 85078000 during 2018-19, Audit pointed out short levy of IGST of ₹70.94 lakh due to misclassification of goods in 13 BsE.

M/s AA and five others imported 13 consignments of “Power Banks” during July 2018 to December 2018 through Commissionerate of Customs (Chennai-II), Customs House, Chennai. The importers cleared the imported goods by mis-classifying them under CTH 85076000 meant for ‘Electrical accumulators –Lithium-ion’. The goods were assessed by the Department to IGST at the rate of 18 *per cent* under Schedule III, serial no. 376 AA (applicable to Lithium-ion batteries) of the aforesaid notification.

Audit noticed that the goods being 'Power Banks' are appropriately classifiable under CTH 85078000, and attracted IGST at the rate of 28 *per cent* (Notification no. 1/2017 dated 28 June 2017 Schedule IV-SI. No. 139). Thus, misclassification of Power bank had resulted in short levy of IGST amounting to ₹70.94 lakh. This was required to be recovered from the importers along with applicable interest.

On this being pointed out (September 2019), the Commissioner of Customs (Chennai-II) authorities intimated (March/September 2020) recovery of ₹43.32 lakh including interest of ₹3.88 lakh in respect of three importers. Further progress was awaited (September 2021).

3.7.11 'Seaweeds extract flakes/liquid seaweed plant extract' misclassified as 'Animal and vegetable fertilizers/other fertilizers/organic chemicals'

Seaweeds are classifiable under CTH 12122910 and attract BCD at the rate of 30 *per cent* and Additional Customs Duty at the rate of 4 *per cent* upto 30 June 2017. After introduction of GST w.e.f. 1st July 2017, Seaweed attracts the IGST at the rate of 5 *per cent* (Notfn. 1/2017-Integrated Tax (Rate), Sch. I, SI. No.74) instead of CVD and ACD.

As per HSN, Heading 1212 covers all seaweeds and algae, whether or not edible. These seaweeds may be fresh, chilled, frozen, dried or ground. Seaweeds and other algae are used for various purposes e.g. pharmaceuticals products, cosmetics, human consumption, animal feeding and fertilizers.

Imports under CTH 31010099 valued at ₹14.59 crore were made during the period March 2016 to July 2017 through ICD Tughlakabad (Import Commissionerate), Delhi under 46 BsE. Audit test checked all 46 BsE and noticed short levy of duty of ₹60.14 crore in eight BsE involving imports valued at ₹2.17 crore.

M/s AB Pvt. Ltd. and two others imported (March 2016 to July 2017) eight consignments of 'Seaweeds extract flakes/liquid seaweed plant extract' at a combined AV of ₹2.17 crore. The imported goods were mis-classified under CTH 31010099 as 'Animal and vegetable fertilizers/other fertilizers/organic chemicals' and assessed to BCD at the rate of 7.5 *per cent* apart from IGST w.e.f. 1 July 2017.

Audit noticed that imported items are correctly classifiable under CTH 12122910-seaweeds and leviable to BCD at the rate of 30 *per cent* instead of 7.5 *per cent* levied.

Thus, misclassification of the imported goods resulted in short levy of duty of ₹60.14 lakh.

On this being pointed out (January 2018), the Department confirmed demands (September 2019/ April/July 2021) of ₹60.14 lakh against three Importers (M/s AC Limited- four BsE; ₹28.43 lakh, M/s AD Pvt. Ltd. - One BE; ₹9.33 lakh and M/s AB Pvt. Ltd -Three BsE; ₹22.38 lakh). The ICD, Tughlakabad authorities further intimated (July 2021) that M/s AC Ltd had filed an appeal against Order-in Original. Further progress is awaited (September 2021).

3.8 Incorrect application of notifications

Test check revealed improper application of various notifications in 34 cases, each involving revenue of ₹10 lakh or more. The total revenue implication was ₹12.60 crore. Individual cases of improper application of notifications of value less than ₹10 lakh have been reported to the local Commissionerates through field inspection reports. The Department accepted 30 cases involving total revenue implication of ₹11.17 crore and intimated recovery of ₹7.76 crore in 15 cases which included interest. Eight cases involving revenue implication of ₹7.12 crore have been discussed in the succeeding paragraphs and the remaining 26 cases involving revenue implication of ₹5.48 crore are included in **Annexures 4 and 5**.

3.8.1 Short/ Non-levy under IGST notifications

Non-levy of IGST on re-imports

Notification no.45/2017-Cus dated 30 June 2017 and notification no.46/2017-Cus dated 30 June 2017 exempted the goods when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the first schedule of the Customs Tariff Act 1975, and the whole duty of the Additional Duty, integrated tax, compensation cess leviable thereon under sub-section (1), (3), (5), (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said table in the notification. Accordingly, notifications stipulated that if goods are exported under bond without payment of integrated tax/Central Excise duty then the amount of integrated tax/Central Excise duty not paid at the time of export are to be paid at the time of re-import.

Out of the total 24,618 BsE of value ₹27,818 crore filed during April 2016 to March 2018, Audit test checked and pointed out “irregular exemption of IGST/Central Excise” amounting to ₹66.75 lakh in nine BsE valued at ₹4.19 crore in respect of import of various items at Custom House, Pipavav (under Jamnagar Customs Commissionerate).

M/s AD Ltd., M/s AE, M/s AF Ltd, M/s AG Ltd and M/s AH re-imported (September 2017/March 2018) their goods exported under bond, through nine BsE (11 consignments). However, audit noticed that the applicable integrated tax/Central Excise duty required to be paid under the aforesaid notifications was not recovered by the Department. This resulted in non-levy of integrated tax/Central Excise duty of ₹66.75 lakh which was required to be recovered along with applicable interest.

On this being pointed out (August 2018), the Department accepted (May 2019) the observation and reported recovery of ₹77.76 lakh (including interest) from the importers.

3.8.2 Short levy of IGST on imports of 'Machinery and mechanical appliances having individual functions (CTH – 8479)

'Machinery and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84' are classifiable under CTH-8479 and attract IGST at the rate of 18 *per cent* {serial no.366 of schedule III of notification no.1 Integrated Tax (Rate) dated 28 June 2017}.

For import under CTH 8479 valued at ₹1,194 crore made during the period July 2017 to March 2019 through ICD Tughlakabad (Import Commissionerate) under 3,150 BsE, Audit filtered the whole data for import of "machines" other than Composting machines where IGST was levied at the rate of 12 *per cent* instead of 18 *per cent* and found 20 such BsE involving imports valued ₹7.51 crore where there was short levy of duty due to incorrect application of IGST by ₹48.49 lakh.

M/s AI Pvt. Ltd. and 13 others imported (July 2017 to February 2019) 30 consignments (20 BsE) of various machines valued at ₹7.51 crore under CTH 8479 through ICD, Tughlakabad, Delhi. The imported items were classified under CTH-84798999 /84799090 /84794000 / 84798100 and IGST at the rate of 12 *per cent* {serial no.201 of schedule II of notification no.1 Integrated Tax (Rate) dated 28 June 2017} was levied.

Audit scrutiny revealed that IGST at the rate of 12 *per cent* (under serial no.201 of schedule II) is leviable on composting machine. As the imported goods were other than composting machines, these attracts IGST at the rate of 18 *per cent*. Thus, incorrect application of IGST rates resulted in short levy of duty by ₹48.49 lakh.

On this being pointed out (March 2019), the ICD, Tughlakabad authorities intimated partial recovery of ₹14.21 lakh along with interest of ₹1.72 lakh from nine importers and confirmed demand of ₹0.74 lakh against one importer. Further progress is awaited (September 2021).

3.8.3 Short levy of IGST on 'Machines for reception, conversion and transmission or regeneration of voice, image or other data, (CTH - 851762)

'Machines for reception, conversion and transmission or regeneration of voice, image or other data, including switching and routing apparatus' are classifiable under CTH 851762 and attract IGST at the rate of 18 *per cent* (under serial no.379 of schedule III of notification no.01 Integrated Tax (Rate) dated 28 June2017).

For import under CTH 851762 valued at ₹10,687 crore made during the period July 2017 to July 2019 through NCH (import Commissionerate), Delhi under 1,33,737 BsE, audit filtered the whole data and noticed short levy of duty of ₹1.20 crore in 118 BsE involving imports valued at ₹17.03 crore.

M/s AJ Ltd. and 62 others imported (July 2017 to July 2019) "various machines for reception, conversion and transmission or regeneration of voice, image or other data used for other than mobile" at a combined AV of ₹17.03 crore. The imported items were correctly classified under CTH 851762 but IGST was levied at the rate of 12 *per cent* instead of 18 *per cent* applicable.

Audit scrutiny revealed that the imported goods being reception/conversion/transmission machines were leviable to IGST at the rate of 18 *per cent* (under serial no.379 of schedule III). Thus, incorrect application of IGST rate resulted in short levy of duty by ₹1.20 crore.

On this being pointed out (August 2019), the Principal Commissioner, ACC (Import), New Delhi has reported (April 2021) recovery of ₹2.54 lakh from eight importers, confirmation of demands amounting to ₹61.10 lakh in respect of seven importers and issuance of Show Cause Notices to 12 importers. Reply in respect of the remaining importers is awaited (September 2021).

Instances of misclassification of similar imports were also noticed (refer para 3.7.3) which resulted in incorrect assessment of BCD apart from incorrect IGST. CBIC may address whether these instances are due to mapping issues of CTH 851762 with the Tariff Master table updates in ICES.

3.8.4 Incorrect application of IGST rate on 'Lithium Ion Cell' imports

'Lithium Ion Cell for use in manufacturing of Lithium Ion Accumulators' are classifiable under CTH- 85076000 and attract IGST at the rate of 28 *per cent* as per Sl. No.139 of Sch. IV of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017) up to 26 July 2018 and thereafter at the rate of 18 *per cent* as Sl. No.376AA of Sch. III).

During the period July 2017 to August 2019, a total of 11,739 BsE had been filed for import of goods valuing ₹5,730.03 crore under CTH 85076000 through Commissionerate of Customs (Import)-ACC, NCH, New Delhi, Audit filtered the data for import of "Lithium Ion Cell" and found 17 BsE involving imports of "Lithium Ion Cell" valued at ₹3.93 crore where there was short levy of duty of ₹62.84 lakh.

M/s AK and six others imported (July 2017 to January 2018) 17 consignments of 'Lithium Ion Cell for use in manufacturing of Lithium Ion Accumulators (batteries of mobile phone)' at an AV of ₹3.93 crore under CTH 85076000 through Commissionerate of Customs (Import)-ACC, NCH, New Delhi. The imported goods were correctly classified under CTH-85076000 and levied to IGST at the rate of 12 *per cent* as per Sl. No.203 of Sch.-II of aforesaid Notification.

Audit scrutiny revealed that the imported goods are 'Lithium Ion Cell' for use in manufacturing of Lithium Ion Accumulators (batteries of mobile phone)'. Therefore, IGST should have been levied at the rate of 28 *per cent* as per Sl. No. 139 of Sch.-IV. Thus, incorrect application of IGST rate resulted in short levy of duty amounting to ₹62.84 lakh which was required to be recovered from the importers alongwith applicable interests.

On this being pointed out (August 2019/February 2020), the Department intimated (March 2020) recovery of ₹0.79 lakh (along with interest) from three importers and two cases were adjudicated and Pre Notice Consultation (PNC) to one importer. Further progress was awaited (September 2021).

3.8.5 Short levy of BCD because of incorrect grant of notification benefit on '1 Phone (Mobile Phones)' imports

As per section 15 of the Customs Act 1962, the rate of duty and tariff valuation applicable to any imported goods, shall be the rate and valuation in force, in the case of goods entered for home consumption under section 46 on the date on which a BE in respect of such goods is presented under section 46. Provided that if a BE has been presented before the date of entry inwards of the vessel, the BE shall be deemed to have been presented on the date of such entry inwards as the case may be.

Further, as per notification No. 91/2017-Customs (BCD) dated 14 December 2017, the rate of duty applicable to goods falling under CTH 85171290 was 15 *per cent*. Accordingly, BCD is leviable on the imported goods 'I Phone (Mobile Phones)' at the rate of 15 *per cent* under sl. no. (a) (ii) of the aforesaid notification w.e.f. 14 December 2017.

During the period 2017-18, a total of six BsE were filed for import of goods 'I Phone (Mobile Phones)' valuing ₹19.92 crore under CTH 85171290 through Commissionerate of Customs (ACC & Airport), Bengaluru. Audit test checked all the BsE and pointed out short levy of BCD of ₹1.12 crore in all the six BsE.

M/s AL Pvt Ltd. imported (December 2017) six consignments of goods 'I Phone (Mobile Phones)' through Commissionerate of Customs (ACC & Airport), Bengaluru under CTH 85171290. Audit scrutiny revealed that the BsE were filed on 12 December 2017 and 13 December 2017 and the entry inwards date of all these consignments of goods were 14 December 2017 and 15 December 2017. Therefore, as per the proviso to Section 15 of the Customs Act, 1962, in these cases, the duty should be determined on the date of entry inwards. Thus, the BCD should be levied as per notification 91/2017-Cus (BCD) dated 14 December 2017 at the rate of 15 *per cent*. However, the Department assessed the goods adopting lower rate of BCD i.e. 10 *per cent* instead of 15 *per cent*. This resulted in short levy of duty of ₹1.12 crore which was required to be recovered from the importers along with applicable interest.

On this being pointed out (April 2019), the MoF, DoR accepted the observation and intimated (March 2021) recovery of differential duty of ₹1.38 crore which included interest of ₹0.26 crore.

3.8.6 Incorrect grant of notification benefit to Populated, loaded or stuffed Printed Circuit Boards (PCBs) of mobile phones

Populated, loaded or stuffed printed circuit boards (PCBs) of mobile phones are classifiable under CTH 85177010 and attract BCD at the rate of 10 *per cent* w.e.f. 2 April 2018 (Customs Notification No. 36/2018-Cus dated 2 April 2018).

For import under CTH 85177010 valued at ₹427 crore made during April 2018 through ACC, NCH (Import Commissionerate), Delhi under 782 BsE, audit filtered the whole data for import of "PCB Assembly for manufacturing of mobile phone" and noticed short levy of duty of ₹1.30 crore in 22 BsE involving imports valued at ₹11.64 crore.

M/s AM Pvt. Ltd. and eight others imported 22 consignments of PCB Assembly for manufacturing of mobile phone on 2 April 2018 at a combined

AV of ₹11.64 crore through ACC, NCH, Delhi. The goods were correctly classified under CTH 85177010-PCB but assessed to BCD at the rate of nil (Sl. No. 13S of Customs Notification No. 24/2005/Sl. No. 6 (a) (i) of Customs Notification No. 57/2017).

Audit scrutiny revealed that the goods were correctly classified but the benefit of Sl. No. 13S of Customs Notification No. 24/2005 was not extendable to the PCB Assembly for manufacturing of mobile phone. Further, benefit of Sl. No. 6 (a) (i) of Customs Notification No. 57/2017 was withdrawn with effect from 2 April 2018 (Customs Notification Nos. 37 and 38/2018 dated 2 April 2018. Accordingly, the imported goods were leviable to BCD at the rate of 10 *per cent* instead of nil. Thus, incorrect grant of notification benefit to imported goods resulted in short levy of duty by ₹1.30 crore.

On being pointed (September 2018), the NCH authorities reported (March 2020) recovery of ₹ 1.09 crore (including interest) from five importers¹⁵ and confirmed demand of ₹45.03 lakh in respect of remaining four importers.

3.8.7 Short levy of duty due to incorrect grant of exemption

As per notification no.57/2017-Cus dated 30 June 2017 as amended vide notification no.75/2018-cus dated 11 October 2018 'All goods other than goods namely: (a) Wrist wearable devices (commonly known as smart watches) (b) Optical transport equipment (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS) (d) Optical Transport Network (OTN) products (e) IP Radios falling under CTH 8517 6290 attract concessional BCD of 10 *per cent* while goods other than exempted are leviable to BCD of 20 *per cent*.

Out of total 102 BsE with AV of ₹17.19 crore filed in ACC- Nedumbassery, Kerala under CTH 85176290, Audit test checked 45 BsE with AV of ₹9.92 crore and noticed short levy of duty of ₹58.96 lakh in three BsE with AV of ₹4.40 crore.

M/s AQ Ltd had imported (January 2019) three consignments of goods, namely Cabinets, Boards, Telephones, Key Boards, Transceivers, Routing Software, etc. with total AV of ₹4.40 crore through ACC Nedumbassery, Kerala. The goods were classified under CTH 8517 6290 and assessed to BCD at 10 *per cent* after allowing benefit of exemption under the customs notification No.57/2017 dated 30 June 2017 (serial no.20). Total duty collected was ₹1.34 crore. Audit noticed that the imported goods were POTP or POTS/OTN products, namely machines for reception, conversion

¹⁵ 1. M/s AN Pvt.Ltd, 2.M/s AO, 3. M/s AP Pvt. Ltd, 4. M/s A Pvt. Ltd, 5. M/s AM Pvt. Ltd.

and transmission or regeneration of voice, images or other data, including switching and routing apparatus, etc., and hence, were not eligible for exemption under aforesaid notification 57/2017 (serial no.20). The incorrect grant of exemption resulted in short levy of duty amounting to ₹58.96 lakh.

On this being pointed out (May 2020/January 2021), MoF, DoR stated (February 2021) that SCN has been issued to the importer. Further progress is awaited (September 2021).

3.8.8 Imports cleared without levying applicable Anti-Dumping Duty (ADD)

As per Section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an ADD. Accordingly, ADD was imposed on commodities like Dichloromethane (Methylene Chloride), Chlorinated Polyvinyl Chloride resin (CPVC), Homo polymer of Vinyl chloride monomer, Ceramic tableware and kitchenware, Ofloxacin acid and Clear float glass (thickness ranging from 4 mm to 12 mm).

Test check revealed non-levy of ADD in six cases of imports through four Commissionerates¹⁶ involving revenue implication of ₹2.06 crore. The Department accepted three cases (₹1.64 crore) and reported recovery of ₹1.30 crore in two cases. Reply in respect of the remaining three cases is awaited (September 2021).

Out of these cases, one case is discussed in the following paragraph. The remaining five cases involving revenue implication of ₹93.46 lakh are mentioned in **Annexure 5**.

A. Non levy of anti-dumping duty on Dichloromethane (Methylene Chloride) imports

Import of Dichloromethane (Methylene Chloride) classifiable under CTH 29031200 from Korea attracts ADD at the rate of USD 0.21 per kg (Notification No.24/2014-ADD dated 21 May 2014).

Out of total 11 BsE of imports falling under CTH 29031200 (AV ₹9.05 crore) imported (July to September 2018) through Customs House, Kandla under Commissionerate of Customs, Kutch, audit test checked seven BsE (AV ₹4.33 crore) and pointed out in one BE short levy of ADD (amounting to

¹⁶ (i) Commissionerate of Customs, Kutch, (ii) JNCH, Mumbai, (iii) ICD, Tughlakabad, (iv) Kolkata Customs (Port)

₹17.17 lakh) plus resultant short debit of duty foregone of ₹95.40 lakh in Advance Authorization.

M/s AR Limited had imported (September 2018) 639.589 MTs of "Dichloromethane (Methylene Chloride)" under one BE using Advance Authorization. The goods attracted ADD at the rate of USD 0.21 per Kg; accordingly, amount of applicable ADD was required to be debited in the Advance Authorization and the same was required to be taken into consideration for calculation of payable IGST amount. However, audit noticed that the licence holder had neither debited the applicable ADD amount in its Advance Authorization nor considered it for calculation of IGST payable. This had resulted in short levy of IGST of ₹17.17 lakh and additionally short debit of duty foregone of ₹95.40 lakh in Advance Authorization.

On this being pointed out (December 2018), the Department stated (February 2019) that the license holder had paid (December 2018) a total amount of ₹17.38 lakh which included interest and duty amounting to ₹95.40 lakh had been debited from the licence in the system also.

3.9 Other irregularities

Non-payment of duty on goods destroyed in fire

Under Regulation 5 (6) of Handling of Cargo in Custom Area Regulation 2009, the Custodian undertakes to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling.

Audit checked documents related to a fire accident that took place in Container Freight Station (CFS), Adalaj under Ahmedabad Customs Commissionerate and pointed out an irregularity on non-payment of duty of ₹2.77 crore by its Custodian, M/s AS.

Due to a fire accident (June 2016), CFS Adalaj lost its stored goods involving total duty value of ₹2.77 crore. Accordingly, duty on lost goods, required to be paid by the Custodian, was not paid by the CWC.

On this being pointed out (August 2017) the Custodian paid (June 2018 and July 2019) the objected duty amount of ₹2.77 crore. However, Principal Commissioner, Customs, Ahmedabad subsequently stated (October 2019) that the CWC had wrongly paid Customs Duty. The Department stated that (i) Section 23 of Customs Act 1962, permitted remission of duty on imported goods lost at any time before clearance for home consumption;

and (ii) case law CESTAT judgements 2006(201) ELT 18 (Tri. Bang.) and 2009 (247) ELT 567 (Tri. Ahmd), similar fire incident cases in favor of importers M/s Jindal Vijaynagar Steel Ltd., and M/s Aditya Industries respectively regarding remission of duty under section 23 of the Customs Act 1962.

The contention of the Department was not acceptable because the provision of section 23 of the Act and aforesaid CESTAT judgment actually allowed duty remission to importers of goods and not to the Custodian in view of the fact that the responsibility of goods before clearance (for home consumption) rests with the Custodian. Audit contention was supported by the fact that notification 96/2010-cus(NT) dated 12 November 2010 inserted specific conditions 5(1)(ii) and 5(6) in 'Handling of Cargo in Customs Areas Regulations, 2009' by which Customs Cargo Service Provider (CCSP) i.e., the Custodian was held responsible for 'safe, secure and spacious premises for loading, unloading, handling and storing of the cargo' and 'undertake to indemnify Customs from any liability arising on account of damages of imported or exported goods during their receipt, storage, delivery, dispatch or otherwise handling' of goods. Serial numbers 4 and 9 of the Customs circular 04/2011 dated 10 January 2011 stipulated that the above conditions were incorporated in the Regulations on recommendations of the Parliamentary Committee on Subordinate legislation and Commissioners of Customs were required to ensure fulfillment of these requirements without fail.

Ministry of Finance, DoR, not accepting the observation, stated (March 2021) that the Commissionerate has already recovered ₹2.77 crore from the Custodian – M/s AS and also issued a SCN (September 2018) for demand of interest of ₹87.31 lakh, which is under adjudication. Further progress is awaited (September 2021).

The fact remained that recoveries were made after pointed by Audit. Neither was any request made by the Custodian for remission of duty on goods destroyed in fire nor had the Customs Department issued any orders for remission of duty. Additionally, claim was made and payment received by the Custodian from the Insurance Company for the Customs Duty as well. Ministry may re-consider their viewpoint.

3.10 Conclusion

This Chapter highlights 102 cases of non-compliance to the extant notifications, applicable Customs Tariff Duties and Levies, noticed by Audit in the assessments of imports. The revenue of ₹122 crore was at risk due to either non/short levy of duty due to misclassification of imported items,

incorrect application of exemption notifications or incorrect levy of other charges.

The Ministry/Department has accepted 98 cases and has effected recovery of ₹33 crore at the time of finalisation of this report. Ministry's/Department's response was awaited in four cases at the time of finalisation of the Report.

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that these are only a few illustrative cases. There is every possibility that such error of omission and commission, whether in RMS based assessments or manual assessments, may exist in many more cases.

It is pertinent to note that a large number of BsE examined by audit in test check had been assessed through the RMS, which indicated that the assessment rules mapped into the RMS to facilitate system-based assessments were inadequate. The process of mapping and updating of risk parameters in the RMS needs to be reviewed.