

CHAPTER III Implementation of the Scheme

The AA scheme is administered by DGFT (MOCI) with regard to issuance of AAs to redemption and issue of EODC to AHs, while the registration of AAs at Customs ports for allowing exemption from levy of Customs duty on imported inputs as well as accounting of exports against the AAs is administered by the Customs Department (Ministry of Finance). Audit examined the process of issuance of AAs and our main findings were mentioned in Chapter 2. In this Chapter, implementation of the AA Scheme by both the Customs Department and DGFT was examined in audit. Audit also verified the adequacy of the institutional mechanism for coordination between DGFT and Customs and whether exchange of information between the two Department is done effectively and in a timely manner.

The observations were categorized under the following three heads:

- **Implementation of the Scheme by the Customs Department (Para 3.1)**
 - Import of duty free materials beyond the validity period of AAs (Para 3.1.1);
 - Non-monitoring of excess imports (Para 3.1.2);
 - Non-monitoring of Bonds (Para 3.1.3);
 - Incorrect exemption of IGST under AA (Para 3.1.4);
 - Other irregularities (Para 3.1.5).
- **Implementation of the Scheme by DGFT (Para 3.2)**
 - Non/inadequate monitoring of AA Scheme by RAs (Para 3.2.1);
 - Irregularities in clubbing of Authorisations (Para 3.2.2);
 - Irregularities related to Value Addition (VA) (Para 3.2.3);
 - Non realization of export proceeds in freely convertible foreign currency (Para 3.2.4);
 - Filing of application by AH for redemption certificate/EODC (Para 3.2.5);
 - Irregularities during issue of EODC/Redemption letter by RAs (Para 3.2.6);
 - Other irregularities (Para 3.2.7).
- **Interdepartmental Coordination in administration of the Scheme (Para 3.3)**
 - Non-implementation of online MEM for sharing of information (Para 3.3.1);
 - Mismatch between DGFT and Customs in action taken against defaulters (Para 3.3.2);
 - Weakness in institutional mechanism to ascertain export performance and to take action on defaulting AHs (Para 3.3.3).

3.1 Implementation of the Scheme by the Customs Department

3.1.1 Import of duty free materials after the validity period of authorisations

As per Para 4.17 of FTP read with Para 2.16 of HBP, the validity period for import under AA Scheme shall be 12 months from the date of issue of AA. Para 4.41 (c) of HBP further allows two extensions of six months each by revalidation. Thus, the maximum period of validity for import is 24 months in normal category of AAs.

Analysis of EDI data on import utilization under AA revealed that imports were allowed even after the expiry of the extended period of 24 months in 786 cases involving CIF value of ₹25.42 crore with delays ranging from 191 to 2,156 days **(Annexure 3)**.

DoR stated (February 2021) that the issue regarding extension of validity period of AA beyond 12 months period pertains to DGFT and the end date of validity of authorisation for import is accordingly transmitted to Customs by DGFT.

The cases commented in audit were after considering two six monthly extensions. As the validity period of AAs are specified, Ministry (DoR) may restrict debiting licence beyond the validity period (considering the maximum of two extensions allowed under the scheme) and need not wait for DGFT to transmit the end date of licence to act upon, since there is no provision whatsoever for further extension. Besides, the fact could not be denied that duty free imports are being allowed without the licence being valid on date of imports.

Allowing duty free imports beyond the maximum validity period of 24 months (considering two six monthly extensions) indicates weakness in the monitoring mechanism in the Customs Licence Utilisation Module.

3.1.2 Non-monitoring of excess imports

As per Para 4.49 of HBP, bonafide default in fulfillment of EO may be regularized by paying Customs duties on unutilized value of imported/indigenously procured material along with interest as notified by DoR.

It was observed that Customs Department was not monitoring excess imports made by AHs in the following 70 AAs involving duty foregone of ₹15.47 crore as detailed below:

Table 3.1 : Non-monitoring of excess Imports

S/No	Name of the Port	Number of AAs	Duty Foregone (₹ in lakh)	Remarks
1	ACC Hyderabad	68	1487.88	68 AHs voluntarily paid customs duty on unutilized imports after expiry of EO period, which ranged from 24 to 1743 days.
2	NCH Mangaluru	1	55.26	AH confirmed non-meeting of EO within the prescribed period. SCN issued and recovery of ₹11.28 lakh made by enforcing the BG
3	Kolkata Port	1	3.71	Customs failed to update the reduced value of the Bond Waiver Certificate in their system which led to excess import of goods by the firm without execution of Bond/BG
Total		70	1546.85	

DoR stated (February 2021) that presently Customs field formations do not get information regarding cases in which AHs have submitted documents to DGFT for EODC/Redemption/extension/clubbing etc., and therefore CBIC instructed field formations to issue simple notices to AH. In cases where EODC is not submitted or evidence of having applied for EODC with DGFT Office is not submitted, recovery action as per condition of the Bond is to be initiated by the Customs.

3.1.3 Non-monitoring of Bond

3.1.3.1 Delay in cancellation/non- cancellation of bonds executed with the Customs

CBIC Instruction (December 2015) states that AAs where EO period allowed is getting over can be identified in advance with the help of various reports available in the EDI System and directed the Commissioners to make it a general practice that the bond file is retrieved and readied for processing in a day. The said instruction inter alia also states that all processes related to compliance of conditions of notification should get expeditiously completed and the bonds/BGs returned to exporter normally within 10 days from the date of receipt of exporter's application for cases which are not selected for random checks as per Customs Circular (March 2010). In respect for cases selected for random checks, the norm of within 30 days be adopted, except for cases under investigation. Instances of delay in cancellation/non-cancellation of bonds were observed in 224 cases (20 per cent) of 1,107 cases reviewed in audit at the following ports:

Table 3.2: Delay/Non cancellation of bonds executed with Customs

S/No	Name of the Port	Number of Bonds	Remarks
1	Chennai Sea	155	Bonds pending for cancellation even though EODC was granted by DGFT Office.
2	ACC & ICD Hyderabad	20	11 AAs were already redeemed and EO period elapsed for the other nine AAs
3	ACC & ICD Bengaluru	49	Bonds not cancelled even though EO period over. RA Bengaluru issued redemption letters; however, bonds were cancelled and returned to exporters with delays of 30 to 591 days.
	Total	224	

DoR stated (February 2021) that the bond cancellation process for AA is initiated after the exporter applies with documents like EODC, original authorisation with condition sheet etc., for cancellation of bond. In case of non-receipt of EODC even after the prescribed time period, action is to be initiated by Customs authority within sixty days of expiry of EO period. The field formations are being advised to follow the time frame prescribed for bond closure.

The primary purpose of execution of bond is to secure due compliance with rules and procedures as laid in the AA Scheme; it also serves as a collateral security to ensure payment of appropriate duty and interest in case of non-compliance. Non-cancellation of the bonds in a timely manner, as prescribed in CBIC instructions, not only results in locking up of funds of the genuine AHs but also sends a wrong signal to the trade at large.

3.1.3.2 Non/insufficient execution of Bond

Customs Notification No.18 (April 2015) stipulates execution of bond by the importer at the time of clearance of the imported material under the AA Scheme with such surety/security, binding him to pay on demand an amount equal to the duty leviable on such imports. In respect of AAs issued to Merchant Exporters (MEs), the bond shall be jointly executed by the ME and its supporting manufacturer.

Audit reviewed 2,496 Bonds executed with the Customs Department, which revealed non/insufficient execution of Bonds in 119 cases (4.76 per cent) in the following six ports as detailed below:

Table 3.3 : Non/insufficient execution of Bond

S/ No.	Name of the port	Number of Cases	Remarks
1	ACC Bengaluru	51	No action was taken to identify cases of non-fulfillment of EO within the allotted period and debit the bonds in lieu of duty foregone amounting to ₹2,638.19 crore. NCH, Mangaluru issued letters till date, calling for details from AH in respect of ten cases with duty foregone amounting to ₹46.73 crore.
2	ICD Bengaluru	15	
3	NCH Mangaluru	11	
4	JNCH Mumbai	4	Cross-verification of BG data given by Mumbai Customs to that of AAs issued by RA Mumbai revealed that no BG was taken in respect of 4 AAs with CIF value of more than ₹10 crores, even though no exports were effected by these AHs.
5	Tuticorin Port	22	Validity of bonds expired in 22 out of the registered 314 bonds pertaining to RA Chennai and Coimbatore.
6	ICD JRY Kanpur	16	In 16 cases out of 56 licences pertaining to RA Kanpur and Varanasi, the bond amounts were not debited properly against each import. In one instance, pertaining to M/s. AD Ltd. Kanpur, the CIF value of licence was entered in the bond ledger, instead of bond amount.
	Total	119	

DoR stated (February 2021) that action has been taken on cases pointed in audit as per the extant provisions. No time limit has been prescribed regarding validity of bonds in the relevant Customs notifications pertaining to AA scheme. These bonds have continuous liability till the exporter submits EODC issued by the DGFT or the required customs duty in case of non-fulfillment of EO in terms of the relevant Customs notification governing the AA scheme. In respect of non-insisting on 100 per cent BG in four cases of RA Mumbai, DoR stated that no endorsement was made by DGFT and therefore the quantum of BG was taken as per the norms prescribed in Customs Circular 58/2004. In Audit's opinion, not

fixing any time for validity of the bonds does not serve the purpose when the Authorisations for which bonds are executed have a fixed validity period. In the four cases of RA Mumbai commented upon in audit, no BG was taken even though the AHs had not effected any exports. Reason for not endorsing BG conditions by DGFT is awaited.

3.1.3.3 Non-furnishing of specific bond for post-import cases

Customs Notification No. 18 (April 2015) stipulates furnishing of bond by the importer, if imports are made after the discharge of EO in full and facility under Rule 18 (rebate of duty) or Rule 19(2) of the Central Excise Rules, 2002 has been availed, binding himself, to use the imported materials in his/supporting manufacturer's factory for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified Chartered Accountant within six months from the date of clearance of the said materials, that the imported materials have been so used.

It was seen in ACC, ICD Hyderabad and Visakhapatnam Sea port that no specific bonds were obtained in any of the 133 BEs in 58 AAs. Further, no information was available to ascertain whether the facility of Central Value Added Tax (CENVAT) Credit was availed or not, in the absence of which the AHs were required to furnish bonds to Customs, binding themselves to use the imported inputs for the manufacture of dutiable goods and also to submit a certificate, from the jurisdictional Central Excise officer or from a specified Chartered Accountant within six months from the date of clearance of the said materials, that the said materials had been so used. The total duty forgone on such duty-free imports without furnishing of bond was ₹12.39 crore.

DoR in respect of cases pointed in Visakhapatnam Sea Port replied (December 2020) that letters were issued to the importers concerned, directing them to submit the necessary certificates/specific bonds against the post imports made. With regard to Hyderabad Customs Commissionerate, DoR stated (February 2021) that EO was required to be fulfilled and imports took place before EO fulfillment wherein condition (v) is not applicable.

The cases commented in audit pertained to imports made subsequent to fulfillment of the entire EO and therefore condition (v) was applicable. Cross-verification in JDGFT also confirmed that the imports had taken place subsequent to fulfillment of EO in 22 BEs involving CIF value of ₹5.39 crore and duty foregone of ₹1.99 crore as evident from ANF 4F applications filed by the licencees at the time of redemption.

Recommendation No. 9: CBIC may consider having an automated alert system for expiry of EO period to ensure appropriate bond renewal/cancellation and obviate the need for depending on AHs for ascertaining EODC status.

DoR stated (February 2021) that data is being captured and reports on bonds and EO period approaching expiry are available. DoR is in liaison with DGFT for

receiving EODC data online, which will also obviate the need for Customs officer to write to DGFT for obtaining the same.

Till EODC online data is received from DGFT, Audit recommended that DoR may ascertain EO status in a timely manner for effective monitoring of bond renewal/cancellation.

3.1.4 Incorrect exemption of IGST under AA

Customs Notification No. 18 (April 2015) exempts the entire Customs duty on imports against a valid AA licence. Customs Notification No. 79 (October 2017) exempts IGST subject to pre-import condition and EO fulfilled through physical exports. Pre-import condition contemplates that raw material imported under advance authorisation is physically incorporated in the final products manufactured in India, which is then exported. Subsequently, DGFT notification No.53 (January 2019) removed the pre-import condition for availing IGST exemption.

3.1.4.1 Incorrect grant of IGST due to non-fulfillment of pre-import condition

Review of EODC files and cross-verification of (Exports-Imports) EXIM data from Customs ports revealed that the Customs Department at authorised ports had not levied the IGST amounting to ₹8.35 crore in respect of 29 AAs issued by RAs (Hyderabad, Visakhapatnam, Jaipur, New Delhi, Ahmedabad and Kochi). RAs redeemed 12 AAs (out of the 29 AAs) without any demand towards the non-levy of IGST even though AHs did not fulfill the pre-import condition as prescribed in the Customs Notification.

In another four cases in RA Ahmedabad, imports amounting to ₹2.34 crore were made without complying with the pre-import condition and therefore IGST was payable. The amount of IGST could not be calculated in the absence of details in the files.

DoR stated (February 2021) that Visakhapatnam and Jaipur Customs have asked the importers to pay IGST along with interest. With regard to Hyderabad Customs, all the 16 authorisations are issued prior to discharge of EO. Necessary action has been initiated to safeguard the Government revenue. DGFT stated (February 2021) that letters have been issued to firms for compliance to DGFT Notification No.33 and their response is awaited.

3.1.4.2 Incorrect grant of IGST on deemed exports

Customs Notification No. 79 (October 2017) exempts IGST, provided the export obligation is fulfilled by physical exports only. Irregular grant of IGST exemption of ₹14.80 crores were observed in 17 AAs in the following three Ports:

Table 3.4 :Incorrect grant of IGST on deemed exports

S/ No	Name of the Port	No. of AAs	IGST exemption availed (₹ in cr)	Remarks
1	JNCH Mumbai	14	14.66	14 AAs in respect of 4 firms in JNCH Mumbai wherein IGST exemption of ₹14.66 crore was availed without complying with the required condition of effecting physical exports. One of the firm, M/s. AE Ltd. had registered a total of eight AAs with JNCH Mumbai and availed IGST exemption of ₹26.80 crore. However, Audit commented on only two of the eight AAs wherein IGST exemption of ₹11.87 crore was availed which were examined in Audit.
2	Visakhapatnam Customs	1	0.14	Scrutiny of EODC revealed that IGST exemption was claimed even though all the exports made by the firm were deemed ¹¹ exports and no physical exports were made. In one BE, IGST availed was ₹14.21 lakh
3	Navasheva Mumbai	2	-	RA Vadodara issued two AAs to M/s. AF Ltd. and also issued EODC even though the exports were effected through deemed exports. Besides, the required pre-import condition was also not complied by the AH. Due to non-availability of copy of BEs in RA files, audit could not ascertain the details of payment of IGST involved in these BEs.
	Total	17	14.80	

As at the time of import, it is not possible for the Customs Department to ascertain about deemed export and hence, it is the responsibility of RAs to notify the Customs Department for recovery of IGST in cases where the prescribed post-exemption conditions are not complied with. Non-communication of this fact by the RAs to Customs resulted in non-recovery of IGST amounting to ₹14.80 crore, which needs to be recovered along with instances where BE details of AAs commented was not available on record. DoR stated (February 2021) that SCNs have issued in all the cases commented in audit. DGFT, in respect of RA Vadodara, stated (February 2021) that necessary action is being taken.

3.1.5 Other Irregularities

3.1.5.1 Non-observance of financial power in passing adjudication order pertaining to AA Scheme

The financial powers for adjudication of matters related to export promotion schemes in terms of quantum of incentive allowed are specified vide Customs Circular 24 (May 2011) read with Para 4.6 of Customs Manual 2018.

It was seen in ACC Mumbai that all the adjudication orders were passed by Asst./Dy. Commissioner of Customs/ Duty Exemption Entitlement Certificate (DEEC) cell without adhering to the monetary limits prescribed *ibid*. Out of the 42 cases adjudicated, only 17 were below ₹five lakhs and hence within the financial limit prescribed for AC/DC. In the remaining 25 cases, 21 involved duty

¹¹As per Para 7.02 of FTP 2015-20, "Deemed Exports" refers to those transactions in which goods supplied do not leave the country, and payment for such supplies is received either in Indian rupees or in free foreign exchange

amounts ranging from ₹five to 50 lakhs and should have been adjudicated by Additional/Joint Commissioner and the remaining four cases involved duty amount of more than ₹one crore and therefore should have been adjudicated at the level of Commissioner of Customs.

DoR stated (December 2020) that the matter pertained to recovery of Govt. dues under Section 143 of Customs Act, 1962. The notice hitherto issued is restricted to recovery of Govt. revenue for enforcement of provision laid down in Section 143 of Customs Act, 1962, in the manner laid down in Section 142 of Customs Act, 1962, for which the proper officer is AC/DC as mentioned in the provisions of the said Section.

The reply is in contradiction of the monetary limits fixed for Export Promotion Schemes i.e. Advance Authorisation/DFIA/Export rewarding Schemes vide Customs Circular no. 24 (May 2011) & Para 4.6 of Chapter 13 of Customs Manual 2018.

3.1.5.2 Non-fulfillment of conditions of AAS resulting in non-issue of EODC

RA Bengaluru issued 11 AAs to M/s. X Ltd, Bengaluru during 2015-16 & 2016-17 for importing Gold bars under Customs Tariff Heading (CTH) 71081200 with CIF value of ₹10,992.76 Cr and exporting Gold medallions under CTH 71131990.

Customs amended the AAs with a different CTH (71081300) as they were not in agreement with the descriptions of the product stated by the exporter. RA Bengaluru while processing EODC observed that the ITC(HS) codes of imports and exports were not matching with that of the licence and referred the matter to DGFT which in turn forwarded the case to DoR. The clarification is yet to be received from DGFT/DoR. Meanwhile, RA amended four licences (twice in respect of two licences) and the fact of such amendment was not communicated to Customs, who also allowed imports and exports as per the CTH claimed by the firm in BsE/SBs without verifying the amendments issued. The AH has since applied for EODC in all these cases; however no redemption letter could be issued by the RA awaiting clarification from DGFT/DoR.

DoR stated (December 2020) that imports were allowed under the same CTH as per authorisations and DoR is not aware about any reference made by DGFT. Reply of DGFT is awaited.

3.1.5.3 Other inconsistencies like re-export of imported goods and non-selection of detailed scrutiny by ports are summarized below:

Table 3.5: Other inconsistencies

S/No.	Name of the Port/RA	Issue	No. of cases	Remarks
1	RA Bengaluru	Re-export of goods imported under AA Scheme	26 defective items in 3 AAs	Proof of re-export was not available with Customs port and the stipulated time allowed for re-export had already passed.
2	NCH Mangaluru	Random checks in at least five per cent of authorisations registered at a port is to be done in terms of CBIC instructions (January 2011 & December 2015)	-	NCH Mangaluru is conducting such test check of AA cases registered at their port. However, no response on conducting of test check was given by ICD and ACC Bengaluru.

DoR in respect of re-export of goods imported under AA scheme stated (February 2021) that SCN is being issued to recover the duty foregone along with interest. Necessary action in the matter also needs to be taken by DGFT in terms of para 4.43 A of HBP 2015-20.

In respect of test checking the correctness of address shown on authorisation/availability of inputs imported duty free, DoR stated (February 2021) that test check has been conducted in some cases on random basis and Board's instructions in this regard will be followed.

3.2 Implementation of the Scheme by DGFT

3.2.1 Non/inadequate monitoring of AA Scheme by RAs

Para 4.44(b) and (f) of HBP stipulates that AH shall file EODC applications online by linking details of SBs against the authorisation within two months from the date of expiry of the EO period. RA shall not only enforce the conditions of AA and Undertaking but also initiate penal action as per law including refusal of further authorisations to the defaulting exporters.

The following deficiencies on non/inadequate monitoring of AA Scheme by RAs were observed:

3.2.1.1 Non-monitoring of Export Obligation

It was seen that no effective system existed with RAs to ascertain the cases where redemption period had expired as seen from the following observations:

Table 3.6 :Non-monitoring of Export Obligation

S/ No.	Name of RA	Pending cases	Remarks
1	Mumbai & Pune	6494	In 3,981 cases (61 per cent), SCNs are yet to be issued and in some cases action is pending for more than ten years. Duty foregone of ₹654.94 cr. is in respect of 44 sample cases wherein no action has been taken by RA though the EO period had expired and due date for filing of redemption has also expired.
2	Chennai, Kochi & Coimbatore	78	No action was taken in 78 AAs involving duty foregone of ₹56.58 cr. even after the lapse of more than 30 months from the date of issue of AAs and the AH not having submitted any documents for proof of exports nor seeking any extension of EOP. RA Chennai and Coimbatore did not issue deficiency letters nor were any SCNs issued against these AHs.

S/ No.	Name of RA	Pending cases	Remarks
3	Bengaluru	5032	RA has either not taken any action, or has initiated action with substantial delays. RA had not enforced the conditions of AAs in 21 cases. As per MIS-4 report, 1990 cases are marked as "EO fulfilled/document under scrutiny" out of which, 341 cases are more than 10 years old.
4	Hyderabad & Cuttack	1126	Cases were pending for submission of redemption application since 2006. Scrutiny of sample cases revealed that in 48 cases, AH had not submitted application even after the expiry of the prescribed period.
5	Delhi & Indore	28	No action was taken against AHs for non-filing of EODC application within the prescribed period. In another 14 cases, CLA Delhi issued cautionary letters to AHs after delays ranging from 149 to 688 days
6	Kanpur	3	No action was taken by RA for not effecting any exports till 23 months of expiry of EOP. RA issued (October 2018) letter seeking for details of exports and after eight months placed (June 2019) the firm under DEL. Duty involved is ₹1.67cr.
7	Ahmedabad	5	Quantity of inputs procured indigenously against invalidation letters were not monitored scrupulously by the RA as evident from the fact that the balance inputs were not shown as zero despite procuring all the inputs requested under invalidation.
8	Kolkata,	45	RAs neither enforced the conditions of Authorisation undertaking nor initiated penal action as per provisions including refusal of further authorisation to the defaulting exporters despite failure to complete EO or to submit relevant information/documents by the AHs on expiry of EO period. RA Jaipur, in four cases, issued only cautionary letters.
9	Chandigarh	3	
10	Jaipur	9	
11	Vadodara	5	
12	Panipat	3	
13	Ahmedabad	2	
Total		12833	

DGFT stated (February 2021) that necessary steps are being taken to resolve the issue and strengthen the institutional mechanism. Action by way of issuing SCNs/cautionary letters, putting under DEL has been initiated in many cases. RAs depend on AHs to claim for redemption as no mechanism exists with the RAs in the extant system to ascertain the cases where the EO period has expired.

Recommendation No. 10: DGFT needs to have an effective mechanism to continuously and regularly monitor EO. Till recently, there was no system to track cases where EOP had lapsed, and RAs depended on AHs to ascertain the EODC status. To minimize possible misuse of AAs, there is a need to have validation checks in the DGFT's EDI system to address possible diversion of imported inputs through substitution of indigenous inputs.

DGFT stated (February 2021) that in the newly launched (1 December 2020) IT module, cases where EOP has lapsed can be traced and RAs need not depend on AH to ascertain EODC status. With regard to invalidation, it is stated that all amendments including invalidations are shared with Customs server. DGFT has set-up a near real-time data exchange system with DG (Systems) wherein utilization of imports and corresponding exports may be monitored in near real-time.

Audit appreciates DGFT's endeavor in having an online module for monitoring the EOP; however, since the period covered during the audit was 2015-16 to 2018-19, therefore the status of implementation and progress in this regard, would be reviewed in subsequent Audits.

3.2.1.2 Non-monitoring of excess import under AA Scheme

Non-monitoring of excess imports was observed in 22 of the 1,737 cases reviewed in eight RAs:

Table 3.7: Non-monitoring of excess imports

S/ No.	Name of RA	Number of cases	Duty Foregone (₹ in lakh)	Remarks
1	Mumbai & Pune	10	55.96	Excess imports of goods with CIF valuing ₹3.16 cr. when compared to quantities required for exports.
2	Coimbatore	1	15.36	No DL/SCN was issued by RA for recovery of Customs duty on excess imports valuing ₹52.18 lakh even though the EO period expired in May 2019.
3	Kochi	3	409.51	Excess imports of 77.28 MTs of BP light berries and 98.86 MTs of turmeric, valuing ₹57.05 cr.
4	Delhi	1	28.31	Excess imports of 17550.14 kg of imported goods lying unutilized
5	Hyderabad	1	21.34	AH incorrectly claimed the exports against SB not reflected in the EDI data but claimed in the redemption application submitted to RA. Further, the same SB is shown to be exported by a different IEC holder.
6	Ahmedabad & Vadodara	6	86.75	Excess imports in excess of norms fixed by NC
Total		22	617.23	

RA Ahmedabad, Pune and Vadodara reported recovery of ₹28.56 lakh. RA Coimbatore and Hyderabad stated that necessary action has been initiated.

3.2.1.3 Non-monitoring of pre-import condition under AA Scheme

Appendix 4J of HBP 2015-20 prescribes EO period for specified inputs with pre-import condition. Pre-import condition contemplates that raw material imported under advance authorisation is physically incorporated in the final products manufactured in India, which is then exported. AAs were issued by RAs without imposing the pre-import condition in respect of the following items:

Table 3.8 : Non-monitoring of pre-import conditions by RA

S/ No	Inputs	Name of the RA	No. of cases	Duty Foregone (in ₹cr)	Remarks
1	Stainless Steel	Ahmedabad	2	0.54	AA was issued without pre-import condition and regular EOP of 18 months in contravention to PN 30/2017 wherein pre-import condition with EOP of six month was imposed. Further, cross-verification of import documents submitted to RA by the AH with import ledger available in Customs EDI system revealed that the firm had not declared two import consignments to the RA and one consignment, though declared to RA in the EODC file, did not feature in the import ledger of Customs EDI system.
2	Natural Rubber	Kolkata	35	7.65	AH failed to comply with the pre-import conditions in contravention to PN 35/2015 r.w. 39/2018 in respect of 37 consignments and therefore the Customs duty foregone on the proportionate import quantity is recoverable. The benefit of one-time relaxation would not accrue to AAs as pre-import condition is specifically endorsed in the condition sheet attached to the licence.
3		Mumbai	2	0.43	
4		Hyderabad	4	0.95	
5	Spices	Kochi	3	1.23	The AH made partial exports after the expiry of EOP which is not to be considered for EO fulfillment in two AAs. In the third AA, pre-import condition was not fulfilled.
6		Mumbai	1	0.09	AA was issued with EO period of 12 months instead of required EOP of 90 days.
7	Precious Metals	Mumbai	2	10.76	RA removed (June 2018) the conditions based on the request of AH. The amended provisions are not retrospective in nature and removing EOP/pre-import condition for AAs issued prior to May 2018 was not in order.
8	Pharmaceutical products	Hyderabad	1	0.12	Pre-import condition was not met, resulting in excess duty-free imports
Total			50	21.77	

DGFT, in respect of stainless steel, stated (February 2021) that the matter is under examination and Customs authorities have to verify while releasing the Bond executed by them. For natural rubber commented in respect of RA Kolkata, it was stated that the AA was issued for Aluminium and not for Natural rubber; for RA Mumbai, the pre-import condition was not specifically endorsed and for RA Hyderabad, response is still awaited. In case of spices commented in respect of RA Kochi, demand notices have been issued against the firms and for RA Mumbai, it was stated that EO was fulfilled within 90 days from clearance of import and therefore EODC was correctly granted. For pharmaceuticals products

commented in respect of RA Hyderabad, it was stated that the matter is under examination.

The reply of DGFT is not factually correct. The AAs for natural rubber in RA Kolkata were issued for importing natural rubber and in RA Mumbai, the pre-import condition was subsequently endorsed in the AA vide Amendment Sheet No.1 (21 August 2015). Similarly, reply of DGFT in respect of spices in RA Mumbai that EO was fulfilled within 90 days is not factually correct as imports were done in February/March 2018 and exports effected in August 2018.

3.2.1.4 Undue extension of EOP

Para 4.42 (e) read with Para 4.4.2 (f) of HBP states that RA may consider a request of AH for one extension of EO period up to six months from the date of expiry of EOP subject to payment of composition fee of 0.5 per cent of the shortfall in EO. AH will have to submit a self-declaration to RA stating that unutilised imported/domestically procured inputs are available with the applicant. Para 4.42 (c) of HBP stipulates second extension by RA, provided AH has fulfilled minimum 50 per cent export obligation in quantity as well as in value, on pro-rata basis.

Irregularities on extension of EOP were observed in the following four RAs:

- (i) RA Ahmedabad granted 2nd extension to M/s. AG Ltd. even though the firm had fulfilled only 17 per cent of its EO, resulting in irregular grant of extension with consequential short levy of duty of ₹1.07 crore.
- (ii) RA Bengaluru issued (June 2017) AA to M/s. AH Ltd. for which EO period expired in December 2018. The firm applied for extension in May 2019 (after five months from the date of expiry of EOP), which was accorded (May 2019) without imposing the composition fee on the ground that they had utilized all the imported materials and fulfilled EO to the extent of import made. However, no self-declaration as required under HBP ibid was submitted by AH.
- (iii) RA Kolkata issued AA to M/s. AI Ltd. wherein import quantity was not restricted in proportion to actual exports, as required under the rules, while granting second revalidation.
- (iv) RA Varanasi allowed revalidation of AAs in seven cases even though AH applied after expiry of the validity period (**Annexure 4**).

There is no time limit prescribed in FTP/HBP for seeking revalidation of licences and such requests are sought even after expiry of the validity period of Licence. As validity of the licence is specified (12 months from issue date) in Para 2.16 of the HBP and authorisations must also be valid on the date of imports/exports (Para 2.18 of HBP), in audit's opinion any request for revalidation should be entertained within the validity of licence only.

DGFT stated (February 2021) that letters had been issued to firms for compliance and no time limit is prescribed for seeking revalidation either in FTP/HBP.

The reply of DGFT is not tenable as the validity of the licence is specified in the FTP/HBP and any request for revalidation should be entertained within the validity of licence only.

Recommendation No. 11: DGFT should review the procedure for granting revalidation and requests for revalidation should be accepted only within the validity period of the authorisation so that any duty free imports or exports reckoned for export obligation is well within the currency of the authorisation.

3.2.2 Irregularities in clubbing of Authorisations

Paragraph 4.38 (xii) of HBP states that after clubbing, the AAs shall, for all purposes, be deemed to be one authorisation. The MVA (15 per cent) would be calculated on the basis of total CIF/FOB arrived after clubbing the AAs and any shortfall in value or quantity shall be regularized in terms of Para 4.49 of HBP 2015-20.

3.2.2.1 Non-detection of excess import consequent to clubbing of Authorisations

Para 4.20 of HBP stipulates that if the AH has consumed lesser quantity of inputs than imported, AH shall be liable to pay Customs duty on unutilized imported material, along with interest thereon or effect additional export within the EO period to account for the export of the material remaining unutilized.

RA Ahmedabad allowed clubbing of five AAs issued to M/s. AJ Ltd. The exporter could not effect any export in respect of an AA; however, imports were made resulting in non-fulfillment of EO. It was noticed that excess import of one of the inputs though declared by the exporter in the EODC application was not detected by RA while granting EODC resulting in non-levy of duty of ₹43.05 lakh.

Similarly, RA Chennai issued two AAs to M/s. AK Industries Limited for duty free import of Fluorspar (Acid grade) involving CIF value of ₹9.78 crore with an obligation to export Hydrofluoric Acid and the licences were redeemed (December 2019) based on clubbing of Authorisations. Review of consolidated ANF 4F, revealed excess import of 567.94 MT, which was admitted by the AH. However, the Department did not take action to regularize the excess imports and recover the duty amount of ₹10.38 lakh along with interest.

DGFT, in respect of RA Ahmedabad, stated (February 2021) that the matter is under examination. RA Chennai reported partial recovery of ₹2.12 lakh.

3.2.2.2 Short/Non collection of Composition fee on clubbing of AAs

As per Para 4.38 (viii) of HBP, upon clubbing wherever exports are accounted beyond the EOP of the earlier Authorisation, a composition fee of 0.5 per cent of the shortfall in EO shall be levied.

M/s. AL Industries Ltd. applied (March 2019) for clubbing of three AAs issued by RA Vadodara. It was observed that the RA granted (May 2019) EODC on VA achieved in only one Authorisation instead of the aggregated value of all the

three clubbed Authorisations, which resulted in shortfall of VA to the tune of ₹41.25 crore. This incorrect calculation in clubbing of Authorisation resulted in non-levy of composition fee of ₹41.25 lakh.

Similarly, in RA Hyderabad, composition fee of ₹13.90 lakh was not levied for shortfall in EO on clubbed Authorisations allowed to M/s. AM Ltd. In three other cases, composition fee of ₹20.37 lakh was not levied for shortfall in EO on extension sought by the AH.

DGFT, in respect of RA Hyderabad, stated (February 2021) that action is being taken against the firm. RA Vadodara reported recovery of ₹11.69 lakh in one case.

3.2.3 Irregularities related to Value Addition (VA)

As per Para 4.09 (i) of FTP 2015-2020, MVA to be achieved under AA is 15 per cent. As per para 4.49(b) of HBP 2015-2020, if VA falls below minimum prescribed, then the AH shall be required to deposit an amount equal to 1 per cent of the shortfall in FOB value in Indian Rupee. As per Appendix 4H, which is the register for accounting the consumption and stocks of duty free imported or domestically procured raw materials, components, etc, allowed under AA/DFIA. Application for redemption of AAs (ANF-4F) specifies that FOB value of exports for the purpose of VA shall be arrived after excluding foreign agency commission, if any.

3.2.3.1 Incorrect consideration of GST/Commission/IGST amount towards FOB value

Two AH under RA Mumbai achieved EO in terms of quantity as well as value in respect of three AAs, by supplying to 100 per cent EOUs. It was however seen that invoice values counted towards FOB included ineligible amounts like IGST and commission. Excluding the ineligible amounts resulted in shortfall of FOB by ₹13.59 crore and 1 per cent penalty recoverable works out to ₹13.59 lakh.

DGFT stated (February 2021) that RA Mumbai has been instructed to keep the firms in DEL till recovery is effected.

3.2.3.2 Non-declaration of actual imports by AH

Cross verification of EODC application submitted to RAs (Ahmedabad and Vadodara) with that of Licence utilization data of Customs EDI System revealed that all imports against 11 AAs were not declared in the EODC application. AHs declared 123 import consignments in their EODC applications against actual imports of 147 consignments, thereby showing less value of CIF utilized which resulted in understatement of imports of ₹10.71 crore. RAs may ascertain the actual use of these non-declared goods and take appropriate action for disallowing incorrectly availed exemption.

Similar observations were made in RAs (Chennai and Coimbatore) wherein 13 AAs were redeemed and EODC issued even though AH imported lesser quantity

of inputs compared (as per SION) to the quantum actually required for effecting the exports. Besides, there was no declaration of usage of duty paid or indigenously sourced material (other than imports) and the actual consumption (including wastage) shown in the redemption file was less. Non-indication of complete details of consumption in Appendix 4H does not reflect correct position of consumption (**Annexure 5**).

DGFT, in respect of RA Ahmedabad, stated (February 2021) that Customs formations have to verify while releasing the bonds executed with them. Response in respect of other RAs is awaited.

The response of DGFT is not tenable as the aspect of lesser quantities of imports needs to be verified by jurisdictional RAs while reviewing the EODC applications and how they achieve the export obligation. Whether any non-declared goods was used, details of invalidations, etc., should be verified before issuing EODC by RAs. Action may be initiated for understatement of imports by AH.

3.2.3.3 Incorrect estimation of VA on import of components on net to net basis

As per Sl. No. 6 of General Notes for all exports products groups read with Sl. No.4 of General Notes for engineering products and Policy Circular 10/2018-19 (July 2018), an applicant seeking to import components as an input may be allowed to import on net to net basis without any wastage, by RAs with accountability clause and the type, technical specifications etc. of the components sought for import should conform to those utilized in the manufacturing of resultant product, which should be reflected in the export documents. A condition to this effect shall be endorsed on the licence. Further, if the procurement of components falls under no norms category, the applicant has to furnish Appendix 4E detailing exact components (of both import and indigenous inputs) required in manufacture of one unit of export product duly certified by the Chartered/Cost Accountant or Jurisdictional Central Excise Authority.

RA Mumbai and Pune in respect of two licences estimated VA considering only the components imported and not on all the components required on net to net basis to supply an unit of the export product. The quantities imported were less than the quantities applied in the AAs which was not possible as at least one component each is required for making one export set (net to net basis accountability clause). The licence was redeemed without enquiring as to how the balance quantity was procured and used in export set. The 4H consumption sheet and accountability statement also show the consumption of only imported items which were less than the actual requirement. In all the SBs, the total quantity which was applied in the application was mentioned and not the actual quantity consumed in export quantity. Hence the SBs were not prepared as per the General Note and Policy Circular *ibid*. The quantities of inputs utilized in accountability statement do not tally with exports-wise imports details furnished by the firm. Further, refund of IGST paid of ₹6.05 crore on exports has been claimed which is equivalent to drawback of input tax credit. Hence CIF/FOR value

of all components (both imported and indigenous) should have been taken to estimate the VA instead of only imported components. If CIF/Freight on Road (FOR) value of all the components physically present in export was considered, the VA actually worked out to be much lesser than the prescribed 15 per cent.

DGFT stated (February 2021) that there is no mandate that firm has to import all the components required in the manufacturing of the product. However, details of consumption with reference to items imported are to be submitted for accountability and there is no need to consider duty paid inputs for VA on which no drawback was availed.

The reply is not acceptable as the Accountability Statement only reckons imported inputs and does not provide for factoring indigenous procurements. RAs do not insist for declaration of all the inputs actually consumed in the manufacture of exported items as required under Appendix 4H/4E.

Audit is of the opinion that the practice of considering CIF value of only imported inputs does not reflect the complete picture of value addition. Non-inclusion of value of indigenous supplies, incorrect consideration of GST/Commission/IGST amount and non-declaration of actual imports by AHs were observed in audit which is fraught with the risk of diversion of duty free imports as well as misuse of the scheme. RAs may ascertain the actual usage of non-declared goods and take appropriate action for disallowing the incorrectly availed exemption.

Recommendation No. 12: DGFT may insist for complete disclosure in Appendix 4H requiring AHs to declare the “details of all the inputs consumed in the manufacture of exported goods including the indigenously procured inputs and the source of such procurements”, for facilitating better monitoring of actual consumption by RAs thereby preventing diversion of duty free imports and misuse of the scheme.

3.2.3.4 Negative VA on supplies to sister concern

In three licences issued to M/s. AN Ltd. by RA Mumbai, it was noticed that the AH achieved negative VA by exporting finished goods to its sister unit, an Export Oriented unit (EOU), at a price lower than the purchase value. Since the EOU unit is the sister concern of the exporter, the value of the supplies cannot be considered at arms-length when it is lower than the purchase value. This shortfall needs to be regularized by paying 1 per cent penalty amounting to ₹9.51 lakh on value falling short against prescribed minimum VA.

Besides, the practice of diverting inputs to a sister concern at a price lower than the purchase value was a deliberate exhibition of negative VA and not a bonafide default that can be regularised by merely paying 1 per cent penalty. In Audit's opinion, the exporters should be made liable to repay the duty saving benefits under the Scheme and penalty under FTDR Act for deliberate misuse of the Scheme.

DGFT stated (February 2021) that EO of DTA and EOU are to be seen separately as both are independent units and have separate schemes of EO and both cannot be linked. Negative value addition was regularized by RA Mumbai by recovering 1 per cent of shortfall in FOB value from the firm.

3.2.4 Non realisation of export proceeds in freely convertible foreign currency

In terms of Para 4.21(iii) of FTP 2015-20, exports to Special economic Zone (SEZ) units shall be taken into account for discharge of EO provided the payment is realized in Foreign Currency Account (FCA) of the SEZ unit.

Non-realisation of exports proceeds in FCA was observed in 84 instances involving duty foregone amounting to ₹3.38 crore in five RAs as detailed below:

Table 3.9 : Non-realisation of export proceeds in FCA

S/ No.	Name of RA	Number of cases	Duty Foregone (₹ in lakh)	Remarks
1	Chennai, Mumbai & Visakhapatnam	9	259.26	Exports made to SEZ units was reckoned for value addition against export obligation even though the exports proceeds were realized in INR and not in FCA
2	Ahmedabad	13	79.15	In 6 AAs, exports made to SEZ and BRC was in INR. In 3 SBs, export proceeds not realized and in 4 SBs, no e-BRC were available in file or in e-BRC module of DGFT website.
3	Pune	62	-	SBs reckoned for VA even though export proceeds in INR
Total		84	338.41	

DGFT stated (February 2021) that payment received in INR cannot be taken for EO fulfillment and assured to recover the shortfall. RA Mumbai has been instructed to keep the firm in DEL till the recoveries are effected. The matter is under examination in respect of RA Ahmedabad, Chennai and Pune.

3.2.5 Filing of application by AH for redemption certificate/EODC

3.2.5.1 Lack of online filing and closure of EODC

Para 4.46 of HBP states that AH shall file online application in ANF-4F to RA and upload prescribed documents in support of fulfillment of EO for redemption certificate/EODC. DGFT introduced the online system for EODC/redemption for AAs effective from 1 June 2014 vide PN 55 (March 2014).

It was however observed that AHs were still manually filing the application for redemption/EODC till 1 December 2020, when the online application link was activated. Thus, non-activation of online facility for application for redemption/EODC resulted in delay in issue of EODC and increase in transaction cost and time. The effectiveness of the online application functionality will be reviewed in future audits.

3.2.5.2 Delay in submission of EODC application by the AH

Para 4.44 of the HBP stipulates that the AH is required to submit the documents for exports within two months from the date of the expiry of obligation period.

In 11 RAs (Bengaluru, Chandigarh, Chennai, Cuttack, Hyderabad, Indore, Jaipur, Kochi, Ludhiana, Panipat, and Visakhapatnam) delay beyond two months from expiry of EOP was observed in 193 AAs with delays ranging from 5 to 792 days and no action was taken by RAs (**Annexure 6**).

A case is illustrated wherein M/s. AO was issued (May 2015) AA by RA Bengaluru and the due date of submission for EODC/redemption was up to January 2017. It was however seen that the AH submitted application for redemption only in August 2019 with a delay of 32 months.

RA Chennai, Hyderabad and Indore stated (November 2020) that action is being taken to issue caution letters. Reply from other RAs is awaited.

DGFT stated (February 2021) that the scheme has become paperless with new IT system effective from 1 December 2020. All the required documents would be uploaded online, deficiencies and their responses be handled online and data would be seamlessly transferred to Customs which would help in monitoring of EODC finalization.

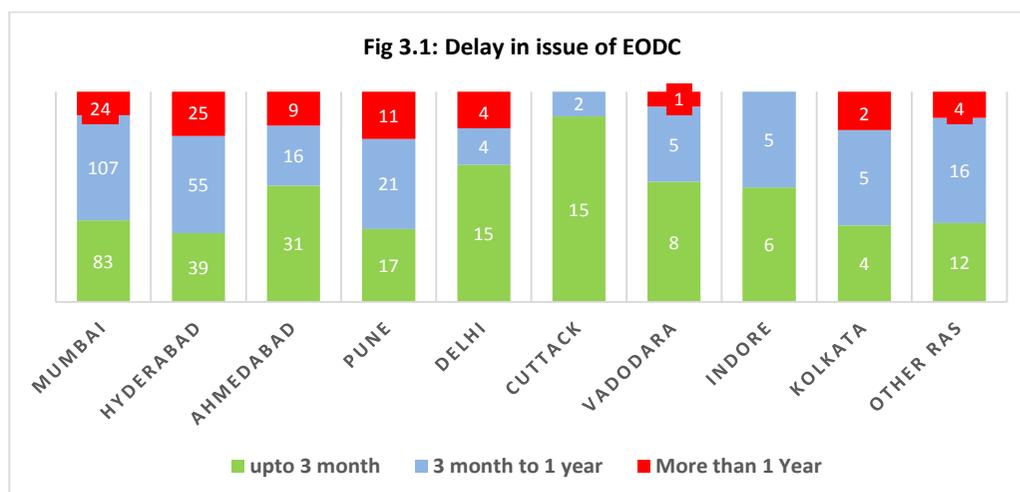
Progress in this regard would be watched in subsequent audits.

3.2.6 Irregularities during issue of EODC/Redemption letter by RAs

3.2.6.1 Delay in issue of EODC by RAs

Para 9.10 of HBP 2015-20 stipulates that AA is to be redeemed within 15 days from the date of receipt of application. MOCI Trade Notice No.20 (June 2019) reiterated that all RAs must convey Deficiency letter (DL) in time bound manner and in one go only.

In 17 RAs (Ahmedabad, Bengaluru, Chandigarh, Coimbatore, Cuttack, Delhi, Guwahati, Hyderabad, Indore, Jaipur, Kolkata, Ludhiana, Mumbai, Panipat, Pune, Vadodara, and Visakhapatnam) out of the 2,242 cases reviewed delay in issue of EODC was observed in 546 cases (24 per cent) with delays ranging from 18 to 1,001 days. In 16 cases in Ahmedabad and Vadodara, delay of more than 15 days was observed even though AH complied with all the deficiencies marked by RA. The analysis of major nine RAs is given below in the graph:



A case is illustrated wherein RA Bengaluru issued (January 2018) AA to M/s. AO Ltd. and the EODC applied (April 2019) by AH got delayed by more than five months due to non-issue of all DLs in one go. EODC was finally issued in October 2019. If all the deficiencies would have been pointed out during the initial pre-scrutiny (April 2019) and prescribed timelines of AA would have been adhered to both by the firm and RA, the undue delay in issue of EODC by more than five months would have been avoided.

Non-activation of the online facility for redemption/EODC application resulted in delay in issue of EODC and increase in transaction cost and time. Even though the redemption application were filed online, however, all documents like BEs, SBs, e-BRCs, input and export consumptions and certificates were required to be filed manually during the period of audit 2015-16 to 2018-19. The complete digitization of redemption process and its integration with licence data would help in reducing the delay and to achieve the benchmark of 15 days set for disposal of redemption applications.

DGFT stated (February 2021) that steps are being taken to resolve the issue and strengthen the institutional mechanism. The new IT system effective from 1 December 2020 is expected to resolve the issue of delay in issue of EODC; till then files were processed only after receiving the hard copies of EODC applications.

Recommendation No. 13: DGFT should review the procedure for issuance of EODC to meet its prescribed timeline of 15 days by ensuring that the online module is realigned to accept only full and completed applications along with all the required documents.

DGFT stated (February 2021) that eodc.online is functional with the new IT system effective from 1 December 2020.

The period covered during the audit was 2015-16 to 2018-19; therefore, the status of implementation and progress in this regard, would be reviewed in subsequent Audits.

3.2.6.2 Irregular redemptions by RAs

RA Mumbai redeemed three AAs issued to two firms (M/s. AN Ltd. and M/s. H Ltd) even though EO was achieved entirely by deemed exports. Benefit of IGST exemption is meant only for physical exports and AHs, to avoid levying of IGST by Customs, declared that only physical exports would be made. RA, however, accepted the deemed exports towards EO while redeeming the cases without ascertaining the fact of irregular availment of IGST amounting to ₹32.80 lakh, based on wrong declaration, which needs to be recovered along with interest.

DGFT stated (February 2021) that RAs have been instructed to keep the firms in DEL till recovery is made.

3.2.6.3 Exports made beyond EOP

Paragraph 2.18 (b) of HBP stipulates that export obligation period of an Authorisation must be valid on the date of export. Exporter should have applied for extension in EOP before effecting exports. Hence, exports effected without any extension needed to be dis-allowed and regularized as per Paragraph 4.49 by collecting duty/interest on proportionate excess imports.

Review of EODCs revealed that exports were effected beyond the EO period allowed under AA scheme in 11 AAs in six RAs with proportionate duty foregone amounting to ₹8.42 crore as detailed below:

Table 3.10: Exports made beyond EOP

S/ No.	Name of RA	Number of AAs	Proportionate Duty foregone (₹ in cr)	Remarks
1	Vadodara	3	6.19	Exports in five out of 137 SBs and two other AAs were effected after the prescribed EO period and no extension was applied for by AH, resulting in short fulfillment of export (quantity wise & value wise). Further, 1 per cent fee for shortfall in VA is also applicable.
2	Ahmedabad	2	1.29	AH effected exports beyond the validity of EOP and later applied for post facto extension which was granted by RA. Thus, without seeking any extension in EO period during the intermediate period, the exporters continued their export.
3	Kolkata	2	0.50	Imports effected after the EOP were not eligible for exemption
4	Jaipur	1	0.41	RA granted <i>post facto</i> extension in EO period, instead of rejecting the invalid exports effected beyond EOP
5	Pune	1	0.03	Excess imports were used for ineligible export. Further, the deemed exports documents did not reflect the proportionate input consumption for each consignment and the fact of exports through a supporting manufacturer was not endorsed in the AA, as required under the provisions.
6	Bengaluru	2	-	Exports valuing ₹2.49 crore made beyond the prescribed EO period.
Total		11	8.42	

DGFT stated that RA Bengaluru recovered ₹0.70 lakh and issued demand for recovering composition fee for ₹0.55 lakh. Demand-cum-SCN was also issued against the firm by RA Pune. In RA Jaipur, EOP has already been extended up to April 2019 and the firm has also effected exports within the above mentioned prescribed time limit. For RA Ahmedabad, it was stated that Para 4.27 of HBP allows Exports/Deemed Export supplies in anticipation or subsequent to issue of an Authorisation.

Reply is not tenable as there is no provision in the FTP/HBP to grant post facto extension in EO period after completion of exports by the exporters and as per Paragraph 2.18 of HBP, an Authorisation must be valid on the date of export. Further, the exporter should have applied for extension of EOP before effecting exports.

3.2.6.4 Non endorsement of inputs in shipping invoices

As per para 4.12 (ii) to (iv) of FTP, the proportion of inputs actually used/consumed in production of export product shall be clearly indicated in the SBs including invoices against deemed exports and the RA shall allow only those inputs which have been specifically indicated in the SBs at the time of discharge of export obligation.

In the following cases, RAs issued EODC without endorsements in SBs:

Table 3.11 : Non-endorsement of inputs in the SBs

S/No	Name of the RAs	Number of AAs	Remarks
1	Kochi	1	EODC issued to M/s. L Ltd. even though the AH had not indicated the inputs actually used/consumed in production of export product involving FOB value of ₹11.83 Crore.
2	Ahmedabad	2	EODC issued in one AA and denied extension for other AA to M/s. AP Ltd. even though incomplete information about imported inputs as required under the SION/Authorisation was observed in 26 BEs. However, no action was taken by RA to verify this mismatch which involves duty forgone of ₹20.69 crore.
3	Chennai	3	EODC issued in five AAs issued to M/s. AQ Ltd. and M/s. AR Ltd. even though AH imported different input than endorsed in AAs resulting in incorrect import involving Customs duty of ₹3.62 crore.
4	Coimbatore	2	
	Total	8	

DGFT stated (February 2021) in respect of RA Chennai, Coimbatore and Kochi that action is being initiated. RA Ahmedabad stated that BEs cleared under the scheme carries the specific authorisation numbers and Customs check the authorisations regarding description quantity value allowed etc., at the time of import. Appendix 4H issued by CA also confirms the exports made and the inputs utilized.

Reply is not tenable as endorsement of inputs in the SBs are required to be checked by the RAs during issuing of EODC/redemption which is the final stage

of the process and also ensures that the duty free imports allowed under the scheme has been used for the intended purpose.

3.2.6.5 Issue of EODC/Redemption Letter without proper endorsement/amendment

As per Para 4.39 of HBP, RA may consider a request in form ANF-4D for enhancement/ reduction in CIF value, quantity of inputs, FOB value and quantity of exports of AA. However, value addition after such enhancement should not fall below MVA stipulated (for the export product) and there is no change in input-output norms.

In RA Hyderabad, 43 AAs were redeemed with reduced CIF/FOB Values when compared with the CIF and FOB values fixed at the time of grant of Authorisation. In all these cases, redemption was allowed without any request for amendment for reduction in CIF or FOB value by the AH. The AAs were redeemed stating that imports made were in the same proportion (as that of CIF and FOB) to exports made and that the required value addition as per AA was achieved.

DGFT stated (February 2021) that Licence were redeemed as per utilization and 15 per cent VA.

The response of DGFT is not tenable as redemption was allowed without any request for amendment for reduction in CIF or FOB value by the AH.

3.2.6.6 Delay in issue of EODC due to non-receipt of SAR by Spices Board

As per Policy Circular 5 (August 2014), AA issued for spices as inputs, shall be furnished to the Spices Board, Kochi without referring the case to the NC and the RA concerned may redeem the AA based on SAR of Spices Board, Kochi. This Policy Circular was made applicable from August 2013 in respect of all the pending cases as well as future AAs.

In RA Kochi, 100 AAs involving CIF value of ₹1596.60 crore pertained to spices, out of the total pending 271 AAs involving CIF value of ₹2145.74 crore issued during the period 2015-16 to 2018-19. Scrutiny of selected 22 AAs relating to spices revealed delay in issue of EODC in all cases due to non-receipt of SAR from Spices Board.

DGFT stated (November 2020) that as per Para 2 of the Policy Circular, RA concerned may redeem AA based on SARs furnished by Spices Board.

Reply is not tenable as SAR was required by RAs to confirm whether the yield declared as per EODC claim is more than the yield as per SAR. It was seen that in 18 of 22 cases, the yield as per EODC applications was more than yield as per the SAR, which was evident from Appendix 4H filed by AH duly certified by CA. Thus, there was no reason for the RA to delay issue of EODC when in the majority of the cases, the yield declared as per ANF 4F application was found to be higher. Thus, delay in redemption of 22 AAs with CIF value of ₹453.01 Cr due to delay in

receipt of SAR was avoidable in view of the Policy Circular *ibid* and defeated the very purpose of issue of the said circular, i.e., reduction of delay in redemption of Authorisations issued for spices.

3.2.7 Other irregularities

3.2.7.1 Export of items without proper endorsement in authorisation and delay in issue of DL

Para 4.35 of HBP states that imported material may be used in any unit of AH subject to condition of paragraph 4.10 of HBP or jobber/supporting manufacturer, with due endorsement in the Authorisation by the RAs.

M/s. AS Ltd. while applying for AA stated that some of the export products would be manufactured by their supporting manufacturer situated in SEZ, Cochin. RA Bengaluru issued two DLs regarding supporting manufacturer, to which AH requested to delete the name of the supporting manufacturer. Accordingly, RA issued the AA, without endorsing any supporting manufacturer.

The firm applied (December 2018) for EODC to which RA issued DL (March 2019) stating that the exported item appeared to fall under SCOMET category and asked for clarification whether required permission for export of SCOMET item was taken from DGFT. DGFT also informed that the item under reference may fall under SCOMET category 8A602, and export shall be made through authorisation from DGFT. Further, it was seen that AH made exports amounting to ₹19.64 crore through its Special Economic Zone (SEZ) unit (supporting manufacturer) without any endorsement as required under the rules *ibid*. The case is yet to be redeemed.

DGFT stated (February 2021) that the firm has approached DC, CSEZ for permission to sub-contract under Rule 43 of SEZ Rules 2006.

The reply is silent on whether authorisation from DGFT was accorded for effecting SCOMET category exports. RA took 14 months to ascertain whether the export item falls under the restricted category which should have been ensured while issuing (February 2018) the AA. Besides, the permission to sub-contract under SEZ provisions was taken post-facto after being rejected by RA and therefore the exports already made without the required endorsement should have been disallowed and the firm should have been asked to pay the duty foregone on the input used in the export product.

Other instances where RAs allowed exports without proper endorsements in the AAs are detailed hereunder:

Table 3.12 : Non-endorsement in authorisations

S/ No.	Name of the RA	Number of cases	Remarks
1	Kolkata	7	Products exported by the AH were different from what was allowed in the authorisation. RA did not verify the mismatch in export products and issued BWC ¹² for the entire quantities of export consignments. In three cases, AH declared that facility of cenvat credit was taken and invalidation letters were also issued by RA after issue of BWC allowing domestic procurement of inputs.
2	Ahmedabad	10	Products exported by the AH in 2 AAs were different from what was allowed in the authorisation resulting in incorrect consideration of exports by RA with duty foregone of ₹83.93 lakh which needs to be recovered. In another eight AAs, the CA certificate did not mention whether cenvat credit was availed or not. It was also certified that the goods imported after exports, will be utilized for the manufacture of dutiable goods. In one case, CA certified both availing as well as non-availing of cenvat credit. RA issued EODC in all eight AAs without duly verifying the CA certificates and the possibility of diversion of goods because of its importation after completion of exports or availing of double benefits cannot be ruled out.
	Total	17	

DGFT stated (February 2021) that the matter is under examination. The product name and description of exported item tallied with AAs in respect of two firms in RA Ahmedabad.

The reply is not factually correct as the product exported (Chlorpyriphos Technical 48 per cent Min and 'Non-Woven Fabric under ITC 63051200') was not tallying with the product (Chlorpyriphos Technical 94 per cent and 'Non-woven fabrics made of manmade fiber (Polypropylene)' under ITC HS Code 56031200) endorsed in the AAs.

3.2.7.2 Non-linking of Export Shipping Bill/invoice with e-BRC

Para 4.44 (e) of HBP 2015-2020 stipulates that e-BRC shall be linked with SBs within six months from the date of expiry of EO/realization or the time period prescribed for realization of foreign exchange by RBI.

In RA Kochi, it was observed in the AA issued (November 2015) to M/s. AT Ltd. that e-BRC for SBs were uploaded in the DGFT System only after EODC was issued. No action was taken by RA for non-submission of e-BRC and EODC was issued without verifying and ensuring that the export proceeds were actually realized.

¹²BWC is Bond Waiver Certificate. When any AH has made the exports first, then bond-waiver is issued as he has already complied with the conditions. Bond is taken to safeguard duty foregone and in the event of non-meeting of export obligation BG is revoked. When AH has already exported, Bond becomes redundant and therefore bond-waiver is issued.

In RAs (Kanpur & Patna), it was noticed that in all the 42 redeemed cases, no e-BRC was linked with the SBs. The SBs were submitted physically by the AH (**Annexure 7**).

DGFT, in respect of RA Kochi, stated (February 2021) that demand notice has been issued to the firm and response from other RAs is awaited.

3.2.7.3 Delay in issue of Invalidation/revalidation letters

Para 4.20 of FTP read with Para 9.10 (xi) of HBP allows AH to procure inputs from indigenous suppliers in lieu of direct imports against Advance Release Order (ARO) or Invalidation letter to be issued by RAs within a period of three days of receipt of application from the AH. As per Para 9.10 (vi) of HBP, RA shall issue revalidation of Authorisation or extension of EOP, within a period of three days of receipt of application from the AH.

In RA Hyderabad, delay in issuance of invalidation letter was observed in 12 cases with delay ranging from three days to 221 days. Similarly, delay in issue of letters for revalidation or extension of EOP was observed in 29 cases in RA Hyderabad and Visakhapatnam with delay ranging from three to 72 days.

DGFT, in respect of RA Hyderabad, ascribed (February 2021) the reason for delay to shortage of manpower.

3.2.7.4 Short/Non collection of Composition fee for extension of EOP

Extension of EOP may be granted subject to payment of composition fee of 0.5 *per cent* of the shortfall in EO.

Short/non collection of composition fees amounting to ₹26.07 lakh was noticed in seven cases in CLA Delhi and RA Jaipur, Kanpur and Kolkata.

CLA Delhi and RA Jaipur reported recovery of ₹3.60 lakh.

3.2.7.5 Claim of inadmissible drawback

Para 4.15 of FTP 2015-20 stipulates that drawback shall be available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product, provided that the applicant shall clearly indicate details of duty paid input in the application for AA.

Review of EODC application of M/s. AU Ltd. in RA Coimbatore revealed that AH claimed both drawback and Advance licence in all the 95 SBs submitted towards proof of exports. This is in contravention to the provisions of para 4.29 of HBP and hence these SBs were to be considered as ineligible for the purpose of EO. CIF value of AA was ₹8.10 crore with duty foregone amounting to ₹1.34 crore.

DGFT stated (February 2021) that AH is eligible for All Industry rate of drawback for non-fabric items.

The reply is not acceptable since the AH claimed drawback for fabric items as per SBs, and hence these SBs are to be considered as ineligible for value addition.

3.3 Interdepartmental Coordination in administration of the Scheme

3.3.1 Non-implementation of online MEM

As per Paragraph 4.47 (b) of HBP 2015-20, after the issue of EODC/Redemption Certificate, RAs shall forward the copy of EODC to Customs authorities at the Port of Registration of Authorisation indicating the details of proof of fulfilment of EO. The copy of the EODC will also be endorsed by RAs to Customs by post till the system of transmitting these through EDI under MEM between DGFT and CBIC is introduced.

It was seen in audit that the MEM was not implemented in RA Jaipur, Kolkata Port and ACC Hyderabad. RA Kolkata, Ahmedabad and Vadodara did not provide any response on the module being in use for exchange of information. The sharing of information between DGFT and Customs was not adequate in the absence of the online MEM and the following was observed:

Table 3.13 : Non-implementation of online MEM

Sl/ No	Port Name	Total	Status
1	Kolkata Sea Customs	273	273 AAs were pending for closure for more than two years due to non-receipt of EODC from DGFT
2	ICD Bengaluru	783	1070 instances of non-communication of EODC from DGFT.
3	NCH Mangaluru	287	
4	ICD Hyderabad	20	Invalidation not communicated to Customs by RA in 12 AAs. This may result in utilization of double benefit by the AH while procurement of inputs in domestic market as well as importing the same inputs duty-free from the port of registration. No EODC received in another 8 AAs.
5	ACC Hyderabad	1	Imports of ₹42.01 lakh not disclosed to RA
6	Delhi	2620	As per Monthly Progress Register (MPR) of Customs ports under Delhi jurisdiction (January 2020), EOP was over in 2620 cases. Money value of these cases were sought from Customs, which is awaited.
	Total	3984	

In the absence of an effective online Message Exchange Module (MEM), CBIC often had to depend on the AH to ascertain EODC status granted by DGFT. Similarly, DGFT was not aware about the duty payment status for cases where EO period is over but documents have not been submitted. Non-communication

of EODC data by DGFT /non-usage of EODC data by Customs authorities results in delay in closure of bonds and increase in pendency. The cases illustrated involved government revenue; hence AHs may be asked to obtain the redemption letter from RAs and submit them to Customs Department to minimize the pendency and action may be initiated to recover the government revenue involved.

DGFT stated (February 2021) that AA software does not allow such access to RAs. EO monitoring has already been initiated by RAs and the new IT system is expected to resolve the issue of delay in EODCs.

DoR stated (February 2021) that a special drive was undertaken in February-March, 2020 for maximum realization of Customs revenue in respect of pending authorisations. On implementation of MEM, quicker action would be possible by Customs, where the EO has expired.

Progress in this regard would be watched in subsequent audits.

3.3.2 Mis-match between DGFT and Customs in action taken against defaulters

An institutional mechanism was set up between Customs and DGFT for periodical meetings on quarterly basis with RAs to exchange intelligence, check misuse and pursue issues such as EO fulfillment status so that concerted action can be taken against the defaulters vide DoR instructions (January 2011).

Cross-verification of data of Customs with DGFT on action taken against the defaulters revealed inconsistencies in 101 instances in the following two ports as detailed below:

Table 3.14: Mis-match between DGFT and Customs in action taken against defaulters

S/No.	Name of the Port	Name of the RA	Number of cases	Mismatch
1	ACC Mumbai	Mumbai	15	ACC Mumbai adjudicated 10 AA pertaining to the period from FY 2005 to FY 2013. However, as per RA Mumbai, AAs are still pending at SCN level, or PH level, and are not yet adjudicated and no penalty determined as per FTDR Act. In another five AAs, ACC Mumbai adjudicated five cases demanding duty of ₹1.90 crore from the exporters. However, on the DGFT side, these were already redeemed 1.5 year to 7.5 years prior to the date of such adjudication orders
2	JNCH Mumbai		86	SCNs issued by JNCH in respect of 86 AAs are pending for adjudication, while these licences were already redeemed at DGFT side.
	Total		101	

A case of unsustainable ex-parte adjudication order was passed against M/s. AV Ltd., by Commissioner of Customs, Mumbai demanding duty of ₹1.63 crore even though the AH had not utilized the AA and Customs Department itself issued a non-utilization certificate in September 2015, based on which DGFT office issued (November 2015) surrender letter.

This indicates weak institutional mechanism between two Departments in exchange of information and coordinated action against the defaulters. Either SCNs were not issued or SCNs already issued were kept pending or adjudicated at Customs side without ascertaining its corresponding position on the RA side. Moreover, EODC orders sent by the DGFT were not effectively reaching the Customs side.

It is seen that DGFT has launched (April 2018) 'eodc.online' website wherein Customs can monitor the status as DGFT updates the progress of action on redemption applications filed by the exporters. This could be used effectively to bring uniformity of action between two Departments.

DoR stated (December 2020) that in many cases the DGFT eodc.online website was not updated. The licencees neither respond to the demand notice nor appear for the personal hearings. Even after giving enough opportunity and time to be heard, there was no response from AHs on the issue of fulfillment of EO. Therefore, the Department is unable to know the present status of the Advance Authorisations at the time of adjudication.

Recommendation No. 14: DGFT should implement the Message Exchange Module (MEM) across all its RAs for effective and timely exchange of information between DGFT and Customs as well as update the EODC status in its eodc.online website on a regular basis. Periodical meetings may be held in an ongoing manner between DGFT and Customs field formations for timely sharing of information, reconciling the EODC status and recovering the government revenue involved in the shape of duty forgone. Appropriate action may be initiated by DGFT/DoR against defaulters for not complying with the Scheme provisions.

DGFT stated (February 2021) that instructions for periodical meetings between DGFT and Customs field formations have been issued (December 2020) wherein RAs have been instructed for reconciling the EODC status and to take action as prescribed in HBP/FTP and FTDR Act 1992 to protect government revenues.

DoR stated (February 2021) that it is liaising with DGFT for receiving online EODC. DoR requested (May 2019) DGFT to provide details of pending authorisations where the EO period is over and EODC/Redemption letter has not been issued and field formations have been asked to strictly follow instructions issued for periodic interactions.

As per the information collated from field audit offices, no records of any such meeting was available. Mumbai office stated that meetings were held after

being commented in audit, which is also corroborated with huge pendency of pan-India cases commented upon. Inter-departmental coordination between DGFT and DoR is required even at headquarters level and instructions to field formations for holding periodic interactions needs to be reiterated/monitored by DGFT/DoR.

3.3.3 Weakness in institutional mechanism to ascertain export performance and to take action on defaulting AH

Customs Circular No.16 (May 2017) stipulates issuing of simple notice by Customs to AHs for submission of proof of discharge of export obligation. The matter may be kept in abeyance in case the AH submits proof of their application having been submitted to DGFT and the process to issue EODC is under progress. Field formations should interact with DGFT through institutional mechanism to pursue such cases. In case of fraud or evasion, field formations shall take necessary action in terms of relevant provisions.

Review of records pertaining to AAs in Customs Ports revealed the following:

Table 3.15: Non-monitoring of export performance due to weak institutional mechanism

S/ No.	Name of the Commissionerate	No. of AAs	Remarks
1	Chennai Sea Port & Tuticorin	19	AH did not submit proof of exports in 19 AAs, although EOP expired and no extension were sought. Imports of ₹50.26 crores with duty foregone of ₹9.00 crores were effected against these AAs. Department issued initial demand letter but no SCN was issued so far to protect revenue.
2	Hyderabad Customs	93	Duty free imports amounting to ₹3674.85 crores with duty foregone of ₹309.67 crores were made in 93 AAs out of 1,343 unredeemed AAs even though EOP had lapsed and no exports were effected.
3	JNCH & ACC Mumbai	19	No SCN was issued in 16 AA files even though AH did not submit any application for redemption to DGFT after the EOP has expired. Besides, there was no communication with DGFT with regard to 15 AA files to ascertain whether AH furnished any documents at DGFT for redemption. In another three instances, although SCNs were issued, adjudication was pending for six to 10 years.
4	ACC Bengaluru	328	SCNs in respect of 328 AAs with duty effect of ₹80.15 crore are yet to be adjudicated with delay ranging from 2 to 10 years resulting in revenue blockage.
5	ACC Mumbai	42	42 files adjudicated within 60 to 1145 days from the date of issue of SCNs.
6	JNCH Mumbai	25	Details of adjudication were requested, which is still awaited; however, as per data available, the SCNs were adjudicated in 25 cases within a period of 72 to 511 days.
	Total	526	

DoR stated (December 2020) that the adjudication are being done ex-parte to protect revenue as AHs are not attending personal hearings in maximum cases. With regard to ACC Bengaluru, 13 cases involving revenue of ₹1.28 crores have

already been adjudicated and remaining pending SCNs are being taken up for adjudication on priority for early disposal.

Non-issuance of SCNs by Customs Department against defaulters and delays in adjudication process indicates weakness in coordination between the two Department and ineffective utilization of the EDI system or 'eodc.online' of DGFT to ascertain export performance and take concerted action. DGFT should notify DoR about extensions granted to AAs, SCNs/demand notices issued and update its portal regularly thereby facilitating action by Customs in a timely manner.

Conclusion

Allowing duty free imports beyond the validity period of Authorisations or excess imports against licences indicates weakness in the monitoring mechanism in the Customs Licence Utilisation module. Further, the primary purpose of execution of bond is to secure due compliance with rules and procedures as laid in the AA Scheme; it also serves as a collateral security to ensure payment of appropriate duty and interest in cases of non-compliance. Non-cancellation of the bonds in a timely manner, as prescribed in CBIC instructions, not only results in locking up of funds of the genuine AHs but also sends a wrong signal to the trade at large.

RAs depend on AH to make a claim for redemption, as no mechanism existed till recently with the RAs to ascertain the cases where the EO period has expired. Instances of non-monitoring of excess imports, non-compliance with the pre-import conditions and undue extension of Export Obligation Period (EOP) were observed.

There is no time limit prescribed in FTP/HBP for seeking revalidation of licences and such requests are sought even after expiry of the validity period of Licence. As validity of the licence is specified (12 months from issue date) in Para 2.16 of the HBP and authorisations must also be valid on the date of imports/exports (Para 2.18 of HBP), in audit's opinion any request for revalidation should be entertained within the validity of the licence only.

RAs do not insist for declaration of all the inputs actually consumed in the manufacture of exported items as required under Appendix 4H/4E. Audit is of the opinion that the practice of considering CIF value of only imported inputs does not reflect the complete picture of value addition. Non-inclusion of value of indigenous supplies, incorrect consideration of GST/Commission/IGST amount and non-declaration of actual imports by AHs were observed in audit which is fraught with the risk of diversion of duty free imports as well as misuse of the scheme. RAs may ascertain the actual usage of non-declared goods and take appropriate action for disallowing the incorrectly availed exemption.

Non-activation of the online facility for redemption/EODC application resulted in delay in issue of EODC and increase in transaction cost and time. Even though the redemption application were filed online, however, all documents like BEs,

SBs, e-BRCs, input and export consumptions and certificates were required to be filed manually during the period of audit 2015-16 to 2018-19. The complete digitization of the redemption process and its integration with licence data would help in reducing the delay and to achieve the benchmark of 15 days set for disposal of redemption applications.

In the absence of an effective online Message Exchange Module (MEM), CBIC often had to depend on the AH to ascertain EODC status granted by DGFT. Similarly, DGFT was not aware about the duty payment status for cases where EO period is over but documents have not been submitted. Non-communication of EODC data by DGFT/non-usage of EODC data by Customs authorities results in delay in closure of bonds and increase in pendency.

Non-issuance of SCNs by Customs Department against defaulters and delays in adjudication process indicates weakness in coordination between the two Department and ineffective utilization of the EDI system or 'eodc.online' of DGFT to ascertain export performance and take concerted action. DGFT should notify DoR about extensions granted to AAs, SCNs/demand notices issued and update its portal regularly thereby facilitating action by Customs in a timely manner.

Recommendations

9. CBIC may consider having an automated alert system for expiry of EO period to ensure appropriate bond renewal/cancellation and obviate the need for depending on AHs for ascertaining EODC status.

10. DGFT needs to have an effective mechanism to continuously and regularly monitor EO. Till recently, there was no system to track cases where EOP had lapsed, and RAs depended on AHs to ascertain the EODC status. To minimize possible misuse of AAs, there is a need to have validation checks in the DGFT's EDI system to address possible diversion of imported inputs through substitution of indigenous inputs.

11. DGFT should review the procedure for granting revalidation and requests for revalidation should be accepted only within the validity period of the authorisation so that any duty free imports or exports reckoned for export obligation is well within the currency of the authorisation.

12. DGFT may insist for complete disclosure in Appendix 4H requiring AHs to declare the "details of all the inputs consumed in the manufacture of exported goods including the indigenously procured inputs and the source of such procurements", for facilitating better monitoring of actual consumption by RAs thereby preventing diversion of duty free imports and misuse of the scheme.

13. DGFT should review the procedure for issuance of EODC to meet its prescribed timeline of 15 days by ensuring that the online module is realigned

to accept only full and completed applications along with all the required documents.

14. DGFT should implement the Message Exchange Module (MEM) across all its RAs for effective and timely exchange of information between DGFT and Customs as well as update the EODC status in its eodc.online website on a regular basis. Periodical meetings may be held in an ongoing manner between DGFT and Customs field formations for timely sharing of information, reconciling the EODC status and recovering the government revenue involved in the shape of duty forgone. Appropriate action may be initiated by DGFT/DoR against defaulters for not complying with the Scheme provisions.

