

## CHAPTER I: ANALYSIS OF RECEIPTS

### 1.1 Budget estimates, revised budget estimates and actual receipts

The budget estimates, revised budget estimates and actual receipts of customs duties during the years 2000-01 to 2004-05 are exhibited in the table below:-

(Amount in crore of rupees)

Year	Budget estimates	Revised budget estimates	*Actual receipts	Difference between actual receipts and budget estimates
2000-01	53576	49781	47542	(-)6034
2001-02	54822	43170	40268	(-)14554
2002-03	45193	45500	44851	(-) 342
2003-04	49350	49350	48629	(-)721
2004-05	54250	56250	**57610	(+)3360

\* Figures as per finance Accounts.

\*\* Figure is provisional.

Actual collection was more than both budget and revised estimate in 2004-05, mainly due to increase in collection of import duty on petroleum products, non-ferrous metals, chemicals and iron and steel.

### 1.2 Trend of receipts

A comparison of total year-wise imports with corresponding net customs duties collected during 2000-01 to 2004-05 has been shown in the table below :

#### VALUE OF IMPORTS AND IMPORT DUTY COLLECTED 2000-01 to 2004-05 (YEAR-WISE)

(Amount in crore of rupees)

Year	Value of Imports	Import duties	Import duty as percentage of value of imports
2000-01	228307	46569	20.40
2001-02	243645	39406	16.17
2002-03	296597	44137	14.88
2003-04	353976	48002	13.56
2004-05	490532	55807	11.38

### 1.3 Commodity wise details of customs receipts

Major commodity wise value of imports and exports and the gross duty realised therefrom during the financial year 2004-05 and the previous year 2003-04 are given overleaf:

**1.3.1 Imports**

(Amount in crore of rupees)

Sl. No.	Commodities	Value of imports*		Import duties**		Percentage share in total import duties collection	
		2003-04	2004-05	2003-04	2004-05	2003-04	2004-05
1.	Food and live animals chiefly for food	16902.93	17564.08	3285	3880	6.84	6.95
2.	Mineral, fuels and related materials	13235.64	24718.88	3974	4796	8.28	8.59
3.	Petroleum, crude and products	94520.00	134094.00	7491	9761	15.61	17.49
4.	Chemicals and related products	21381.64	44688.23	4185	5385	8.72	9.65
5.	Manufactured goods	38188.16	119662.81	4614	5057	9.61	9.06
6.	Machinery and transport equipment	29531.39	51819.41	13441	14817	28.00	26.55
7.	Professional instruments etc.	5635.56	6688.19	3319	3788	6.91	6.79
8.	Others	134580.29	91296.07	7693	8323	16.03	14.92
	<b>Total</b>	<b>353975.61</b>	<b>490531.67</b>	<b>48002</b>	<b>55807</b>		

**1.3.2 Exports**

(Amount in crore of rupees)

Sl. No.	Commodities	Value of exports*		Export duty and cess**	
		2003-04	2004-05	2003-04	2004-05
1.	Food items	24636.61	28492.77	10	08
2.	Beverages and tobacco	1562.05	1376.23	08	07
3.	Petroleum, crude and products (including mica)	105.66	30847.50	02	02
4.	Others	267062.43	301162.66	143	172
	<b>Total of exports and re-exports</b>	<b>293366.75</b>	<b>361879.16</b>	<b>163</b>	<b>189</b>

Source - \*Ministry of Finance, New Delhi.

\*\*Directorate General of Export Promotion, New Delhi.

**1.4 Duty foregone****1.4.1 Under export promotion schemes**

The break-up of duty foregone for export promotion schemes viz., advance licence, duty exemption pass book (DEPB), export promotion capital goods (EPCG), export promotion zone (EPZ), export oriented units (EOUs) and refund of duty under the drawback and other schemes for the period from 2001-02 to 2004-05 is shown in the table overleaf:

**CUSTOMS DUTY FOREGONE UNDER EXPORT PROMOTION SCHEMES  
AND DUTY DRAWBACK SCHEME**

(Amount in crore of rupees)

Year	Advance licence & others	DEPB	EPCG	EPZ/ SEZ	EOU	Duty drawback	Total
2001-02	7890	5661	2008	2064	4219	2957	24799
2002-03	7462	6831	3026	1106	4820	4520	27765
2003-04	10812	11692	3399	1320	9422	3059	39704
2004-05	11741	10076	4681	3457*	8266	2812	41033

\* includes DFRC/DFCEC schemes also

The total duty foregone under various export promotion schemes for the period 2001-02 to 2004-05 as a percentage of customs receipts is shown in the table below:

(Amount in crore of rupees)

Year	Customs duty collected	Total duty foregone under export promotion schemes	Duty foregone as a percentage of customs receipts
2001-02	40268	24799	62
2002-03	44851	27765	62
2003-04	48629	39704	82
2004-05	57610	41033	71

Duty foregone under export promotion schemes has gone up from 62 per cent of customs duty receipts in 2001-02 to 71 per cent of customs receipts in 2004-05.

#### **1.4.2 Other duty foregone**

Duty foregone under section 25 (1) and (2) of Customs Act, 1962 (other than for export promotion schemes vide para 1.4.1) during 2001-02 to 2004-05 is shown in the table below:

(Amount in crore of rupees)

Year	No. of notifications issued under 25(1)	No. of total notifications issued under 25(2)	Total No. of notifications issued	Duty foregone under 25(1)	Duty foregone under 25(2)	Total duty foregone
2001-02	39	NA	NA	2477	NA	NA
2002-03	54	50	104	3512	34	3546
2003-04	57	63	120	4267	258	4525
2004-05	32	10	42	2496	09	2509

Section 25(1) General exemption &amp; section 25(2) adhoc exemption

**1.5 Cost of collection of customs receipts**

The expenditure incurred on collection of customs duty during the year 2004-05 alongwith the figures for the previous year are given below:

Cost of collection	(Amount in crore of rupees)	
	*2003-04	**2004-05
Revenue cum import export and trade control functions	155.56	145.42
Preventive and other functions	514.58	573.10
Total	670.14	718.52
Cost of collection as percentage of customs receipts	1.38	1.25

\* Figures as per finance Accounts.

\*\* Figure is provisional.

**1.6 Searches and seizures**

The details of searches conducted and seizures effected by the customs officers as given by the Ministry of Finance (Ministry) are indicated below:

**SEARCHES AND SEIZURES**

Sl. No.	Description	2003-04	2004-05
1.	Number of searches	3780	3331
2.	Value of goods seized (Rupees in crore)	454.16	642.73
3.	Number of seizure cases adjudicated	10165	6781

Figures relate to 80 custom houses/commissionerates

**1.7 Arrears of customs duty for recovery**

The amount of customs duty assessed upto 31 March 2005 which was still to be realised as on 30 June 2005 was Rs.1805.92 crore in 106 custom houses and commissionerates.

**1.8 Demands of duty barred by limitation**

Demands raised by the department upto 31 March 2005 which were pending realisation as on 30 June 2005 and where recovery was barred by limitation amounted to Rs.41.93 crore in 106 custom houses and commissionerates.

**1.9 Duty written off**

Customs duties written off, penalties waived and exgratia payments made during the year 2004-05 and the preceding two years are given below:

(Amount in lakh of rupees)	
Year	Amount
2004-05	*2.46
2003-04	57.13
2002-03	36.08

\* Figure relates to 118 custom houses/commissionerates

**1.10 Number of pending audit objections**

The number of audit objections raised upto 31 March 2005 and pending settlement as on 30 September 2005 in the various custom houses and combined commissionerates of central excise and customs are given below:

**OUTSTANDING OBJECTIONS AND AMOUNT INVOLVED**

(Amount in crore of rupees)

Sl. No.	Commissionerate	Number	Amount
1.	Ahmedabad	40	70.06
2.	Ahmedabad (Prev.)	51	22.05
3.	Bangalore/Mangalore	469	68.61
4.	Bhubaneshwar	43	191.12
5.	Chennai (Sea)	1535	264.94
6.	Cochin	109	53.07
7.	Delhi	1419	143.42
8.	Jamnagar (Prev.)	30	114.08
9.	Kolkata	1708	2438.42
10.	Mumbai (Air)	537	11.35
11.	Mumbai (Sea)	887	332.57
12.	Hyderabad	536	757.83
13.	Others	3519	5923.55
	<b>Total</b>	<b>10883</b>	<b>10391.07</b>

**1.11 Categories of outstanding audit objections**

(Amount in crore of rupees)

Sl. No.	Categories of objections	No. of objections	Amount
1.	Short levy due to misclassification	1595	85.33
2.	Short levy due to incorrect grant of exemption	922	140.25
3.	Non levy of import duties	870	120.23
4.	Short levy due to undervaluation	540	57.37
5.	Irregularities in grant of drawback	933	17.97
6.	Irregularities in grant of refunds	92	21.67
7.	Irregularities in levy and collection of export duty	21	0.59
8.	Other irregularities	5910	9947.66
	<b>Total</b>	<b>10883</b>	<b>10391.07</b>

**1.12 Contents of the section**

This section contains 256 paragraphs (including 45 cases of total under assessment), featured individually or grouped together, arising from test check in audit. Two hundred forty four paragraphs contain audit impact of Rs.112.41 crore attributable to non compliance of Rules/Regulations. In 12 paragraphs audit has pointed out lacunae/shortcomings in notifications/Act/Regulations with financial implication of Rs.243.38 crore. Ministry did not respond to 40 paragraphs issued to them. Out of which in 22 cases, replies from even department were not provided (January 2006). The department/Ministry had (till January 2006) accepted audit objection in 178 paragraphs involving Rs.45.41 crore and recovered Rs.4.13 crore.

## **CHAPTER II: SHORT LEVY DUE TO INCORRECT CLASSIFICATION**

Some illustrative cases of short levy of customs duty arising from incorrect classification of goods are briefly narrated below:

### **2.1 Automatic data processing machines/electronic equipment**

The Tribunal in the case of commissioner of customs, Inland Container Depot (ICD), New Delhi vs Keihin Penalfa Ltd., {2003 (154) ELT 680 (Tribunal-Delhi)} held that 'electronic automatic regulators' are classifiable under sub-heading No.8543.89 of the Customs Tariff.

M/s. Ford India Ltd., Chengalpattu, imported (May and June 2000) two consignments of 'processor assembly' (also known as electronic automatic regulators) through custom house Chennai (sea). The department classified and cleared the goods under sub-heading 9032.89 as 'automatic regulating or controlling instruments and apparatus'. Incorrect classification resulted in short levy of duty of Rs.19.52 lakh and interest thereon.

On this being pointed out (October & November 2000), the Ministry reported (November 2005) recovery of Rs.21.77 lakh including interest.

### **2.2. Chemical products/tin plates**

Preparations based on carbon in the form of pastes, blocks and plates and other semi manufactures are classifiable under heading No.38.01 of Customs Tariff.

M/s. Steel Authority of India Ltd., Bokaro Steel Plant imported a consignment of carbon blocks, mass and paste through Kolkata sea customs in February 2003 and the department classified them under CTH 6902.90 treating them as refractory product. This misclassification resulted in short levy of duty of Rs.11.90 lakh.

On this being pointed out (July 2003), the department reported (May 2005) recovery of Rs.10.55 lakh. Recovery particulars of the balance were awaited (January 2006).

### **2.3 Other cases**

Five other cases of incorrect classification of goods imported by five importers involving short levy of duty of Rs.16.98 lakh were reported to the Ministry. The department/Ministry admitted the objection in two cases involving Rs.4.31 lakh as per details overleaf:

(Amount in lakh of rupees)

Sl. No.	Details of product	Name of the importers M/s.	Heading where classifiable	Heading where classified	Amount short levied	Amount admitted	Amount recovered
1	Tools	Bilakhia Holding (P) Ltd.	9031.00	8803.30	7.74	Not admitted	--
2	Colour television	Bigesto Foods (P) Ltd.	8528.00	8532.29	3.15	Not admitted	--
3	Sugar spheres	Cipla Ltd.	1701.99	3824.90	3.04	3.04	3.04
4.	Modular router	Network Solutions (P) Ltd.	8517.50	8473.30	1.78	Not admitted	--
5.	Process mills and accessories	Process mills & accessories	8479.00	8437.80	1.27	1.27	--
	<b>Total</b>				<b>16.98</b>	<b>4.31</b>	<b>3.04</b>

## **CHAPTER III: SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION**

Short levy of duties aggregating Rs.6.21 crore in 23 cases on account of incorrect grant of exemptions were pointed out to the Ministry. Some illustrative cases are narrated below:

### **3.1 Condition of notification not fulfilled**

**3.1.1** Crude palm oil and its fraction of edible grade falling under CTH 15.11 having acid value of two or more and beta carotene in the range of 500-2500 mg/kg in loose or bulk form are eligible for concessional rate of duty in terms of notification No.21/2002-cus (serial No.34) dated 1 March 2002.

Thirty two consignments of palm oil imported by M/s. Liberty Oil Mills Ltd. and others through Jawahar Lal Nehru custom house (JNCH), Mumbai between August and November 2004 were provisionally assessed at concessional rate of duty under the notification ibid in the absence of test reports establishing their eligibility for this benefit. The exemption benefit was Rs.3.70 crore.

On this being pointed out (August 2005), the Ministry stated (October 2005) that these imports were provisionally assessed under customs notification dated 1 March 2002 ibid at lower rate of duty on the basis of import and other documents submitted by the importer. There was no stipulation in the notification to test these imports for establishing these goods as crude only. They further stated that in all cases, goods were sent for chemical test and these provisional assessments are being finalised. Based on test reports, demand notices would be issued wherever required.

The reply of the Ministry is not tenable as concessional rate of duty was leviable only on crude palm oil of 'edible grade' for which chemical test was required, the fact substantiated by their own action while invariably sending all imports for testing. However, the fact remains that the imports made in 2004 were not yet finally assessed even after a lapse of two years despite six month's time limit having been prescribed.

Further scrutiny by audit revealed that test report received on 25 August 2004 in respect of another consignment imported in May 2004, established that beta carotene level was only 398.3 mg/kg rendering it ineligible for exemption benefit of Rs.11.16 lakh. Department failed to finalise assessment till date thereby giving unintended financial benefit of Rs.11.16 lakh plus interest to importer. Ministry while accepting the fact reported (October 2005) that a less charge demand for Rs.11.16 lakh has been issued.

Further progress was awaited (January 2006).

**3.1.2** As per condition 35 of notification No.21/2002-cus dated 1 March 2002, crude sunflower oil upto an aggregate of one lakh and fifty thousand metric tonne of total imports of such goods in a financial year is eligible for concessional rate of duty.

Four consignments of 'crude sunflower oil' imported by M/s. Godrej Industries Ltd. in August 2004 were assessed (October 2004) provisionally at concessional rate of duty under



notification *ibid.* Audit scrutiny revealed that neither were test reports available determining classification of the goods as 'crude' nor was any record of aggregate import of such goods by the importer in the financial year maintained to monitor quantity restrictions. Since both conditions stipulated in the notification were unfulfilled, benefit of exemption granted was irregular. This resulted in short levy of duty of Rs.42.11 lakh.

Delay in finalisation of the above mentioned cases was also violative of provisional assessment rules, which provided for finalisation within six months.

On this being pointed out (August 2005), the Ministry reported (October 2005) that the cases are being finalised on the basis of test reports received.

The fact remains that even after a lapse of more than two years the provisional assessments were pending. Further progress was awaited (January 2006).

**3.1.3** As per customs notification No.16/2000 dated 1 March 2000 (serial No.204), as amended, import of goods required for setting up of crude petroleum refinery are leviable to concessional rate of basic customs.

Two consignments of goods imported during April and May 2000 by M/s. Hindustan Petroleum Corporation Ltd., an existing refinery through air customs, Chennai were cleared at concessional rate of duty under notification *ibid.* Incorrect grant of exemption resulted in short levy of duty of Rs.7.05 lakh and interest thereon.

On this being pointed out (October and November 2000), the Ministry reported (November 2005) recovery of the duty of Rs.12.54 lakh including interest.

**3.1.4** In terms of customs notification No.236/1989 (serial No.11) dated 1 September 1989, appendix-I thereto, phosphoric acid classifiable under CTH 2809.20 imported from countries specified in appendix *ibid.*, other than South Africa was leviable to concessional rate of customs duty.

M/s. Indian Farmers Fertilisers Co-operative Ltd., New Delhi, imported from South Africa two consignments of phosphoric acid through customs house, Kandla and cleared them in January 2004. Goods were allowed exemption *vide* notification *ibid.*, even though country of import i.e South Africa is not specified in the appendix *ibid.* Incorrect grant of exemption resulted in short levy of duty of Rs.8.36 lakh and interest of Rs.0.51 lakh.

On this being pointed out (June 2004), the Ministry reported (November 2005) recovery of the amount.

## **3.2 Incorrect application of exemption notification**

Notification No.21/2002-cus and 06/2002-CE dated 1 March 2002 (serial No.156 and 87A) provides for import of 'light weight coated (LWC) paper' weighing up to 70 GSM by actual users for printing of magazines at concessional rate.

Thirty three consignments of 'LWC paper' import by M/s. Delhi Press Patra Prakashan Pvt. Ltd., and 25 others were imported between December 2004 and January 2005 through Delhi commissionerate. Department classified the goods under CTH 48102200 and assessed them by extending benefit of notifications *ibid.*

Audit scrutiny revealed that importers were eligible to import standard/glazed newsprints only, for printing of magazines classifiable under CTH 4801 as per registration certificates issued by the office of registrar of newspapers for India (RNI). Thus, incorrect grant of notification benefit to importers resulted in short levy of duty of Rs.1.35 crore. Besides this, in cases of three importers, registration certificate was also not found on record.

On this being pointed out (March/April 2005), the department stated (May 2005) that there was no condition of taking any type of undertaking or bond, surety etc for allowing notification benefit and that magazine publishers were registered with RNI. As general practice, the department has been obtaining copy of registration certificate issued by RNI to determine whether the importers were actual users or not and whether they were engaged in the publishing of magazines. The department further stated that the magazine editions/inserts of several newspapers were printed on LWC. The department's reply is not tenable as the RNI had specifically declared eligibility of type of paper to be imported as standard/glazed newsprint. Besides, the registration certificates supplied by the department with their reply *ibid*, confirms eligibility to import standard/glazed newsprint only.

Further progress was awaited (January 2006).

### 3.3 Other cases

In 19 other cases, objections were issued to the Ministry on incorrect grant of exemption involving short levy of Rs.41.54 lakh. The department admitted the objection in six cases involving Rs.16.74 lakh and reported recovery of Rs.16 lakh as per table below:

(Amount in lakh of rupees)					
Sl. No.	Product on which exemption granted	Name of the importers M/s.	Amount short levied	Amount admitted	Amount recovered
1.	Integrated processing module	Grasim Industries Ltd.	4.66	4.66	4.66
2.	X-ray tubes	Steel Authority of India Ltd.	3.77	3.77	3.77
3.	Switches	Bharti Teletech Ltd. & two others	3.54	Not admitted	--
4.	Stainless steel bars	Steellite Metal & Tubes & another	3.37	3.37	2.63
5.	Density meter	Alstom Projects (I) Ltd.	3.27	Not admitted	--
6.	Computer software	Cyber Multimedia (I) Ltd.	2.61	Not admitted	--
7.	Test kits	Spectral Diagnostic (P) Ltd.	2.37	Not admitted	--
8.	Spare parts for gas chromatograph	Indian Acrylics Ltd. & another	2.25	Not admitted	--
9.	Motion picture raw film	Patel India Distributions (P) Ltd.	2.11	2.19	2.19

10.	LWC paper	Chhaya Deep News	1.87	Not admitted	--
11.	Galvanized steel sheets	L.G. Electronics (I) Pvt. Ltd.	1.77	Not admitted	--
12.	Stainless steel scrap	Lohia Metal	1.42	Not admitted	--
13.	Nickel & article of nickel	Surya Kiran Udyog (P) Ltd.	1.39	1.39	1.39
14.	Pokemon lenticular cards (toys)	Frito –Lay India	1.36	1.36	1.36
15.	Flint button refractive index	Pratiti Industries	1.31	Not admitted	--
16.	Scanners	Delhi University, North Campus & AIIMS	1.27	Not admitted	--
17.	Nickel alloy wire	Punjab Lighting Aids (P) Ltd.	1.14	Not admitted	--
18.	Strip cronifer II extra B, cold rolled	Daulat Ram Inernational	1.05	Not admitted	--
19.	Tools	Jindal Iron & Steel Co. Ltd.	1.01	Not admitted	--
	<b>Total</b>		<b>41.54</b>	<b>16.74</b>	<b>16.00</b>

## **CHAPTER IV: SHORT LEVY OF DUTY DUE TO UNDERVALUATION**

### **4.1 Tariff values inconsistent with Board's own decision**

Sub-section 2 of section 14 of Customs Act, 1962 stipulates that if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in official gazette, fix the tariff value of any class of import or export goods having regard to the trend of value of such or like goods. Accordingly tariff values of brass scrap, palm oil and soyabean oil (all grades) were fixed by the Government from time to time.

In an earlier response, Ministry stated (December 2004) that tariff values were to be revised when computed value based on average international prices went beyond ten per cent of the tariff values (less or higher) in respect of palm oil/soyabean and five per cent in respect of brass scrap.

Audit scrutiny of 98 consignments of brass scrap/palm oil imported through JNCH, Mumbai and custom house, Kandla during August 2003 to January 2005 revealed that variation between invoice values and tariff values on which the goods were assessed ranged from six to thirty per cent resulting in under valuation of the consignments and consequent loss of revenue to the extent of Rs.1.25 crore.

On this being pointed out during April 2004 to June 2005, the Ministry stated (September 2005) that the goods were assessed with reference to tariff value fixed by the Government irrespective of invoice value.

The reply was not tenable being at variance with the Board's decision for revision of tariff values. Audit is of the view that pace of revisions needs to be commensurate with market trends.

### **4.2 Incorrect reckoning of foreign exchange rate**

Section 14 of Customs Act, 1962 read with "explanation" appended to customs notification No.36/2001 (NT) dated 3 August 2001 as amended stipulates that the relevant date for determination of rate of exchange for the conversion of tariff value shall be the date of presentation of bill of entry under section 46 of Customs Act. Date of presentation of bill of entry for warehoused goods under section 46 of Customs Act is the date of filing the into-bond bill of entry.

One hundred and seventy five consignments of palmolein and palm oil imported through custom house, Chennai (sea) by M/s. Maharaja Industries and 26 others were warehoused and cleared during the period from December 2003 to June 2004. While converting tariff value in US dollar applicable for the goods, exchange rate on the date of filing the ex-bond bill of entry was reckoned instead of the exchange rate that prevailed on the date of filing the into-bond bill of entry. This resulted in incorrect computation of assessable value and consequential short collection of duty to the tune of Rs.98.83 lakh.

On this being pointed out (August to October 2004), the department/Ministry reported (November 2005) recovery of Rs.13.16 lakh in respect of 26 cases. Further 40 cases were under appeals with CESTAT/Commissioner (Appeals) and 79 time barred cases are under persuasive action. Further progress was awaited (January 2006).

### **4.3 Other cases**

In four other cases, objections were issued to the Ministry on undervaluation involving short levy of Rs.8.59 lakh. The department admitted the objection in one case involving Rs.1.48 lakh as per table below:

(Amount in lakh of rupees)

<b>Sl. No.</b>	<b>Name of product</b>	<b>Name of the importers M/s.</b>	<b>Amount short levied</b>	<b>Amount admitted</b>	<b>Amount recovered</b>
1.	Caller ID phones	Bharti Systel	3.41	Not admitted	--
2.	Desktop computers	Apple Computers International (P) Ltd.	1.98	Not admitted	--
3.	Components for DVD player	BPL Sanyo (P) Ltd.	1.72	Not admitted	--
4.	Polished marble slabs	MTAR Technology (P) Ltd. & another	1.48	1.48	0.34
	<b>Total</b>		<b>8.59</b>	<b>1.48</b>	<b>0.34</b>

## **CHAPTER V: NON LEVY/SHORT LEVY OF ADDITIONAL DUTY**

According to section 3 of CTA, 1975, any article which is imported into India shall also be liable to additional duty equal to the central excise (CE) duty for the time being leviable on a like article produced in India.

Short levy of additional duties amounting to Rs.36.04 lakh were reported to the Ministry in eight cases, as narrated below:

### **5.1 Non levy of additional duty due to incorrect grant of exemption**

Notification No. 76/2004-cus dated 26 July 2004 provides that central processing unit with monitor, mouse and key board imported as a set are chargeable to additional duty under Computers (Additional Duty) Rules, 2004.

**5.1.1** Four consignments of 'various computer parts' imported by M/s. Hewlett Packard India Ltd. and three others through Mumbai commissionerate in July/August 2004 were classified under CTH 8471 and assessed to concessional duty of CVD under the notification *ibid*. This resulted in non levy of additional duty of Rs.23.21 lakh.

On this being pointed out (August 2004), the Ministry admitted the objection and reported (October-December 2005) recovery of Rs.19.93 lakh in three cases. Reply in the remaining case was awaited (January 2006).

**5.1.2** In terms of notification No.94/96-cus dated 16 December 1996, re-importation of goods exported under duty exemption entitlement certificate (DEEC) attracts additional duty of customs equivalent to CE duty leviable at the time and place of importation of goods and SAD. However, in case of manufacturer-exporter, payment of CE duty may be deferred on execution of transit bond with customs authority specifying that CE duty payable at the time of importation shall be paid as and when the said goods are removed for home consumption, besides de-logging of the shipping bill from DEEC.

M/s. Tega Industries Ltd., Kolkata had initially exported a consignment of 'rubber plate and rubber conveyor belt including elastocer' under DEEC scheme in January 2002 and subsequently re-imported the same in December 2003 through custom house, Kolkata (port). On the basis of transit bond executed by the importer, department allowed clearance of the goods without levying any duty. The importer did not submit the re-warehousing certificate from the central excise authority within the stipulated period of six months from the date of importation. As such the unit was liable to pay additional duty of customs of Rs.3.89 lakh and SAD of Rs.1.13 lakh.

On this being pointed out (June 2004), the Ministry reported (January 2006) that a show cause notice has been issued demanding CVD and SAD. Further progress was awaited (January 2006).

**5.2. Other cases**

In three other cases, incorrect application of rate, incorrect classification, incorrect computation resulted in short levy of additional duty of Rs.7.81 lakh of which two cases involving Rs.6.80 lakh were admitted and recovery of Rs.5.18 lakh in one case was reported by the department, as per details below:

(Amount in lakh of rupees)

Sl. No.	Details of product	Irregularity	Amount short levied	Amount admitted	Amount recovered
1.	Dry wipe marker ink	Non levy of CVD	5.18	5.18	5.18
2.	Video games	Incorrect grant of exemption	1.62	1.62	--
3	Laboratory equipments	Misclassification	1.01	Not admitted	--
	<b>Total</b>		<b>7.81</b>	<b>6.80</b>	<b>5.18</b>

## CHAPTER VI: DUTY EXEMPTION SCHEME

### 6.1 Duty Entitlement Passbook (DEPB) Scheme

DEPB Scheme was introduced with effect from 1 April 1997 in Exim Policy 1997-2002 with objective to neutralise the incidence of customs duty on the import content of export product which was provided by way of grant of duty credit. Exporter could apply for credit, at specified percentage of free on board (FOB) value of exports, made in freely convertible currency against such export products and at such rates as may be specified by DGFT by way of public notice issued in this behalf, for import of raw materials, intermediates, components, parts, packaging material etc. Holder of DEPB has the option to pay additional customs duty, if any, in cash.

Test check of records of 19 out of 23 regional licensing authorities (RLA) covering 11 States for the years 2002-2005 revealed the following:-

#### ***6.1.1 Duty credit not related to actual incidence of duty***

DEPB credit is allowed on basis of standard input output norms (SION) regardless of whether that particular industry imported any goods at all to manufacture the export product.

Test check revealed that in 1237 licences of exports items namely fish products, zinc ingots, zinc concentrate etc; issued by RLA Hyderabad, Visakhapatnam, Jaipur, Ludhiana, Amritsar, Mumbai and Ahmedabad, exporters needed little or no imported material but were granted credits of Rs.48.82 crore based on DEPB rates which were not related to actual incidence of duty.

On this being pointed out (June 2005), RLA, Hyderabad, Jaipur and Visakhapatnam stated that it being policy matter would be taken up with DGFT, New Delhi. Replies from remaining RLAs were awaited (January 2006).

#### ***6.1.2 Unintended benefit of DEPB credit***

In terms of para 4.31 of Exim Policy (2002-2007) read with para 4.3.7 of handbook of procedures (HBP) Vol-I (2002-2007), duty credit under the scheme shall be calculated by taking into account deemed import content of the said export product as per SION and BCD payable on such deemed imports. Value addition (VA) achieved by export of such product shall also be taken into account while determining rate of duty credit. In the case of marine product (66/2), leather (64/4, 64/7) and textiles (89/16) scrutiny showed that DEPB credit rate was not revised according to the change in the rate of BCD. This resulted in unintended benefit to 3140 licencees amounting to Rs.20.48 crore.

#### ***6.1.3 Non/short realisation of export proceeds***

As per para 7.38 of HBP-Vol-I (1997-2002) read with para 4.45 of HBP-Vol-I (2002-2007), if export proceeds are not realised within six months from date of export or such extended period as may be allowed by the reserve bank of India (RBI), DEPB credit allowed shall be recovered from exporter in cash with interest. In case of proportionate realisation, proportionate credit attributable to non realised export proceeds shall be recovered in cash.



In 221 licences issued by RLAs, Hyderabad, Jaipur, Ludhiana, Mumbai and Ahmedabad export proceeds of Rs.177.32 crore were not realised within the prescribed period. As such DEPB credit of Rs.21.78 crore and interest was recoverable from the licencees.

On this being pointed out (June 2005), RLA, Hyderabad while accepting the observation advanced shortage of staff as reasons for inability to monitor cases every month and said that complete information was being collected. RLA Ludhiana accepted the observation and stated that further reply would follow.

However, Ministry in their response (September 2005/January 2006) to seven cases of Mumbai reported recovery of Rs.1.81 lakh in two cases, surrender of unutilised DEPB by one licencee and submission of foreign exchange by another licencee and remaining three cases have been referred to Revenue authority. RLA Jaipur reported recovery of Rs.0.32 lakh in seven cases. Further progress was awaited (January 2006).

#### ***6.1.4 Excess grant of DEPB credit due to incorrect fixation/incorrect application of credit rate***

Audit scrutiny revealed that in 4835 licences issued by RLA, Ahmedabad, Bangalore, Ludhiana, Kochi and Thiruvananthapuram, incorrect computation of FOB value/incorrect fixation/ incorrect application of credit rates resulted in grant of excess DEPB credit amounting to Rs.126.59 crore.

On this being pointed out (June 2005), RLA, Ludhiana while accepting the fact stated that detailed reply would be furnished.

RLA Ahmedabad stated (September 2005) that the licencees had been correctly allowed DEPB credit. The reply is not tenable as the licencee were granted excess DEPB credit by applying higher rate for the export product out of two different credit rates prevalent at that time. Reply from RLA, Bangalore, Kochi and Thiruvananthapuram were awaited (January 2006).

#### ***6.1.5 Grant of credit to items not specified in DEPB rate list***

DEPB credit of Rs.41.47 lakh in seven licences was granted by RLA, Bangalore and Ahmedabad for exports products namely 'internal combustion engine parts (serial No.61/455)', 'polyester cotton blended grey fabrics with polyester content more than 50 percent by weight (serial No.89/53 (a))' not covered under DEPB rate list.

This was pointed out in June 2005, the department's reply was awaited (January 2006).

#### ***6.1.6 Irregular grant of exemption of education cess on DEPB clearance***

In terms of section 91, 92 and 94 of Finance (No.2) Act, 2004 (23 of 2004), 'education cess' is leviable as duty of customs on all imported goods with effect from 9 July 2004 at the rate of two per cent of the aggregate of duties of customs and any sum chargeable on such goods under any other law for the time being in force. Further, in terms of notification Nos.104/95-cus dated 30 May 1995, 45/2002-cus dated 22 April 2002 and 69/2004-cus dated 9 July 2004 import made under DEPB Scheme may be exempted from BCD, additional duty and SAD by making corresponding debit from DEPB. However, the said notification does not provide for debit of education cess from DEPB and so the same has to be collected in cash or cheque.

On imports of 310 consignments of 'crude palm oil, carbon, graphite bricks, coating material etc.' under DEPB by M/s. Jhunjhunwala Vanaspati Ltd., Varanasi and other importers

through custom houses at Kolkata (sea), Tuticorin, Chennai (sea) and Mumbai (sea) between August 2004 and February 2005, department debited both BCD and education cess from DEPB under notifications *ibid*. Since there was no provision for setting off education cess from DEPB such debit was irregular to the extent of grant of exemption of education cess of Rs.2.40 crore.

On this being pointed out between October 2004 to May 2005, the Ministry in respect of 262 consignments stated (September 2005 to December 2005) that education cess was debited from DEPB as per customs circular No.5/2005 dated 31 January 2005. Reply of the Ministry is not tenable because customs duty can be exempted only through notification and not through a circular.

Meanwhile, in respect of 30 consignments wherein education cess was neither debited from DEPB nor paid in cash, the Ministry reported recovery of Rs.14.37 lakh and issue of demand notices in remaining ten cases.

#### **6.1.7 Grant of excess DEPB credits**

As per para 4.38 read with appendix 10A of HBP 2002-2007 Vol-I while fixing DEPB rates BCD and SAD paid on imported inputs for manufacture of export goods are considered. Vide notification No.6/2004-cus dated 18 January 2004, levy and collection of SAD was withdrawn from all imported goods with effect from 9 January 2004. DEPB rates were, however, revised with effect from 9 February 2004 vide public notice No.47 (RE-2003)/2002-2007.

Audit scrutiny of records of regional Jt. DGFT (licensing authority) Ludhiana and Amritsar revealed that in 69 cases (47 Ludhiana and 22 Amritsar) of licences issued after 9 February 2004, DEPB credit at old rates to the extent of Rs.3.35 crore was allowed which included Rs.1.15 crore on account of exempted SAD.

On this being pointed out (September/December 2004), the licensing authority Ludhiana (November 2004) stated that DEPBs were issued applying rates applicable on the date of let export order, while licensing authority at Amritsar (December 2004) stated that DEPB certificates had been correctly issued as per notification. Reply of the department was not tenable as let export date in these cases was after 9 February 2004. It was therefore incorrect to include element of SAD in DEPB.

In another case, M/s. Steel Authority of India Ltd., imported six consignments of various goods namely 'sea water magnesia, top bottom pinion, taper roller bearing, mechanical spares made of iron and steel and roasted molybdenum ore and concentrates' through Kolkata (sea) customs between August 2004 and February 2005 under the notification *ibid*. Although credits available in these were not sufficient to cover duties leviable, department allowed partial debit to DEPBs and balance payment of duties through cheque or by debiting personal ledger accounts, in contravention of the provision of the notification *ibid*. This resulted in irregular grant of exemption to the tune of Rs.29.55 lakh.

On this being pointed out (May 2005), the department stated (June 2005) that importer had option either to pay full duty through DEPB debit or to pay partly by cash under DEPB scheme. Reply of the department is not tenable because proviso to condition (3) (iii) of the notification requires that benefit of exemption from duty shall not be admissible if there is insufficient credit in the DEPB for debiting duty leviable on the goods but for this exemption.

In these cases credit available in DEPBs was insufficient for effecting debit. Hence notification leaves no scope for partial debit from the DEPB in the absence of sufficient credit therein and partial payment by cash.

#### **6.1.8 Incorrect grant of credit under DEPB scheme**

According to Board circular No.26/2002 dated 16 May 2002, exporter who availed benefit of customs notification No.32/1997 dated 1 April 1997 which provided for exemption to goods imported for execution of export order for jobbing, was not entitled to credit under DEPB Scheme.

Thirty four consignments of 'printing machinery parts' exported during March 2001 to January 2003 by M/s. Craftsman Automation Pvt Ltd., were allowed credit under DEPB even though benefit in terms of notification ibid was availed by the exporter. This had resulted in incorrect grant of DEPB credit of Rs.93.41 lakh which was recoverable.

On this being pointed out (March 2003), the licensing authority stated (March 2004) that declaration in terms of notification No.32/1997 was obtained from the firm by the customs authority and the matter pertained to them. Reply was not acceptable since DEPB credit was allowed by the licensing authority and appropriate safeguards should have been in place. Moreover, Ministry of Finance vide their circular dated 27 August 2002 had reiterated that due care needed to be taken to ensure that such unintended/double benefit in the form of duty free imports and DEPB benefit at the time of export were not availed of by unscrupulous exporters. Further progress was awaited (January 2006).

Further, as per para 4.42 of HBP of Exim Policy 2002-2007, credit under DEPB may be utilised for payment of customs duty on any item, which is freely importable except capital goods. Para 9.10 of the HBP ibid defines capital goods as any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological upgradation or expansion.

M/s. Steel Authority of India Ltd, Rourkela imported three consignments of 'secondary reformer burner assembly, welding transformer and control unit etc' under DEPB in September and November 2002 through custom house, Kolkata (sea). However, imported goods being capital goods in terms of para 9.10 of the HBP were not eligible for the exemption. This resulted in incorrect grant of exemption under DEPB amounting to Rs.25.86 lakh.

On this being pointed out (June and July 2003), the department issued demand notice for Rs.23.86 lakh in respect of one consignment in August 2004). Reply in remaining was awaited (January 2006).

#### **6.1.9 Non-imposition of restriction on DEPB clearance**

As per para 4.46 of HBP of 2002-2007 effective from 1 April 2002, the CIF value of imports effected under DEPB shall not exceed FOB value against which DEPB certificate has been issued. Further, in terms of clarification of Ministry of Commerce under policy circular dated 9 August 1999, in cases where clearance is sought after clubbing different DEPBs, FOB value taken for restriction should be proportionate to credit availed against such DEPBs by the importer. Thus, in case of clubbing of two or more DEPBs in respect of clearance of

single consignment, proportionate FOB value of each certificate is to be calculated separately and sum total of FOB value so calculated should not exceed the CIF value of import of the said consignment for allowing benefit of debiting duty from DEPB credit,

Audit scrutiny revealed that ten consignments of coking coal imported by M/s. Tata Iron and Steel Industries Ltd., Mumbai clubbing 31 different DEPBs between December 2002 and May 2003 through commissionerate of central excise and customs, Bhubaneswar-I were allowed DEPB benefit without applying restriction on CIF value of import against FOB value of the DEPB certificate either in single use or in case of clubbing of different DEPB certificates in single consignment as per circular *ibid*. Non-imposition of restriction on such DEPB clearance resulted in undue financial benefit of Rs.2.08 crore.

On this being pointed out (October 2004), the department stated (December 2004) that the DEPB scrips had been debited from FOB value of exports till the balance of DEPB credit or FOB value got exhausted. The department's reply is not tenable being contrary to the policy circular *ibid*.

Further progress was awaited (January 2006).

#### 6.1.10 Other cases

Thirteen other cases of excess DEPB credit of Rs.57.65 lakh were pointed out, of which department accepted eight cases as per table below:

(Amount in lakh of rupees)				
Sl. No.	Irregularity	Licensing authority	Amount objected	Whether accepted
1.	Non application of DEPB rates on date of let export order	Hyderabad Ludhiana, Jaipur	16.72	Yes
2.	Excess grant of DEPB due to misclassification	Pune	10.63	No
3.	Excess grant of DEPB due to misclassification	Coimbatore	6.36	Yes
4.	Exemption from anti dumping duty under DEPB scheme	Kolkata	7.08	Yes
5.	Credit allowed on inappropriate documents	Ahmedabad	1.15	--
6.	Grant of DEPB after expiry of prescribed period	Visakhapatnam Ahmedabad	4.39	No
7.	Non application of late cut	Ahmedabad Jaipur	2.48	Yes
8.	Incorrect utilisation of DEPB scrip	Chennai	2.17	Yes
9.	Excess grant of DEPB credit	Mumbai	1.84	Yes
10.	Non application of late cut	Mumbai	1.69	No
11.	Foreign exchange less realized	Jaipur	1.31	--
12.	Excess grant of DEPB credit due to non application of value cap	New Delhi	1.23	Yes
13.	Excess DEPB credit due to excess agency commission	Hyderabad	0.60	Yes
	<b>Total</b>		<b>57.65</b>	

## **6.2 Export Promotion Capital Goods (EPCG) scheme**

### *Non fulfilment of EO*

According to para 6.2 of Exim Policy 1997-2002, capital goods may be imported at concessional rate of customs duty subject to fulfilment of specified EO. Further as per 6.19 of the policy *ibid*, in the event of failure to fulfil EO, the licensee was liable to pay customs duty plus interest thereon.

**6.2.1** M/s. Suvarna Apparels and Fashion Exports Ltd., Hyderabad, a 100 per cent EOU under Visakhapatnam export processing zone (VEPZ) was allowed to debond during May 1998 by concerned development commissioner with permission to switch over to EPCG scheme. Jt.DGFT, Hyderabad, accordingly, issued EPCG licence (May 1998) at zero rate of duty for CIF value of Rs.8.61 crore representing depreciated value of capital goods imported under EOU scheme against export of goods valued at Rs.52.93 crore. Duty saved on depreciated value of capital goods transferred was Rs.2.76 crore.

As licensee failed to produce any documentary evidence towards fulfilment of EO during obligation period, he was liable to pay customs duty of Rs.2.76 crore and interest of Rs.2.86 crore upto March 2005.

On this being pointed out (April 2004), Jt.DGFT, Hyderabad while accepting the fact stated (May 2005) that licensee had since been declared defaulter. Further progress was awaited (January 2006).

**6.2.2** M/s. Suditi Industries was issued zero per cent EPCG licence in June 1998 to import capital goods worth Rs.3.41 crore (US\$ 16,27,894) and EO was fixed at US \$ 51,19,615 with average export to be maintained at US \$ 73,61,251.

Audit scrutiny revealed that though licensee had fulfilled EO they had failed to maintain average export level during the licence period. Thus, customs duty saved on imported goods amounting to Rs.1.25 crore was recoverable in terms of provisions *ibid*.

On this being pointed out (August 2004), the DGFT issued show cause notice (SCN) to the licence holder (September 2004) and adjudicated the case in October 2004 by levy of fiscal penalty of Rs.3.69 crore under section 13 of FT (DR) Act, 1992. The department further stated (March 2005) that case had been referred to district collector for recovery of dues. Details of recovery of duty were awaited from the customs department (January 2006).

**6.2.3** An EPCG licence was issued (November 1998) to M/s. Phil Corpn. Ltd., Mumbai to import capital goods worth Rs.99.45 lakh with EO of Rs.59.67 crore. The licensee utilised licence in full, but failed to produce any evidence either for fulfilment of EO or for extension for any particular block years. As such they were liable to pay customs duty exempted amounting to Rs.47.44 lakh plus interest of Rs.46.25 lakh.

On this being pointed out (March 2004), department intimated that (August 2004) case had been referred to district collector for recovery of fiscal penalty amounting to Rs.1.34 crore.

Further progress was awaited (January 2006).

**6.2.4** M/s. Sai Agri International (P) Ltd., Kakinada was issued EPCG licence to import capital goods under zero duty EPCG scheme valuing Rs.1 crore (February 1999) with EO of Rs.5 crore to be discharged within eight years in four blocks from the date of issue of licence. Audit scrutiny revealed that licensee failed to make any exports during the first two blocks ending February 2003 and consequently became liable to pay proportionate duty on imports made alongwith interest.

On this being pointed out (May 2003), RLA, Visakhapatnam admitted the objection and stated (March/May 2005) that the licensee actually imported goods valued Rs.67.06 lakh involving customs duty of Rs.29.86 lakh between February and August 1999 but failed to make any exports. The licensing authority further stated that customs authorities, Chennai, had enforced bank guarantee and realised (April 2005) entire customs duty of Rs.29.86 lakh and also stated that further progress on recovery of interest would be intimated. Report on recovery of interest of Rs.27.48 lakh was awaited (January 2006).

**6.2.5** M/s. Mitsu Industries was issued licence under ten per cent EPCG Scheme in March 1999 to import capital goods for CIF value of Rs.1.26 crore (US\$ 2,95,596) with EO of US\$ 11,82,384 (i.e. 4 times CIF value). Annual average export of US\$ 2.07 crore was required to be maintained.

Audit scrutiny revealed that licensee fulfilled EO during the period March 1999 to November 2000. Hence, licensee was required to maintain average exports also for 1998-99 and 1999-2000 (till November 2000). Adopting average export performance (AEP) of US\$ 2.07 crore per annum, target was US\$ 3.46 crore for the period from 1998-1999 till November 2000. Licensee however, achieved AEP of US\$ 1.22 crore. Jt.DGFT had redeemed the licence. Entire duty saved amounting to Rs.40.65 lakh was required to be recovered from the licensee alongwith interest of Rs.39.13 lakh.

On this being pointed out (January 2005), Jt.DGFT stated (February 2005) that demand cum SCN was issued on 3 February 2005. Customs department also intimated (April 2005) that SCN demanding duty amounting to Rs.40.65 lakh and interest thereon was issued in April 2005.

Further progress was awaited (January 2006).

**6.2.6** M/s. Schefields Ltd., Kolkata was issued EPCG licence in February 1999 by Zonal Jt.DGFT, Kolkata for import of 'ball pen manufacturing machine' at concessional rate of duty against EO of US\$3.22 lakh to be achieved in five years. This obligation was over and above maintaining annual average of past exports of US\$87362 per year. Against import of capital goods valuing Rs.34.33 lakh in April 1999, the licensee exported goods worth US\$3.79 lakh during February 2000 to February 2001. However, AEP during February 1999 to January 2000 and February 2000 to January 2001 was US\$33244 and US\$49761 respectively, which was less than the AEP prescribed. Licensee was liable to pay duty foregone amounting to Rs.16.31 lakh alongwith interest of Rs.14.67 lakh thereon on failure to maintain average EO.

On this being pointed out (January 2003), zonal Jt. DGFT stated (August 2004) that EO had been fulfilled as per the statement of the firm. Reply was not tenable since verification of record furnished by the firm revealed that three export consignments amounting to US\$78453 and two amounting to US\$52282 shown towards fulfilment of average EO during the periods February 1999 to January 2000 and February 2000 to January 2001 respectively had already

been utilised towards fulfilment of two other EPCG licences. Reutilisation of the same exports towards fulfilment of different EOs as well as average export performance was not in order.

Further progress was awaited (January 2006)

**6.2.7** A ten per cent EPCG licence was issued to M/s. KFA Corporation to import capital goods of CIF value Rs.17.43 lakh (US\$ 2,75,000) and EO was fixed at rate of US\$ 11,00,000. The capital goods were imported in January 1999.

Audit scrutiny revealed they were installed on 20 November 1999. As such exports made prior to date of installation would not qualify for counting towards fulfilment of EO. However, Jt.DGFT did not exclude exports made by licensee for the period prior to installation of capital goods before allowing redemption. Grant of redemption of licence was therefore not in order and duty saved amounting to Rs.30.83 lakh was required to be recovered alongwith interest thereon.

On this being pointed out (November 2004), Jt.DGFT intimated (April 2005) that demand notice was issued in January 2005. Customs department also accepted the stand taken by audit (September 2005).

**6.2.8** M/s. Jaymex was issued licence under ten per cent EPCG Scheme in November 1999 to import capital goods for CIF value of Rs.51.61 lakh (US\$ 120029) with EO US\$ 4,80,116 and annual AEP to be maintained at US\$ 8,02,297.

Audit scrutiny revealed that against prescribed AEP of US\$ 16,04,594 the licensee could maintain AEP of US\$ 9,14,536 only during the period 1999-2000 and 2000-01 resulting in shortfall of US\$ 6,90,058. Thus he was liable to pay duty saved of Rs39.34 lakh including interest. However, it was observed that Jt.DGFT redeemed the licence without recovering amount due from the licensee.

On this being pointed out (March 2005), the department stated that action was being initiated. Further progress was awaited (January 2006).

### ***Failure to monitor EO***

In terms of para 6.11 (a) of HBP, Vol-I, 1997-2002, the licence holder under EPCG Scheme shall fulfil year wise EO within a period of five years from the date of issue of licence. In the event of failure to do so for three consecutive years, he is liable to pay customs duty on the entire amount along with interest.

**6.2.9** M/s. Suryavarada Spinning Mills Ltd., Dharapuram, was issued (June 1997) a licence for CIF value of Rs.1.93 crore under ten per cent EPCG scheme with an obligation to export cotton yarn of 41 counts and above, and earn foreign exchange of US dollar 21,49,648 within five years from date of issue of licence. They imported (December 1997) second hand machinery for value of Rs.1.99 crore but failed to manufacture and export yarn during EO period. No action was initiated by the department to demand duty liability with interest immediately after expiry of third year (June 2000) of EO. After delay of about three years, SCN was issued (April 2003) by licensing authority and no further follow up action was initiated to recover the dues. This resulted in locking up of revenue to the tune of Rs.1.01 crore including interest.

On this being pointed out (February 2004), the licensing authority stated (December 2004) that the firm was placed under denied entity list and that the customs department was informed by Jt.DGFT, Coimbatore to collect customs duty with interest and also to forfeit the bank guarantee executed by the firm. Consequently, the bank guarantee was forfeited by the customs department and Rs.40 lakh was realised in December 2004. However, the recovery particulars for the balance amount of Rs.60.60 lakh were awaited (January 2006).

**6.2.10** M/s. Bipin Exports, Tiruppur was issued (April and July 1997) two licences under ten per cent EPCG Scheme for CIF value of Rs.21.01 lakh and Rs.22.37 lakh with an obligation to export embroidered cotton hosiery garments and earn foreign exchange to the extent of US dollar 2,34,068 and US dollar 2,48,644 respectively within a period of five years. The licensee imported (April 1997 and January 1998) embroidery machine valued at Rs.21.68 lakh and Rs.21.73 lakh against the licences. EO period expired on 30 April 2002 and 1 July 2002 respectively. Licence holder, however, failed to discharge minimum of 25 per cent of EO as required under the licence for three consecutive year period ended on 30 April 2000 and 1 July 2000 respectively. Therefore action to recover whole of the duty of customs alongwith interest should have been taken forthwith. Licensing authority, however, issued (March, April 2003) SCN to the licence holder for non fulfilment of EO after a delay of over three years. No further follow up was taken to recover duties alongwith interest, which led to blocking up of revenue to the tune of Rs.23.36 lakh including interest.

On this being pointed out (March 2004), the licensing authority placed (December 2004) the firm under denied entity list and requested commissioner of customs, Chennai (sea) to collect customs duty with interest thereon and also to forfeit the bank guarantee executed by the firm. However, customs department is yet to recover the amount (January 2006).

#### **6.2.11 Non fulfilment of EO due to incorrect reckoning of exports**

In terms of para 6.5 (i) of Exim Policy 1997-2002, as amended, the EO under EPCG scheme shall be fulfilled by export of goods manufactured or produced by using the capital goods imported under the scheme. Para 6.19 of HBP, Vol-I of Exim Policy provides that the licence holder shall pay the duties of customs with interest in the event of failure to fulfil EO.

M/s. Saran Garments, Tiruppur was issued (May 1998) licence under EPCG scheme for CIF value of Rs.1.36 crore for import of circular knitting machine with an obligation to export knitted garments for a total value of US\$ 25,64,947. The machinery was imported in June 1998. Though licensee exported goods for a total value of US\$ 25,69,142 (February 2001) exports of the value of US\$ 2,53,164.22 were made prior to the date of import of machinery. Thus there was shortfall in EO to the extent of US\$ 2,47,966.52 and the licensee was liable to pay the duties of customs of Rs.1.07 crore including interest.

On this being pointed out (December 2004), the department stated (December 2004) that as per para 6.5.1 of Exim Policy, EO could be fulfilled by goods manufactured in different manufacturing units of the licence holder which implied that the export goods need not be produced out of the imported machinery. Reply of the department was not tenable because para 6.3 (a) of the Exim Policy 1992-1997 provides that capital goods imported by the licence holder shall be installed at the factory of the licence holder or his supporting manufacture(s)/ vendor(s). In the instant case, the capital goods were imported during June 1998. Exports prior to that would not count for fulfilment of EO since they were neither produced by use of imported machinery by licence holder nor by his supporting manufacture(s)/vendor(s).



### **6.2.12 Irregular grant of exemption under EPCG scheme**

Para 5.1 of Exim Policy 2002-2007 read with customs notification No.55/2003 dated 1 April 2003 as amended stipulates that import of capital goods under EPCG scheme for pre-production, production and post production (including CKD/SKD thereof as well as computer software systems) at concessional rate of duty is permissible subject to fulfilment of prescribed EO within stipulated period of eight years reckoned from date of issue of licence. Para 4 of customs notification *ibid* however provided that capital goods imported or assembled are to be installed in importer's factory or premises and certificate to this effect should be produced from the jurisdictional deputy/assistant commissioner of central excise, within six months from the date of completion of imports or within such extended period as the said deputy/assistant commissioner of central excise may allow.

M/s. Hy-Grade Pellets Ltd., Visakhapatnam was issued EPCG licence in January 2004 by Jt.DGFT, Visakhapatnam to import 'electric resistance welded (ERW) pipes' with an EO to export 'iron ore pellets' equivalent to eight times of duty saved on goods imported. Licence holder imported ERW pipes in two consignments and cleared the same in February 2004 and April 2004 through Customs House, Visakhapatnam. Customs duty to the extent of Rs.13.85 crore was saved. Pipes imported were installed between their beneficiation plant (mine site) at Kirundal in Bailadila (Chattisgarh) and pelletisation plant (manufacturing unit) at Visakhapatnam (A.P.) for transportation of iron ore fines in the form of slurry for manufacture of export product ie, iron ore pellets.

Licence to import was issued in January 2004 on basis of the declaration of factory premises as Visakhapatnam. However, based on his request licence was amended in April 2004 by changing place of installation of imported goods as 'Bailadila (beneficiation plant) to Visakhapatnam (pelletisation plant).' This was after goods had been cleared. Thus, it was evident that imported goods were allowed to be installed outside the importer's factory or premises in violation of the condition of notification.

Commissioner of Customs, Visakhapatnam had made a reference to Board for clarification on the issue of installation of 'capital goods', in response to which it clarified in October 2004 that so long as the imported ERW pipes had been installed for the purpose for which they had been imported and installation certificate was produced by the licence holder, the technical aspect of capital goods not having been installed within specified licensing premises could be overlooked. Consequently, commissioner of customs, Visakhapatnam also opined that this case should not be taken as a precedent for future imports. Import of this item was clearly against provisions of Exim Policy and conditions of the notification. Irregular extension of benefit in this case thus resulted in loss of duty amounting to Rs.13.85 crore besides interest.

On this being pointed out (February 2005), the department contended that (i) benefit under the notification was granted based on the licence issued by the Jt.DGFT, Visakhapatnam (ii) installation of ERW pipes in the factory premises was as per notification and was in order (iii) the Board clarified (October 2004) that since ERW pipes are required for transportation of iron ore fines in the form of slurry from the mine site at Bailadila to the factory at Visakhapatnam, which is a pre-production operation for manufacture of iron ore pellets, it qualified as capital goods.

Reply of the department was not tenable as (i) the notification *ibid* specifically provides that capital goods imported should be installed in the importer's factory or premises whereas

pipes were laid outside 'factory premises' connecting beneficiation plant at Bailadila (mines site) and pelletisation plant at Visakhapatnam (factory site) covering enroute distance of 267 kms in four States viz, Chattisgarh, Madhya Pradesh, Orissa and Andhra Pradesh which cannot be construed as 'part of the factory' or 'premises' of the importer. In this context, reference is made to judgement of Supreme Court in the case of C.C.E, Jaipur vs. J.K. Udaipur Udyog Ltd., reported in 2004 (171) ELT 289 (SC) wherein Apex Court referring to definition of 'factory' as per section 2 (e) of Central Excise Act, 1944, has clearly held that mine connected to factory by ropeway for carrying excavated raw materials could not be considered as part of factory since no manufacturing activity was undertaken therein. The ropeway is merely a device or mechanism for transporting limestone. On the same analogy pipes were mechanism for transportation, not installed in the assessee's premises.

Further progress was awaited (January 2006).

### **6.3 Export oriented units (EOU) scheme/export processing zones (EPZ) scheme**

#### **6.3.1 Non utilisation of imported goods in export**

Notification No.53/97-cus (now 52/03 dated 31 March 2003) as amended from time to time, exempts specified goods that are imported into India from whole of duty of customs and additional duty, if any, leviable thereon, provided they are used for purposes of manufacture of articles for export or for being used in connection with production or packaging or job work for export of goods or services by EOUs.

M/s. Sandoz Pvt. Ltd., an export oriented unit was issued letter of permission (LOP) in January 2000 under 100 per cent EOU scheme for manufacture of celphalosporins, their intermediates and bulk drugs.

Audit scrutiny revealed that it received insurance amount of Rs.1.97 crore for loss of goods in fire in the unit on 17 October 2002. Cost of raw material destroyed in fire was declared at Rs.1.87 crore. Since raw material imported was not used in the final product, duty of Rs.1.06 crore needed to be recovered from the importer.

On this being pointed out (August 2004), the department issued demand notice to the unit (September 2004). Further progress was awaited (January 2006).

#### **6.3.2 Excess grant of central sales tax (CST)**

In terms of para 9.14 of Exim Policy read with para 9.29 and appendix 43 of HBP 1997-2002, EOUs are entitled to full reimbursement of central sales tax (CST) paid by them on purchases made from domestic tariff area (DTA) for production of goods meant for export subject to following conditions:

- i) supplies from DTA to EOU must be utilised by them for production of goods meant for export and may include raw materials, components, consumables, packing materials, capital goods, spares, material handling equipment etc. on which CST has been actually paid by EOUs.
- ii) while dealing with application for reimbursement of CST, development commissioner shall see inter-alia that purchases are essential for production of goods meant for export and/or to be utilised for export production by the units.

Further, para 9.9. of Exim Policy 1997-2002 provides that entire production of EOU unit is to be exported subject to the relaxation that 50 per cent of the FOB value of exports may be sold in DTA on payment of applicable duties and on fulfilment of minimum net foreign exchange earning as percentage of exports (NFEP) by the unit.

During audit of development commissioner, Visakhapatnam special economic zone (VSEZ), it was observed that two 100 per cent EOU units viz, (i) M/s. Tata Coffee Ltd., and (ii) M/s. Sanghi Spinners India Ltd., were sanctioned and reimbursed CST amounting to Rs.4.34 crore on raw materials/consumables procured/utilised by them in entire production during January 2001 to September 2003. These two units were permitted to sell 50 per cent of the FOB value of exports in DTA. Grant of CST on entire production of goods instead of restricting it to export production resulted in excess grant to the extent of Rs.1.45 crore.

On this being pointed out (May 2004), the development commissioner, VSEZ stated (June 2005) that as per CST guidelines, there is no such restriction for reimbursement of CST in proportion to value of inputs used in export production. Hence CST is reimbursed wherever it is paid on the inputs used in the production by the EOUs and DTA sale is allowed subject to payment of applicable duties which is generally on high side when compared to the duties payable on the goods produced by DTA unit.

Reply of department is not tenable as reimbursement of CST is admissible only in respect of goods meant for actual export and not so in respect of goods produced/meant for domestic sale. Further, effective rates of duties levied on DTA sales made by 100 per cent EOUs under section 3 of Central Excise Act are far less than the duties chargeable on direct imports. Duty structure of domestically produced goods is not comparable with the duties chargeable on DTA sales as goods produced and cleared from 100 per cent EOUs stand on par with imported goods.

### **6.3.3 Non achievement of NFEP**

Hundred per cent EOU is required to manufacture and export entire manufactured product and fulfil the EO annually as well as cumulatively and execute legal undertaking to the effect that in event of failure to fulfil the EO within stipulated time, it shall be liable to pay customs duty on imported duty free capital goods, raw materials, consumables, and components etc. alongwith interest at the rate of 24 per cent per annum from the date of import to the date of payment of duty, besides penalty imposable under FTDR Act, 1992. Further, in terms of para 9.5 and para 9.2.9 of Exim Policy 1997-2002, it is required to achieve NFEP which is calculated annually and cumulatively for the entire period of five years from commencement of commercial production.

Scrutiny of export performance of M/s. R.G.B. Garments Pvt. Ltd., Kolkata, a 100 per cent EOU under the Falta special economic zone (FSEZ) revealed that LOP was issued to it in September 1997 to manufacture 60 lakh pieces of garments made from viscous fibre and other material with EO of US\$ 3,540,000 to be achieved in five years. The unit failed to do so and its NFEP performance stood at negative 399.27 per cent during the five year period. It was liable to pay duty foregone of Rs.10.54 lakh on imports of Rs.88.32 lakh {Rs.63.69 lakh (capital goods) + Rs.24.63 lakh (raw material)} and interest of Rs.14.28 lakh (from the date of import upto 31 March 2004).

On this being pointed out (April 2002), development commissioner, FSEZ stated (March 2004) that penalty of Rs.10000 was imposed on the basis of exim performance of the unit during and upto 2000-01 and the unit had deposited the amount in February 2002. The unit was further imposed penalty of Rs.1 lakh for non-achievement of NFEP during 2002-03. Reply regarding recovery of custom duty of Rs.10.54 lakh and interest of Rs.14.28 lakh was awaited (January 2006).

#### **6.3.4 Non maintenance of separate records for indigenous and imported raw materials**

Notification No.8/1997-CE dated 1 March 1997 exempts finished products, rejects and waste produced or manufactured in scrap or FTZ wholly from raw materials produced or manufactured in India, and allowed to be sold in India from so much of the duty of excise leviable thereon under section 3 of the Central Excise Act, 1944, on like goods, produced or manufactured in India other than in 100 per cent EOU or a FTZ, if sold in India. Further, Board clarified vide CBEC circular No.442/8/99-CX dated 4 March 1999 that benefit of the above mentioned notification may be allowed to units importing as well as indigenously procuring raw materials provided unit is able to satisfy jurisdictional central excise authorities beyond doubt that inputs used, in manufacture of goods to be sold in DTA are manufactured out of indigenous raw materials only, by way of maintenance of records, physical scrutiny/verification and the manufacturing process etc. In case of common inputs or final products, adequate precautions should be taken and unless it is conclusively proved that goods for sale in DTA are manufactured wholly out of indigenous raw materials, benefit of notification should not be allowed.

Scrutiny of records revealed that M/s. Antarctica Ltd., unit under FSEZ, was permitted in March 1993 'to manufacture and export printed cardboard cartons' and it started commercial production in May 1995. With use of imported raw materials 'low density polyethylene' and indigenous raw materials 'M.G. poster paper' the unit manufactured finished products 'Linear teenpati tea cartons' through job work and sold the same to some units in Nepal against rupee payment and in DTA, UNICEF organisation in India etc. It availed benefit of exemption notification dated 1 March 1997 and paid only applicable excise duty on such sale. Audit scrutiny revealed that the goods were manufactured from both indigenous as well as imported raw materials and the unit did not maintain separate records for indigenous or imported raw material as prescribed under circular dated 4 March 1999. As such exemption allowed was irregular and short levy of Rs.41.98 lakh, recoverable from the unit.

On this being pointed out (March 2004), the department accepted the objection in principle and stated (December 2004) that protective demand was raised. Further progress was awaited (January 2006).

## **6.4 DTA sale**

### ***Irregular DTA sale***

In terms of para 9.9 (b) of the Exim Policy 1997-2002, DTA sale up to 50 per cent of the FOB value of exports is admissible to a 100 per cent EOU subject to payment of applicable duties and fulfilment of minimum NFEP prescribed in appendix-1 of the policy. Further, in terms of para I (f) and (g) of Appendix-42 of the HBP Vol-I (1997-2002), advance DTA sale

is admissible to a 100 per cent EOU in respect of trial productions and in cases of capacity expansion/product diversification which shall not exceed entitlement accruable on the exports envisaged in the first year.

**6.4.1** M/s. Taurus Esdan Hydraulics Ltd., an existing DTA unit under FSEZ, Kolkata on conversion into a 100 per cent EOU (October 1999) was permitted (May 2000) advance DTA sale of nylon tubing valued at Rs.2 crore. Against this, the unit cleared goods valued at Rs.3.16 crore during 2000 to 2003. Audit scrutiny revealed that it did not undertake any capacity expansion/product diversification. Also, NFEP achieved during the years 2001-02 and 2002-03 was negative 1.44 per cent and 6.86 per cent respectively, below the prescribed limit of ten per cent. Thus, not only was the grant of permission for advance DTA sale not in conformity with the provisions of Exim Policy, there was also DTA sale of Rs.2.91 crore more than entitlement. The unit was, therefore, liable to pay differential duty of Rs.91.78 lakh.

On this being pointed out (March 2004), FSEZ authorities while admitting the fact stated that the unit sought regularization of advance DTA sale made by them, which was turned down by Ministry of Commerce. It was stated (January 2005) that commissioner of central excise and customs, Jamshedpur had been requested to finalise the demand. Further progress was awaited (January 2006).

**6.4.2** M/s. India Poly Films Ltd., Silvassa a 100 per cent EOU in Vapi commissionerate was engaged in manufacture of biaxially oriented polythelene terphthalate (BOPT) films. During 1995-96 and 1996-97 it achieved VA of negative 130.96 per cent against 29 per cent prescribed. It had effected DTA sales for a value of Rs.1.70 crore on payment at concessional rate of customs duty of Rs.61.26 lakh between September 1996 and February 1997.

Failure to achieve prescribed VA, made DTA sales irregular. Therefore, the unit was liable to pay differential customs duty of Rs.70.17 lakh.

On this being pointed out (October 1999), the assistant development commissioner, SEEPZ, SEZ, Mumbai stated (July 2004) that excise authorities had been asked to recover differential duty of Rs.91.44 lakh. Department reported (February 2005) that SCN was issued in August 2004.

**6.4.3** M/s. Sarita Software and Industries Ltd., a 100 per cent EOU under VSEZ cleared 17,52,583 meters of cotton grey fabric and 6,33,145 meters of polyester grey fabric in DTA during 1998-1999 to 2000-01 availing benefit under notification ibid as amended. Audit scrutiny revealed that the said EOU manufactured its final products from raw material procured from other 100 per cent EOUs. There was no evidence on record to establish that the raw materials procured from other EOUs were manufactured by such EOUs wholly from indigenous materials. This was in violation of notification dated 18 July 1998 ibid, and resulted in short levy to the tune of Rs.51.90 lakh.

On this being pointed out (May 2001), the department confirmed (April 2004) demand of Rs.38.74 lakh and Rs.13.16 lakh and also imposed penalty each of equal amounts in respect of cotton grey and polyester grey fabrics respectively. The importer filed an appeal in customs, excise and service tax appellate tribunal (CESTAT) and obtained stay against the recovery. Further progress was awaited (January 2006).

### 6.5 Duty free service entitlement credit certificate (DFSECC) scheme

In terms of notification No.54/2003-cus dated 1 April 2003, spares, office equipments and furniture, professional equipments and consumables are exempted from whole of the duty of customs, additional duty of customs, on their import into India against a DFSECC issued under para 3.8 of Exim Policy 2002-07 subject to various conditions. One of the conditions requires that these DFSECC and goods imported against it shall not be transferred or sold.

Six importers i.e. M/s. Taj Bengal Hotel and five others imported 254 consignments of whisky, beer and liquor free of duty under DFSECC through custom house, Kolkata (port). Department cleared (between March 2004 and February 2005) these consignments and exempted customs duties in terms of notification ibid after debiting the DFSECC for duties leviable but for this exemption. Declarations from importers to the effect that items imported against DFSECC would be used/utilised by their guests only and the same would not be traded outside the hotel were also obtained. Since whisky, beer and liquor do not fall under any of the ibid category of spares, office equipments, furniture and consumables etc. and the hotels importing whisky, beer and liquor under DFSECC being trading concerns would not supply them free of cost, such use or utilisation tantamounted to sale. Thus, extension of the benefit of duty free clearance of the said goods was irregular to the extent of Rs.1.25 crore.

On this being pointed out between January and May 2005, the department stated (May 2005) that Ministry of Commerce, categorised the items as 'consumables' for hotel industry and held that the sale of liquor to the guests within the hotel premises was in order. The department further stated that there was anomaly in the wording of the Finance Ministry's notification.

Reply of the Ministry of Finance was awaited (January 2006).

### 6.6 Other cases

In 18 other cases of non fulfilment of EO, irregular DTA sales etc., short levy of Rs.1.35 crore alongwith interest of Rs.33.81 lakh were pointed out as per table below. Department/Ministry admitted objections in 13 cases.

(Amount in lakh of rupees)

Sl. No.	Irregularity	Name of the importers/exporters (M/s.)	Commissionerate	Amount objected	Interest	Whether accepted
1.	Non levy of duty on DTA sales	Toonz Animation	Thiruvananthapuram	21.04	--	Yes
2.	Short levy of duty on DTA sales	Modern Denim Ltd.	Ahmedabad	19.63	--	Yes
3.	Incorrect exemptions under EPCG scheme	Essar Oil Ltd.	Jamnagar	8.33	8.76	Yes
4.	Failure to monitor EO	Sikora India	Coimbatore	11.64	--	Yes
5.	Excess DTA sales	Sindhu Apparels (P) Ltd.	Surat-I	11.41	--	Yes
6.	Non-imposition of late cut on DFRC scheme	Arihant Arts & four others	Jaipur	9.56	--	Yes
7.	Non fulfilment of EO	RD Curer (P) Ltd.	Bangalore	7.19	--	Yes
8.	Non fulfilment of EO	Ganesh Anhydride Ltd.	Mumbai	7.43	--	Yes

9.	Incorrect exemptions under EPCG scheme	ITC Hotels Ltd.	Bangalore	6.57	--	No
10.	Non fulfilment of EO	Mitsu Industries Ltd.	Mumbai	6.88	6.54	Yes
11.	Non fulfilment of EO	Ponnappa Coffee Curing Works	Bangalore	4.05	4.70	Yes
12.	Non fulfilment of EO	Indus Insul (P) Ltd.	Hyderabad	4.64	4.99	No
13.	Non fulfilment of EO	CM Textiles (P) Ltd.	Mumbai	4.05	--	Yes
14.	Non fulfilment of EO	Indiana Conveyers (P) Ltd.	Mumbai	3.99	5.92	Yes
15.	Non fulfilment of EO	Durga Hotels & two others	Mumbai	3.62	2.90	Yes
16.	Non levy of education cess	--	JNCH, Mumbai	2.08	--	No reply
17.	Short levy of duty on DTA sales	JJ Spectrum Silk Ltd.	Kolkata	1.30	--	Interim reply
18.	Non levy of education cess	AMC cookware (I) Pvt. Ltd. & two others	Bangalore	1.09	--	No
	<b>Total</b>			<b>134.50</b>	<b>33.81</b>	

## CHAPTER VII: OTHER TOPICS OF INTEREST

### 7.1 Non disposal/delay in disposal of warehoused goods

Section 72 (2) of Customs Act, 1962 provides that where goods have not been removed from a warehouse, after expiration of the prescribed period under section 61, the proper officer may detain and sell such goods and realise full duty, penalties, rent, interest and other charges payable in respect of such goods.

**7.1.1** Ten consignments of machinery imported by M/s. JVC Nova Magnetics and seven others through custom house, Chennai (sea) and warehoused between January 1987 and May 2000 in central warehousing corporation (CWC) were kept uncleared for periods ranging from three to seventeen years after expiry of permitted warehousing period. No action was initiated by department to dispose off the goods and realise the duty involved, resulting in locking up of revenue of Rs.22.01 crore including interest.

This was pointed out to the department in February 2005, their reply was awaited (January 2006).

**7.1.2** Audit scrutiny revealed that 82 cases of imported goods warehoused between March 2002 and June 2004 under Kandla commissionerate, remained uncleared after expiry of the warehousing period. Duty and interest recoverable in these cases amounted to Rs.6.97 crore and Rs.1.82 crore (upto March 2005) respectively.

On this being pointed out (December 2003), the department issued (March 2004) SCN in respect of two cases involving duty of Rs.4.38 lakh and interest of Rs.2.11 lakh. Further progress was awaited (January 2006).

**7.1.3** Scrutiny of records of CWC, Pratapnagar, Udaipur revealed that M/s. J.K. Cement Works, Chittorgarh, imported machinery during August/September 1996 involving duty of Rs.1.06 crore which was allowed to be warehoused upto 31 December 1998 (extended period). However, the goods were not removed from the warehouse after the expiry of the extended period and no action was initiated by the department to recover duty, penalty, interest etc., from the importer. This resulted in blockage of revenue of Rs.1.06 crore and interest of Rs.1.56 crore upto March 2005.

On this being pointed out (December 2001), the department stated (June 2005) that demand notice was issued in March 2003 but recovery could not be enforced as the unit was under BIFR. Meanwhile importer's request to relinquish the title on goods had been turned down (June 2005) by the department since demand notice under section 72 has already been issued prior to exercising the relinquishment action. Matter was under stay by High Court of Rajasthan against recovery of dues. The department further stated that as goods had already been attached recovery would be made on vacation of stay. Further progress was awaited (January 2006).

**7.1.4** Ten consignments of goods with assessable value of Rs.94.05 lakh involving duty of Rs.46.33 lakh imported through custom house, Chennai (sea) customs and warehoused between August 2002 and December 2003 in public bonded warehouse were kept uncleared after the expiry of the warehousing period of one year permitted under section 61. No action



had been initiated *ibid* to dispose off the goods and realise duty, resulting in blocking of revenue to the tune of Rs.50.10 lakh including interest for periods from six to twenty one months.

This was pointed out to the department in January 2005, their reply was awaited (January 2006).

**7.1.5** Supreme Court in the case of M/s Kesoram Rayon vs. collector of customs, Kolkata {1996 (86) ELT 464 (SC)} ruled that “where the goods have been allowed to be cleared after expiry of the warehoused period, removal of such goods should be treated as ‘improper removal’ and rate of customs duty payable should be at the rate applicable on the date on which the permitted warehoused period came to an end”. Further, as per CEGAT’s decision in the case of M/s KLJ Plastics Ltd. vs. commissioner of customs, Chennai {2000 (117) ELT 108 (Tribunal)}, benefit of concessional rate of duty is not admissible in respect of improperly removed goods at a later date under the DEEC Scheme.

M/s. TIL Ltd., Kolkata warehoused various parts and accessories of crane on 28 October 2002. Though warehousing period expired on 27 October 2003 they did not clear goods within validity period of one year i.e. 27 October 2003, nor did they apply for extension of warehousing period. The department allowed clearance of the goods on 4 August 2004 under DEEC licence dated 8 July 2004 without levying any duty. Action of the department was irregular in terms of both judicial pronouncements and section 72 of Customs Act, 1962. Improper removal of the goods as well as incorrect facility of DEEC benefit resulted in loss of customs duty of Rs.29.95 lakh and interest of Rs.7.13 lakh.

On this being pointed out (January 2005), the department stated (June 2005) that demand-cum SCN was issued to the importer. Further progress was awaited (January 2006).

**7.1.6** Board’s circular dated 7 September 1961 stipulates that ‘reserve price’ should be the absolute minimum below which the consignment should not be sold.

M/s. Ranit Pharma Ltd., Hyderabad imported 1500 kgs. of ‘quinaldic acid’ in December 2000 involving duty of Rs.26.78 lakh and warehoused it in public bonded warehouse (ICBC) at tollgate, Chennai. Warehousing period expired in December 2001 and no extension thereof was obtained by the importer. The department after delay of 28 months from expiry of the warehousing period initiated action in April 2004 to auction goods by fixing reserve price of Rs.50 lakh based on chemical test report establishing purity of goods at 99.5 per cent. Despite recommendations by assistant commissioner/deputy commissioner/joint commissioner for rejecting the highest bid, the goods were auctioned in June 2004 to the highest bidder at a price of Rs.1.71 lakh being much lower than the reserve price fixed. This resulted in loss of revenue of Rs.25.07 lakh.

On this being pointed out (December 2004 and January 2005), the department stated (February 2005) that the bid was accepted by the commissioner on the plea that chemical value would not increase. Reply was not tenable because within a month of fixing reserve price there seemed to be no possibility of deterioration in quality of the chemical when reserve price was fixed on 20 May 2004. Further, recommendations made by AC/DC/JC for rejecting the bid were overlooked for no apparently justified reasons. Auction of goods below the reserve price was also in contravention of Board’s circular of 7 September *ibid*.

## **7.2 Non levy of SAD**

**7.2.1** Serial No.56 of customs notification No.23/2002 dated 1 March 2002 exempts goods imported into India from levy of SAD provided imported goods are exempted from levy of both BCD and additional duty of customs.

Floating crane imported (January 2003) by Chennai Port Trust through custom house, Chennai (sea) was assessed to BCD. The SAD leviable, however, was incorrectly exempted in terms of provisions cited, which resulted in short collection of duty of Rs.1.07 crore.

On this being pointed out (June 2003), the Ministry stated (October 2005) that demand notice for Rs.1.07 crore was issued and confirmed (May 2004). Appeal filed by the importer was dismissed (September 2004) by the Commissioner (Appeals). The importer filed further appeal before CESTAT which was dismissed in February 2005. The importer has filed writ petition in the High Court against the order of the tribunal which is pending.

**7.2.2** As per notification No.29/2003-cus (serial No.62) dated 1 March 2003 SAD on import of nylon fabric (un-dipped) was leviable.

Five consignments of 'nylon fabric (un-dipped)' imported by M/s. J&K Industries Ltd., Kankroli under Jaipur-II, commissionerate were cleared from customs bonded warehouses during March/April, 2003 without levy of SAD. This resulted in non levy of SAD amounting to Rs.11 lakh and interest thereon.

On this being pointed out (March/April 2004), the department reported (June 2004) recovery of Rs.11 lakh. Recovery of interest was awaited (January 2006).

## **7.3 Short levy of duty from sale proceeds of uncleared goods**

Section 48 of Customs Act, 1962 deals with disposal of goods not cleared by importers through person having custody thereof. Section 150 deals with the apportionment of sale proceeds of such goods. Balance amount, if any, after adjusting all expenses, dues of the Government etc is payable to importer. As per ratio laid down in the case of M/s. Instamedic International vs. collector of customs, New Delhi (tribunal) reported in 1999 (111) ELT 833 it was held that "once the assessment of duty is complete, the fact that the goods were not physically removed by the importer and that it had to be sold subsequently in auction cannot by itself become a ground for reassessing the goods for demanding duty thereon". This implies that duty is recoverable based on assessment done at the time of assessment of bill of entry filed by the importer.

Various goods imported by M/s. Gujarat Sico Textiles and 12 others with duty liability of Rs.1.38 crore as per original bills of entry filed by importers between June 1995 to October 2001 through Mumbai (sea) commissionerate were put to auction by the department/custodian between 1998-99 and 2001-02 and Rs.83.94 lakh was realised as duty. Rs.1.09 crore was refunded to the importers in terms of section 150 of CTA.

Audit scrutiny revealed that at the time of auction, department re-assessed the goods by adopting value and rate of duty different to the original bills of entry. Non-application of rate of duty prevalent on the date of import had resulted in incorrect quantification of surplus and consequently refund and short levy of duty of Rs.54.72 lakh.

This was pointed out to the department in June 2005, their reply was awaited (January 2006).

#### **7.4 Short collection of cost recovery charges**

Customs officers are posted in custom bonded warehouses for supervising the manufacturing operations on cost recovery basis. According to Ministry of Finance letter dated 1 April 1991, cost of officers posted as such is fixed at 1.85 times monthly average cost of the post plus dearness allowance (DA), house rent allowance (HRA), city compensatory allowance (CCA), adhoc bonus etc.

Audit scrutiny of files relating to the 'cost recovery charges' at Cochin Shipyard Ltd. for the period from October 1999 to September 2003 revealed that DA and bonus sanctioned from time to time to officers were not taken into account while calculating cost recovery charges.

On this being pointed out (December 2003), the department stated (April 2005) that out of short collection of cost recovery charges of Rs.21.16 lakh in eight cases, Rs.14.30 lakh was recovered in seven cases and recovery in the remaining case was under progress.

#### **7.5 Non levy of additional duty of excise (ADE)**

Notification Nos.30/97-cus dated 1 April 1997 and 51/2000-cus dated 27 April 2000, exempt raw materials from levy of customs and additional duty under section 3 of CTA, 1975 under actual user DEEC scheme. However, ADE leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, is not covered under these notifications.

Further, it has been judicially held in the case of Gokak Mills vs commissioner of central excise {2001 (129) 523 (T) Bangalore} that where a notification granting exemption was issued under a particular rule without reference to any other statute making provisions of levy and collection of special, auxiliary or any other kind of excise duty levied under such statute, the exemption must be construed as limited to the duty of excise payable under the Central Excise and Salt Act, 1944 and cannot cover such special, auxiliary or other kind of duty of excise.

Audit scrutiny of records of assistant commissioner, CFS (OWPL), Ludhiana revealed that eleven consignments of nylon tyre cord dipped fabrics falling under CTH 5902.10 imported by M/s. Govind Rubber Ltd., Ludhiana and five others between June and August 2001 under DEEC Scheme were cleared without levy of additional excise duty leviable under ADE (GSI) Act, 1957 amounting to Rs.13.11 lakh.

On this being pointed out (November 2003), department stated (October 2004 and January 2005) that additional duty equal to central excise duty leviable on like goods manufactured in India was leviable under section 3 of CTA. ADE (GSI) was levied under central excise law on those goods which were chargeable to duty of excise under section 3 of central excise Act, 1944 and section 2 of the CET Act 1985. In case it was accepted that ADE (GSI) was not duty of excise charged under above section it would not be chargeable under section 3 of Customs Act. Reply of the department was not tenable because ADE (GSI) is a duty of excise but it is leviable under the ADE (GSI) Act 1957. Section 3 A (5) of CTA ibid provides that nothing contained in that section, shall apply to any article which is chargeable to additional duties levied under sub section (1) of section 3 of ADE (GSI) Act 1957. The exemption notifications issued under sub section (1) of section 25 of the Customs Act would

not automatically exempt the levy of ADE leviable under ADE (GSI) in view of the judicial pronouncement *ibid*.

### **7.6 Non levy of interest**

In accordance with section 61 (2) (ii) of Customs Act 1962, goods remaining in a warehouse beyond a period of 30 days attract interest at the specified rates.

M/s. Plastolene Polymers Pvt. Ltd., and three other units under the FSEZ warehoused 19 consignments of different goods between February 2002 and March 2003 and the department allowed clearance of such goods after the warehousing period of 30 days without levying any interest for the belated period. This resulted in loss of revenue of Rs.11.45 lakh.

On this being pointed out (March 2004), the department admitted (December 2004) the irregularity. Recovery particulars were awaited (January 2006).

### **7.7 Non levy of anti-dumping duty**

As per section 9A of the CTA, 1975, where any article is exported from any country or territory to India at less than its normal value, then upon the importation of such article into India, the Central Government may, by notification, impose an anti dumping duty. Accordingly, anti dumping duty was imposed on 'nylon fabric, vitrified and porcelain tiles, acrylonitrile butadiene rubber, graphite electrode' etc. from time to time.

Audit scrutiny revealed that 26 consignments of above articles imported by 17 importers were cleared without levying/short levying anti dumping duty. This resulted in short levy of anti dumping duty of Rs.1.83 crore.

On this being pointed out (September 2001 to June 2005), the department/Ministry admitted short levy of Rs.1.52 crore in 11 consignments and reported recovery of Rs.37.99 lakh in eight cases.

### **7.8 Excess payment of drawback**

**7.8.1** All Industry Rates of duty drawback are reviewed by the drawback directorate annually as per post budgetary exercise to provide input stage duty neutralisation of customs and central excise duties suffered on inputs and packing materials used for manufacture of export product. Consequent on presentation of Union Budget for the year 2004-05 on 8 July 2004 there was reduction in the rates of customs duties ranging from 25 to 75 percent for some items like metals, minerals, refractories, zinc speller dross, copper mill scale, all primary, semi finished and finished form of iron and steel etc and platinum with effect from 9 July 2004. Accordingly, All Industry Rates of drawback for 2004-05 should have been announced by Ministry soon thereafter or within 90 days as was the convention prior to 2003-04. During 2003-04 they had in fact been notified in a month's time. However, they were notified vide notification No.8/2005-Customs (NT) only on 18 January 2005 effective from 19 January 2005 i.e. after more than five months.

Test check of 22022 shipping bills of drawback in nine commissionerates at Chennai, Delhi, Mumbai, Jaipur and Cochin revealed excess payment of drawback amounting to Rs.42.89 crore to exporters during the period 9 August 2004 to 18 January 2005 when reimbursement of customs duties in excess of duty incidence suffered on inputs used in export products was allowed.

Since rates of drawback have all India applicability financial implications of the delay would be much larger.

This was pointed out to the Ministry in January 2006; their reply was awaited.

**7.8.2** On export of goods, refund of excise and customs duties paid on components and raw material could be claimed as drawback as per provisions in the relevant Acts and rules thereunder. Of 63 cases, where excess payment of drawback amounting to Rs.3.22 crore had been pointed out, the department admitted the facts in 47 and reported recovery of Rs.63.84 lakh in 36 cases.

### **7.9 Other cases**

Of 14 cases, which audit pointed out involving Rs.56.61 lakh as detailed below, the department accepted objections in nine involving duty effect of Rs.36.95 lakh and reported recovery of Rs.10.72 lakh in three cases.

(Amount in lakh of rupees)

Sl. No.	Subject	Importer/exporter M/s.	Amount objected	Amount admitted	Amount recovered
1.	Incorrect grant of refund	Rao Insulating Co. Ltd. & another	10.09	Not admitted	--
2.	Non levy of SAD	Birla Tyres & nine others	7.39	7.39	3.02
3.	Non levy of NCCD	J.M. Textiles & 53 others	6.74	6.74	6.74
4.	Delay in disposal of confiscated vehicle	Ahmedabad (Preventive)	6.55	6.55	0.96
5.	Project import	The Indure Ltd.	4.73	4.73	--
6.	Non levy of SAD	Indian Rayon & Industries Ltd.	3.85	Not admitted	--
7.	Delay in implementation of CEGAT order	Tata Infotech Ltd.	3.16	No reply	--
8.	Non disposal of seized goods	Kolkata (Air) commissionerate	2.85	2.85	--
9.	Non disposal of uncleared goods	Magnum Overseas	2.78	2.78	--
10.	Non disposal of seized goods	Shillong (Preventive)	2.23	2.23	--
11.	Non realisation of revenue on pilfered goods	Entrack International Trading (P) Ltd.	2.13	2.13	--
12.	Non realisation of duty on excess baggage	ITDC, Kolkata	1.55	1.55	--
13.	Delay in adjudication of demand	Kelvin Infotech (P) Ltd.	1.33	Interim reply	--
14.	Non levy of special excise duty	Triumph Properties Ltd. & another	1.23	Not admitted	--
	<b>Total</b>		<b>56.61</b>	<b>36.95</b>	<b>10.72</b>

### **7.10 Miscellaneous**

Three hundred and forty other cases involving duty of Rs.51.35 lakh were also pointed out. The department has accepted all the objections and reported recovery of Rs.48.43 lakh in 299 cases.