

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 2001-02 to 2005-06, 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	Percentage variation
2001-02	54822	43170	40268	-14554	-26.55
2002-03	45193	45500	44851	-342	-0.76
2003-04	49350	49350	48629	-721	-1.46
2004-05	54250	56250	57610	3360	6.19
2005-06	53182	64215	**65050	11868	22.32

*Figures as per Finance Accounts

**Figure is provisional

Actual collection was more than both budget and revised estimates in 2005-06, mainly due to increase in collection of import duty on petroleum products, chemicals and machinery and transport equipments.

1.2 Trend of receipts

A comparison of total year-wise imports with corresponding net customs duties collected during 2001-02 to 2005-06 has been shown in the table below:

VALUE OF IMPORTS AND IMPORT DUTY COLLECTED 2001-02 to 2005-06 (YEAR-WISE)

(Amount in crore of rupees)

Year	Value of Imports	Import duties	Import duty as percentage of value of imports
2001-02	243645	39406	16.17
2002-03	296597	44137	14.88
2003-04	353976	48002	13.56
2004-05	501065	56745	11.32
2005-06	660409	64201	9.72

While value of imports has recorded a growth of 171 per cent over the last five years, the corresponding import duties, as a percentage of value of imports, have declined to ten per cent from 16 per cent.

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 2005-06 and the previous year 2004-05 are given below:

1.3.1 Imports

(Amount in crore of rupees)

Sl. No.	Commodities	Value of imports		Import duties		Percentage share in total import duties collection	
		2004-05	2005-06	2004-05	2005-06	2004-05	2005-06
1.	Food, live animals and animal products	20612.71	20879.86	3880	5329	6.84	8.30
2.	Mineral products except mineral fuels	7467.63	10210.85	4796	5773	8.45	8.99
3.	Mineral fuels, mineral oils and products	156445.46	222740.23	9761	7158	17.20	11.15
4.	Products of chemical or allied industries	41110.63	52853.71	5385	5915	9.49	9.21
5.	Machinery and transport equipment	103019.77	153464.23	14817	17141	26.11	26.70
6.	Project goods etc.	2711.23	4006.28	3788	4088	6.68	6.37
7.	Other	169697.13	196253.72	14318	18797	25.23	29.28
	Total	501064.56	660408.88	56745	64201		

1.3.2 Exports

(Amount in crore of rupees)

Sl. No.	Commodities	Value of exports		Export duty and cess	
		2004-05	2005-06	2004-05	2005-06
1.	Food, live animals and animal products	35428.07	43312.64	15	06
2.	Mineral fuels, mineral oils and products	32082.88	52537.61	02	02
3.	Others	307828.57	360567.63	172	134
	Total of exports and re-exports	375339.52	456417.88	189	142

Source - Directorate General of Export Promotion, New Delhi.
Department of Commerce, export import data bank

1.4 Duty foregone

1.4.1 Under export promotion schemes

The break-up of duty foregone for export promotion schemes viz., advance licence, DEPB, EPCG, EPZ, EOUs and refund of duty under drawback and other schemes, for the period from 2002-03 to 2005-06 is shown in the table below:

CUSTOMS DUTY FOREGONE UNDER EXPORT PROMOTION SCHEMES AND DUTY DRAWBACK SCHEME

(Amount in crore of rupees)

Year	Advance licence & others	DEPB	EPCG	SEZ*	EOU/EPZ	Duty drawback	Total
2002-03	7462	6831	3026	1106	4820	4520	27765
2003-04	10812	11692	3399	1320	9422	3059	39704
2004-05	11741	10076	4681	2447	8266	2812	41033
2005-06	13361	5651	5333	2471	10278	3235	40329

* includes DFRC/DFCEC schemes also

The total duty foregone under various export promotion schemes for the period 2002-03 to 2005-06 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
2002-03	44851	27765	62
2003-04	48629	39704	82
2004-05	57610	41033	71
2005-06	65050	40329	62

1.4.2 Other duty foregone¹

Duty foregone under section 25 (1) and (2) of Customs Act, 1962 (other than for export promotion schemes vide para 1.4.1) during 2002-03 to 2005-06 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
2002-03	484	4	488	6852	69	6921
2003-04	57	64	121	13477	259	13736
2004-05	32	39	71	19916	16	19932
2005-06	29	49	78	40667	15	40682

* General exemption

** Adhoc exemption

¹ Figures furnished by Directorate General of Export Promotion, New Delhi. These are in variance with corresponding figures intimated by the Ministry for previous years. Reasons for the same have not been furnished.

1.5 Cost of collection of customs receipts

The expenditure incurred on collection of customs duty during the year 2005-06 along with the figures for the previous year are given below:

	(Amount in crore of rupees)	
	*2004-05	**2005-06
Expenditure on revenue cum import/export and trade control functions	145.42	158.53
Expenditure on preventive and other functions	573.10	306.18
Total	718.52	464.71
Customs receipt	57610	65050
Cost of collection as percentage of customs receipts	1.24	0.71

* Figures as per Finance Accounts.

** Figures are 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	2004-05	2005-06
1.	Number of searches	3568	3555
2.	Value of goods seized (Rupees in crore)	603.65	407.90
3.	Number of seizure cases adjudicated	4382	5052

1.7 Arrears of customs duty

1.7.1 The amount of customs duty assessed upto 31 March 2006 which was still to be realised as on 30 June 2006, was Rs.810.39 crore in 128 custom houses and commissionerates.

1.7.2 Customs revenue of Rs.865.82 crore demanded upto March 2006, in 34 zones, was not realised by the department at the end of financial year 2005-06, as per table below. Of this, an amount of Rs.293.97 crore was undisputed, however, even this amount was not recovered for period over ten years. There is a need to strengthen recovery mechanism of the department.

Sl. No.	Commissionerate	Amount under dispute			Amount not under dispute			Grand Total (col 5 & 8)
		Over five years but less than ten years	Over ten years	Total (col 3 & 4)	Over five years but less than ten years	Over ten years	Total (col 6 & 7)	
		3	4	5	6	7	8	
1.	Central Excise	75.74	9.78	85.52	30.05	11.12	41.17	126.69
2.	Central Excise & Customs	33.22	11.35	44.57	11.88	3.90	15.78	60.35
3.	Customs	391.62	50.14	441.76	197.00	40.02	237.02	678.78
	Total	500.58	71.27	571.85	238.93	55.04	293.97	865.82

1.8 Demands of duty barred by limitation

Demands raised by the department upto 31 March 2006 which were pending realisation as on 30 June 2006 and where recovery was barred by limitation amounted to Rs.3.93 crore in 128 custom houses and commissionerates.

1.9 Duty written off

Customs duties written off, penalties waived and ex-gratia payments made during the year 2005-06 and the preceding two years are given below:

(Amount in crore of rupees)

Year	Amount
2005-06	43.41
2004-05	3.01
2003-04	0.57

1.10 Contents of the section

This section contains 139 paragraphs (including 14 cases of total under assessment), featured individually or grouped together, arising from important findings from test check in audit, pointing out leakage of revenue aggregating Rs.63.22 crore. Of this, the Ministry/department had accepted (till December 2006) audit observations in 74 paragraphs involving Rs.25.92 crore and reported recovery of Rs.11.69 crore.

1.11 Impact/followup of Audit Reports

During the last five years (including the current year's report), audit through its Audit Reports had pointed out short levy etc. totalling Rs.1813.70 crore in 1111 audit paras. Of these, Government had accepted (till December 2006) audit observations in 781 audit paras involving Rs.871.65 crore and had since recovered Rs.52.65 crore in 557 cases. The details are abstracted in the following table.

(Amount in crore of rupees)

Year of Audit Report	Paragraphs included		Paragraphs accepted						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt
2005-06	139	63.22	74	25.92	--	--	74	25.92	49	11.69	--	--	49	11.69
2004-05	256	355.79	178	45.41	5	0.87	183	46.28	122	4.13	5	0.87	127	5.00
2003-04	251	941.10	177	94.44	11	494.84	188	589.28	128	10.06	23	1.59	151	11.65
2002-03	252	222.42	165	132.23	16	0.60	181	132.83	106	8.70	16	0.60	122	9.30
2001-02	213	231.17	138	71.97	17	5.37	155	77.34	91	9.64	17	5.37	108	15.01
Total	1111	1813.70	732	369.97	49	501.68	781	871.65	496	44.22	61	8.43	557	52.65

CHAPTER II : SHORT LEVY DUE TO INCORRECT CLASSIFICATION

Some illustrative cases of short levy of customs duties aggregating Rs.69.68 lakh due to incorrect classification of goods are briefly narrated below:

2.1 Satellite receiver and its parts

The conference of commissioners of customs on tariff and allied matters held at Chennai in January 2000, decided to classify 'satellite receiver' under CET 8528.12. Also, the Accessories (Conditions) Rules, 1963 states that accessories and spare parts and maintenance or repairing implements for any article, when imported along with that article shall be chargeable at the same rate of duty as that article, provided that (i) such accessories, parts and implements are compulsorily supplied along with that article, and (ii) no separate charge is made for each supply, their price being included in the price of that article.

M/s. Ushodaya Enterprises, Hyderabad imported 'satellite receiver and parts' in April 2001 through Hyderabad commissionerate II. The supplier charged the main equipment and the parts separately. The goods were classified as 'transmission apparatus' under CTH 8525.20.

Audit scrutiny revealed that, as per 'technical write up' the main equipment merited classification as satellite receiver under 8528.12, and the rest of the equipment as 'parts suitable for use solely or principally with the apparatus of headings 8525 to 8528' under CTH 8529.90. The incorrect classification resulted in a short levy of customs duty of Rs.23.17 lakh.

On this being pointed out (February 2002)/March 2002), the department issued SCN in April 2005.

Further progress was awaited (December 2006).

2.2 Imported motor cars

'Motor vehicles' for transport of ten or more persons are classified under CTH 8702. Whereas 'motor cars and other motor vehicles' principally designed for the transport of persons (other than those of heading 8702) including station wagons and racing cars are classified under CTH 8703.

An importer imported a used 'Lincoln car' (1999 model) in September 2004 through ICD, Tughlakabad, Delhi. The department classified and assessed the imported car under CTH 8702. Although, the department considered the car manufacturer's price list for arriving at the current value of the Lincoln car, but no documentary evidence about the actual seating capacity was available in the records. Enquiry about this model from its manufacturer's website revealed that it was actually a six-seater car and not a ten seater car. Accordingly, it merited classification under CTH 8703. The misclassification resulted in short levy of duty of Rs.12.64 lakh.

On this being pointed out (December 2004/February 2005), the department stated (June 2005) that the classification under CTH 87.02 was correct as the vehicle was meant for

transport of ten persons including driver. In their reply, the department tried to project the imported car as a 'small bus' by claiming that it was a limousine and limousine by definition is "very large vehicle; a small bus etc." The reply of the department is not tenable as the catalogue of the car clearly shows it is a six seater car and the department has not produced any evidence in support of their claim that it was actually a ten seater vehicle.

2.3 Cane or beet sugar/chemically pure sucrose

'Cane or beet sugar and chemically pure sucrose' in solid form merit classification under CTH 17019990 and are assessable at concessional rate of duty under notification No.21/2002 dated 1 March 2002 (serial No.38).

A consignment of 'fine granulated sucrose' imported by M/s. Lupin Ltd. through Mumbai (Air) commissionerate in March 2004 was classified under CTH 2940 as 'other organic compound' instead of CTH 17019990. The misclassification resulted in short levy of duty of Rs.9.49 lakh including interest.

On this being pointed out (May 2004), the Ministry reported (August 2006) recovery of entire amount.

2.4 Polyethylene films

Import of 'polyethylene films' classifiable under CTH 39.20 from specified SAARC countries under SAPTA, are chargeable to concessional rate of duty, under notification No.105/99-cus dated 10 August 1999.

M/s. AK Traders, Kolkata imported 13 consignments of 'polyethylene film' mis-declaring the same as 'lay flat tube' between June 2002 and June 2004 through Petrapole land customs station, under the commissionerate of West Bengal (Preventive). The goods imported from M/s. Promising Industries Limited, a unit under Chittagong EPZ, Bangladesh, were classified under sub-heading number 3917.29 of the Customs Tariff as 'plastic tubes, pipes and hoses' and assessed under the notification, *ibid*. However chemical testing of representative samples of identical goods imported in June 2003 revealed that the goods were plastic/polyethylene films classifiable under heading CTH 39.20. Accordingly, the department assessed the said consignment treating the goods as plastic film attracting higher rate of duty. But in respect of the goods imported earlier by the same importer, the department did not initiate any action to recover the short levied duty of Rs.9.68 lakh due to misclassification. Moreover, the importer was also liable to pay penalty under section 114 A read with section 28 of the Customs Act, 1962 and interest under section 28 AB of the said Act.

On this being pointed out (November 2004), the Ministry admitted the objection and stated (September 2006) that the demands are under process of adjudication.

Further progress was awaited (December 2006).

2.5 Readymade garments

In terms of section note 2 (A) to section XI of the Customs Tariff Schedule, goods consisting of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over any other single textile material.

M/s. Vaibhav Textiles, Haryana imported 9214 pieces of readymade garments (ladies trousers) and other items and declared them as made out of synthetic woven fabrics, through Kolkata (Sea) customs in February 2003. Accordingly, the department classified the goods as 'ladies trousers made out of synthetic fabrics' under CTH 6204.63. However, chemical test report revealed that the goods were made out of dyed woven fabric containing 35.2 per cent cotton, 33.4 per cent synthetic fibres and 31.4 per cent artificial fibres (viscose). Since cotton predominated by weight in the trouser fabric, the imported goods were classifiable under CTH 6204.62 in terms of section note, *ibid*. The incorrect classification resulted in short levy of duty of Rs.9.45 lakh.

On this being pointed out (October 2003), the department asked the importer (November 2003) to pay the amount voluntarily and intimated the fact (June 2005) but it did not admit the objection on the ground that weight of the embroidery yarn and of the fabric from which the pockets were made, had not been taken into consideration by audit, for classifying the garments in question.

The department reply is not tenable as:

(i) the objection was based on incorrect application of section note 2 (A) to section XI, which, in the instant case, had to be applied in conjunction with sub-heading notes 2 (A) and 2 (B) (a) *ibid* and interpretive rule 3 (b) of the Customs Tariff, since two different fabrics were parts of the goods in question - one for the trouser body and another for the pockets. As per interpretive rule 3 (b), the material or component that gives the garment its essential character, should be the basis of its classification. In this case, the trouser fabric, and not the pockets fabric, gives the trousers their essential character and hence the former is to be taken into consideration for classification of the trousers.

(ii) Further, general note (A) under section XI of the HSN states 'in the case of products consisting of two or more textile fabrics of different composition assembled by sewing, gumming, etc., classification is determined in accordance with interpretive Rule 3'. Accordingly, note 2 to section XI apply only where it is necessary to determine the textile material which predominates by weight in the fabric taken into consideration for classification of the product as a whole.

Further progress was awaited (December 2006).

2.6 Oxygen/infrared gas analyser

'Oxygen /infrared gas analyser' merits classification under CTH 90271000 as 'gas or smoke analysis apparatus' (instruments and apparatus for physical and chemical analysis).

Gas analysis apparatus viz 'oxygen analyzer/infrared gas analyzer' imported by M/s. ABB Limited, Bangalore and two others (November 2004 to March 2005) through ACC, Bangalore were classified and assessed under CTH 90278090/90275090 and CET 90261090/902700 instead of 90271000. The incorrect classification resulted in short levy of duty of Rs.5.25 lakh.

On this being pointed out (July to October 2005), the department reported (March 2006) recovery of entire amount.

CHAPTER III : SHORT LEVY DUE TO INCORRECT EXEMPTIONS

Short levy of duties aggregating Rs.12.56 crore on account of incorrect grant of exemptions were pointed out to the Ministry. Some illustrative cases are narrated below:

3.1 Failure to enforce end-use bond

In terms of notification 21/2002-cus (serial No.200) dated 1 March 2002, scrap of iron and steel imported for use in or supply to a unit for the purpose of melting, was entitled to concessional rate of duty, subject to the condition that the importer produced, to the proper officer of customs, a certificate issued by the Central Excise authorities within six months or such extended period as the proper officer may allow, that the scrap had been used in the unit. To this end, the importers were required to execute bonds binding themselves to pay on demand, the differential duty in case of failure to fulfil the conditions.

Audit scrutiny revealed that 80 consignments of steel scrap imported by M/s. Rangaraj Steel and Alloys Ltd and 27 others through Chennai (Sea)/Kolkata (Sea) Customs, during the period between April 2003 and May 2005, were allowed concessional rate of duty under the notification, *ibid*. However, none of the importers produced the end-use certificates from the concerned central excise authorities even after the lapse of more than two years from the date of import. No extension was given to the importers. As the condition for having availed the concessional rate of duty was not fulfilled, the differential duty of Rs.7.14 crore should have been demanded by the department by enforcing the bonds, on the expiry of the prescribed period of six months from import. However, no action was initiated by the department, with the result that customs duty of Rs.7.14 crore remained un-recovered for more than two years.

This was pointed out to the department in December 2005/July 2006; their reply was awaited (December 2006).

3.2 Incorrect grant of exemption

3.2.1 As per notification No.17/2001-cus dated 1 March 2001 as amended by notification No.21/2002-cus (serial No.15) dated 1 March 2002, 'all goods other than areca nuts' falling under CTH 0802.90 are chargeable to concessional rate of duty. However, 'betel nut' is chargeable to full rate of duty. Hence, import of betel nut, which is nothing but 'areca nut', does not qualify for the benefit of the said exemption.

M/s. Esskay Exports, Jalpaiguri and 13 others imported (between February and December 2002) 50 consignments of betel nut through Mahadipur land customs station under the West Bengal (Preventive) commissionerate. The department extended benefit of the notification, *ibid* and allowed clearance of the goods at concessional rate of duty. Thus, incorrect grant of exemption resulted in loss of revenue amounting to Rs.2.09 crore.

On this being pointed out (September 2003), the department contended (April 2004, October 2005 and January 2006) that 'betel nut' and 'areca nut' were two different things. The department further contended that 'betel nut' was not known as 'areca nut' in common trade parlance and the same was classifiable on the basis of popular meaning and not the technical or scientific meaning. The contention of the department is not tenable as areca nut and betel

nut are one and the same. Betel nut, which was imported through another land customs station at Petrapole in huge quantities under the same commissionerate has been correctly classified as 'areca nut' by the department. Further, they were synonymously used in the 'Explanatory Note Vol.1' also, which is a vital reference for classification of any item imported into India.

3.2.2 In terms of paras 3.8 and 9.47 of Exim Policy 2002-07, read with notification No.54/03-cus dated 1 April 2003, import of spares, office equipment(s) furniture(s), professional equipment(s) and consumables excluding agriculture and dairy products are exempt from whole of the duty of customs, additional duty and special additional duty against a DFCEC issued to a service provider. The entitlement and goods are non transferable and are limited to average foreign exchange earned during the preceding three licensing years by the service provider.

M/s. Volvo India Pvt Ltd, Bangalore, not a DFCEC licensee, imported capital goods viz., three numbers of 'volvo hydraulic excavator' through ICD, Bangalore. The goods were cleared under notification No.28/02-cus dated 11 March 2002 with duty exemption of Rs.54.70 lakh. However, the notification No.28/02-cus was not applicable in the instant case for import of capital goods as it exempts only 'kerosene when imported by manufacturer of linear alkyl benzene for extraction of 'N paraffin'. The importer was, accordingly, liable to pay duty of Rs.54.70 lakh and interest thereon.

On this being pointed out (May/December 2005), the department stated (June 2005/March 2006) that notification No.28/02-cus was wrongly indicated in the BEs instead of notification No.54/03-cus and the goods were cleared against a valid licence furnished by M/s. Punj Lloyd Limited, a DFCEC licence holder.

The contention of the department is not tenable as in the instant case, the importer was M/s. Volvo India Pvt Ltd., not a DFCEC licensee and was accordingly not eligible for exemption under notification No.54/03-cus. Further, the import of capital goods were not permitted in the licence issued in favour of M/s. Punj Lloyd Ltd.

3.3 Incorrect application of exemption notification

In terms of para 6 (ii) of notification No.53/97-cus dated 3 June 1997, in respect of goods imported by a 100 per cent EOU, which were not proved to the satisfaction of proper officer to have been used in connection with the production or packaging of goods for export out of India or cleared for home consumption within one year from the date of import, the importer was liable to pay on demand duty 'leviable' on the imported goods and interest thereon on the said duty, from the date of duty free importation.

M/s. Balmer Lawrie and Co., Aroor, a unit under CEPZ, imported duty free raw materials through Cochin custom house required for the manufacture of 'marine freight containers' between December 1997 and October 2000 under notification, *ibid* and shifted these from the EOU premises to a public bonded warehouse in Chennai in 2001. Subsequently the goods were cleared on payment of duty prevailing on the date of clearance from the warehouse between February 2003 and December 2003. As required under para 6(ii) of the notification, *ibid*, these goods were neither used within a specified period of one year from the date of import nor was any extension for utilisation of these goods granted by the proper officer. Hence the duty prevalent on the date of import should have been demanded by the

department at the time of clearance of the goods. This resulted in short levy of Rs.2.01 crore, including interest.

This was pointed to the department/Ministry in April 2004/August 2006; their reply was awaited (December 2006).

3.4 Failure to re-export

3.4.1 In terms of notification No.27/2002-cus dated 1 March 2002, leased machinery, equipment and tools temporarily imported for use are eligible for concessional rate of duties, if they are re-exported within six months or within such extended period not exceeding one year from the date of import. In the event of failure, the importer is liable to pay the differential duty, along with interest.

Audit scrutiny revealed that M/s. Simplex Projects Limited, Kolkata imported (July 2004) one consignment of 'hydraulic vibratory hammer with accessories' and M/s. Tata Iron & Steel Company Limited, Jamshedpur imported (September 2004) one consignment of 'dual fuel gas/oil burners' through Kolkata (Sea) customs on payment of concessional rate of duties under notification, *ibid*. The importers did not re-export the goods even after expiry of one year from the date of importation. As the imported goods were not re-exported, the importer was liable to pay differential duty of Rs.30.35 lakh including interest.

On this being pointed out in July 2005, the department stated (June 2006) that the clearance was allowed after obtaining bond and bank guarantee. They further stated that a demand notice of Rs.22.04 lakh had been issued (June 2006) against M/s. Simplex Projects Limited, Kolkata since they could not produce re-export documents. Reply in other case was awaited.

The department's contention is not tenable as even though the bond and bank guarantee were furnished as per requirement of the notification, no action was taken by the department to invoke bond and bank guarantee even after the importer failed to re-export the goods within six months from the date of importation. Further, the SCN-cum demand has been issued only after being pointed out by audit. Additionally, bond and bank guarantee furnished by the importer had already expired.

3.4.2 In terms of notification No.158/95-cus dated 14 November 1995, goods which are manufactured in India and re-imported for reprocessing or refining or remaking etc. are exempt from payment of duty, subject to the condition that the goods are re-exported within six months from the date of re-importation or such extended period not exceeding a further period of six months. In the event of failure to comply with the aforesaid condition, the importer is liable to pay the duty exempted along with interest.

Five consignments of chemicals imported (June/July 2002) by M/s. Bayer Chemicals and three others through Chennai (Sea) commissionerate availing the notification, *ibid* were not re-exported till June 2006. For failure to re-export the imported goods, the importers were liable to pay a duty of Rs.13.96 lakh along with interest.

These were pointed out to the department in May and June 2005; reply was awaited (December 2006).

3.5 Other cases

In four other cases, objections were issued to the Ministry on incorrect grant of exemption involving short levy of Rs.32.47 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.	Madopar 250 tablets	Nicholas Piramal (I) Ltd.	9.82	Not admitted	--
2.	Machinery and its accessories	Mumbai Port Trust	8.24	Not admitted	--
3.	Yarn drying machine	Vinayak Fibres Ltd.	7.70	Not admitted	--
4.	Aluminium clad wire and steel core	Usha Martin Ltd.	6.71	No reply	--
	Total		32.47	--	--

CHAPTER IV : SHORT LEVY DUE TO UNDERVALUATION

4.1 Short levy due to non application of tariff value

The Central Government, by issue of notification No.36/2001-cus (NT) dated 3 August 2001 as amended by notification No.62/ 2001-cus (NT) dated 7 December 2001 had fixed the tariff value of US\$1030 per MT for imported 'brass scrap (all grades)' falling under sub-heading No.74.04 of the Customs Tariff.

Nine consignments of 'brass scrap' were imported by four importers (between December 2001 and February 2002) through the commissionerate of Customs (Preventive), West Bengal, Kolkata. The department charged duty with reference to their assessable value instead of charging duty with reference to tariff value fixed for the purpose. This resulted in undervaluation and subsequent short levy of duty of Rs.36.73 lakh.

On this being pointed out (September 2003), the department while admitting the irregularity stated (October 2005) that the field formations have been instructed to raise demand with reference to tariff value. Further progress was awaited (December 2006).

4.2 Incorrect assessment of notified commodities on the basis of RSP

Government of India had notified a list of commodities for assessment of countervailing duty on the basis of their RSP vide notification No.13/2002-CE (NT) dated 1 March 2002.

4.2.1 'Razors and razor blades' (including razor blade blanks in strips) falling under the heading 82.12 were notified for assessment of countervailing duty on the basis of their RSP.

Audit scrutiny revealed that M/s. Gillette India Ltd, Okhla Industrial Estate, New Delhi imported (April 2005) 9.34 lakh units of 'vector plus cartridge 2 push button (shaving blades)' through ICD, Tughlakabad, Delhi. The department correctly classified the imported item under CTH/CETH 82122019 but assessed the CVD on the basis of its transaction value instead of its RSP of Rs.35 per unit. Non-assessment of notified commodities on the basis of RSP by the department has resulted in short levy of duty amounting to Rs.27.41 lakh.

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

4.2.2 'Telephone sets including telephones with cordless handsets' were to be assessed on the basis of their RSP.

M/s. Bharti Teletech Ltd imported 11,900 pieces of Model No CB 53000 and 9,500 pieces of Model No CB 54000 of 'cordless phone' in October/November 2005 from Hong Kong. The department incorrectly classified and assessed them under heading 85252012 instead of under heading 85171110 'line telephone sets with cordless handsets push button type'.

Audit scrutiny revealed that the assessing authority had failed to assess the countervailing duty on these telephone instruments on the basis of their RSP. The incorrect classification and non assessment of the goods on the basis of their RSP, resulted in short levy of duty of Rs.21.91 lakh.

On this being pointed (December 2005 to March 2006), the department reported (March 2006) recovery of the entire amount.

4.3 Incorrect adoption of export freight and insurance charges

As per notification No.21/2002-cus dated 1 March 2002 (item 212 B) condition 28B, if 'zinc metal' is imported after toll smelting or toll processing, within one year from the date of export of 'zinc concentrate' out of India, duty shall be leviable as if the value of the said metal was equal to the aggregate of toll smelting (or) toll processing cost, insurance and freight charges both ways.

M/s. Hindustan Zinc Ltd exported 20732.062 MT (19171.5490 DMT) of 'zinc concentrate' on 14 May 2004 for toll smelting to South Korea and imported 7356.455 MTs zinc ingots on 23 August 2004.

The department adopted the proportionate quantity of zinc concentrate for corresponding net import of zinc instead of adopting the total exported quantity of zinc concentrate for calculation of export freight and insurance charges to arrive at the assessable value.

Thus, incorrect adoption of the quantity of zinc concentrate for calculation of export freight and insurance charges resulted in short computation of Rs.47.29 lakh in assessable value, leading to short levy of duty of Rs.16.28 lakh.

On this being pointed out (April 2006), department stated (September 2006) that audit contention that the export freight and insurance to be taken on the total quantity of 20,732.062 MT of zinc concentrate exported is not correct, for the reason that out of the total quantity exported only 16,176.921 DMT of zinc concentrate has been used in processing the zinc metal.

The reply of the department is not tenable because the notification 21/2002 actually speaks of freight and insurance charges both ways i.e., paid, payable, and pro-rata calculation is nowhere mentioned in the notification. While the importer had taken the actual freight paid for import of zinc ingots, the same procedure applies for export also.

4.4 Other cases

In three other cases, objections were issued to the Ministry on undervaluation involving short levy of Rs.20.58 lakh. The department admitted and recovered Rs.5.71 lakh in one case as per table below:

(Amount in lakh of rupees)

Sl. No.	Name of product	Name of the importers M/s.	Amount short levied	Amount admitted	Amount recovered
1.	After shave preparations	Gillette India Ltd., New Delhi	8.80	Not admitted	--
2.	Beauty soap	Tanban Commercial (P) Ltd., Siliguri	6.07	Not admitted	--
3.	Tablets, perfumes etc.	Glaxo Smithkline pharmaceuticals & two others	5.71	5.71	5.71
	Total		20.58	5.71	5.71

CHAPTER V : NON-LEVY/SHORT LEVY OF ADDITIONAL DUTY

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

Short levy of additional duties amounting to Rs.11.08 crore were reported to the Ministry, as narrated below:

5.1 Short levy of duty due to incorrect computation

Additional duties of customs were imposed on 'motor spirit (petrol)' and 'high speed diesel oil' vide section 103 read with Second Schedule to the Finance Act (No.2) 1998 (21 of 1998) and section 116 of Finance Act, 1999.

M/s. Indian Oil Corporation and 11 other importers cleared 107 consignments of Petrol and high speed diesel oil between October 2000 and May 2005 through custom house Kandla and Sikka. The goods were cleared by paying CVD on assessable value plus basic customs duty only. The additional duties levied under Finance Act 1998/1999 were not considered for the purpose of calculation of CVD. This resulted in short levy of Rs.10.76 crore.

On this being pointed out (between May 2005 and May 2006), the Kandla commissionerate reported (December 2006) recovery of Rs.6.24 crore. In respect of custom house Sikka, Jamnagar commissionerate reported (September 2006) recovery of Rs.4.07 lakh. Further progress was awaited (December 2006).

5.2 Non-levy of additional duty

As per notification No.19/2005-cus, dated 1 March 2005, goods required for manufacture of 'telecommunication grade fibre reinforced plastic rods/optical fibres', specified at serial No.84, 176 of notification No.21/2002-cus dated 1 March 2002, are liable to an additional duty at the rate of four per cent when imported into India.

Eleven consignments of 'glass roving' classifiable under CTH 7019 and two consignments of 'fibre reinforced plastic rods' (CTH 3916), imported by M/s. Aksh Opti-fibre Ltd and five others, through Jawaharlal Nehru custom house, Mumbai during September/October 2005, were assessed under serial No.84 of the notification No.21/2002 dated 1 March 2002 and cleared without levy of additional duty. This resulted in non-levy of additional duty amounting to Rs.8.82 lakh.

On this being pointed out (February 2006), the Ministry reported (October 2006) recovery of Rs.6.07 lakh in ten cases and informed that demand had since been issued in the remaining case. Further progress was awaited (December 2006).

5.3 Other cases

In three other cases, incorrect classification and non-levy of additional duty resulted in short/non-levy of additional duty of Rs.22.73 lakh. The department reported recovery of Rs.6.54 lakh (till December 2006) as per details below:

(Amount in lakh of rupees)

Sl. No.	Details of product	Irregularity	Amount short levied	Amount admitted	Amount recovered
1.	Pipette and vacuette	Incorrect classification	8.81	8.81	--
2.	Acrylated monomer	Non-levy	8.75	1.02	1.02
3.	Compact cassegrain antenna	Non-levy	5.17	5.17	5.52
	Total		22.73	15.00	6.54

CHAPTER VI : DUTY EXEMPTION SCHEME

6.1 EPCG scheme

Incorrect regularisation of EO

In terms of para 6.5(1) of Exim Policy 1997-2002, under the EPCG scheme, EO shall be fulfilled by the export of goods manufactured or produced by the use of CG imported under the scheme. It may also be fulfilled by the export of same goods, for which EPCG licence has been obtained, manufactured or produced in different manufacturing units of the licence holder/specified manufacturer/vendor. If the importer fails to discharge a minimum of 25 per cent of the export obligation prescribed for any particular year, for three consecutive years, he is liable to pay the customs duties leviable and interest from the date of clearance of the goods.

6.1.1 M/s. Balaji Hotels and Enterprises Ltd., Chennai was issued two EPCG licences in March 1997 and November 1997 for the import of 'special heat strengthened laminated glass' and 'plant and machinery' respectively to export 'miscellaneous products' for a total value of USD 2120000 and USD 4932420 within five years and to establish an international luxury hotel of approximately 275 rooms in Chennai.

These licences were fully utilised for imports during October 1998 and redeemed in June 2003 by treating the foreign exchange earned by M/s. Oberoi Hotels and Enterprises Ltd., to the extent of Rs.2.63 crore, as the earnings of the licensee(M/s. Balaji Hotels and Enterprises Ltd), under para 5.4(1) of the Exim Policy 2002-07.

Audit scrutiny revealed that, the project was suspended because the construction was abandoned midway. Thus, no foreign exchange was earned by the licensee (M/s. Balaji Hotels and Enterprises Ltd) by exporting 'miscellaneous products' as required under the licences and the reckoning of the earnings of M/s. Oberoi Hotels and Enterprises Ltd to redeem the obligation imposed on the licensee was not in order as M/s. Oberoi Hotels and Enterprises Ltd was neither a unit nor a vendor of the licensee . Accordingly, the licensee was liable to pay customs duty and interest amounting to Rs.3.78 crore.

On this being pointed out (November 2003) the RLA, Chennai, in their reply stated that para 5.4(1) of policy provided for reckoning the total foreign exchange earnings of the group hotels (M/s. Oberoi Hotels and Enterprises Ltd.) towards the EO of the licensee. The RLA also stated that the competent authority had exercised its powers under para 2.5 of the Exim policy, which provides that DGFT may in public interest, grant relaxation of the provisions of the policy or of any procedure on the ground that there is genuine hardship to the applicant or that a strict application of the policy or procedure is likely to have an adverse impact on trade.

Reply of the RLA was not tenable as:

- a) M/s. Balaji Hotels and Enterprises did not belong to the group of M/s. Oberoi Hotels and Enterprises and accordingly reckoning of earnings of M/s. Oberoi Hotels and Enterprises to discharge EO by M/s. Balaji Hotels was incorrect.
- b) Additionally the paras 2.5 and 5.4(1) of the exim policy 2002-07 was not applicable in this case as the licence was issued under Exim policy 1992-97. Further, by exercising powers under para 2.5 of the policy, no public interest is served in the instant case, rather the

projected earnings/creation of jobs had not materialised despite investment of considerable funds.

The request for relaxation of policy provisions for EPCG scheme could be considered only after consulting Policy Relaxation Committee, but no evidence of such consultation was produced to audit.

Non fulfilment of EO

In terms of para 6.11 of HBP Vol-I, if the licence holder fails to discharge a minimum of 25 per cent of the EO prescribed for any particular block of two years, for two consecutive blocks under zero duty EPCG scheme, the licensee is liable to pay forthwith the whole of duties of customs leviable on the goods imported along with interest.

6.1.2 M/s. Computerised Numerical Controls (India) Pvt Ltd was issued EPCG license in January 1999 for import of CG worth US\$334120 (equivalent to Rs.1.43 crore) against EO of US\$2004720 (Rs.8.58 crore) within a period of six years. The average exports were to be maintained at US\$273022.

Audit scrutiny revealed that the licensee imported goods worth Rs.1.55 crore during April and August 1999 but no proof of fulfilment of EO for any particular block/year even after the expiry of EO period was submitted by the licensee. Further, no extension of time limit was granted by the competent authority.

As the EO was not fulfilled the licensee was required to pay the custom duty of Rs.72.93 lakh and interest of Rs.72.01 lakh.

On this being pointed out (March 2005), the department reported that a demand for duty for Rs.72.93 lakh was issued (November 2005). Further progress was awaited (December 2006).

6.1.3 M/s. Premina Exports, Tiruppur, an EPCG licence holder imported CG for Rs.1.21crore under zero duty EPCG Scheme to export 'cotton knitted hosiery garments' for US\$2490669 and maintain an annual average export of US\$1004154. The EO period of the licence expired on 15 September 2005. The licensee utilised the licence in full but no document towards fulfilment of EO was produced by the importer till February 2006. For failure to comply with the provisions of the policy and fulfil the EO, the licensee was liable to pay customs duty of Rs.61.51 lakh on the imported machinery along with interest of Rs.55.36 lakh.

On this being pointed out (January 2006), the department issued (February 2006) SCN to the licence holder.

6.1.4 M/s. Aar Pee Colour House, Tiruppur was issued EPCG licence (July 1999) for the import of machinery for Rs.1.16 crore under zero duty EPCG scheme with the obligation to export 'cotton hosiery knitted garments' for US\$23395834 over a period of six years. The licensee utilised the licence for a value of Rs.90.48 lakh. The licence period expired on 30 June 2005. The licensee neither produced the installation certificate nor discharged the prescribed minimum export obligation for two consecutive blocks, as such he was liable to pay duty of Rs.45.96 lakh, along with interest. The department did not initiate any action to recover the duties despite failure of the licensee at both the stages.

On this being pointed out (November 2005), the JDGFT stated (March 2006) that the importer has been advised to seek regularisation under ten per cent EPCG Scheme on the grounds that the cif value of imports at Rs.90.48 lakh was less than 90 per cent of the

threshold limit. The contention of the JDGFT was incorrect as the threshold limit for zero duty EPCG scheme was Rs.1 crore, 90 per cent of which was Rs.90 lakh.

Further progress was awaited (December 2006).

6.1.5 M/s. B.N.T. Connections, Chennai was issued an EPCG licence (December 1998) for the import of CG for Rs.1.64 crore under zero duty EPCG scheme for export of 'readymade garments' for US\$1924956 over a period of six years. In addition, the licence holder was required to maintain an annual average level of export performance to the tune of US\$3627955.

Against the import of goods amounting to Rs.78.03 lakh, the licensee not only failed to fulfil the EO and maintain annual average exports but also failed to utilise the licence upto 90 per cent of the threshold limit within the validity period of the licence. As such, the licensee was liable to pay customs duty foregone amounting to Rs.21.44 lakh along with an interest of Rs.22.52 lakh.

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

6.2 Advance licensing scheme

In terms of para 7.28 HBP Vol-I (1997-2002), if EO is not fulfilled both in terms of quantity and value, the licence holder of the advance licence shall for regularisation, pay to the customs authority, customs duty on the unutilised imported material along with interest thereon and to the licensing authority, a sum in rupees which is equivalent to the cif value of the unutilised imported materials; and a sum in rupees equivalent to the shortfall in EO. In addition, the licensee was also liable to penalty in terms of section 11(2) of FT (D&R) Act, 1992.

6.2.1 An advance licence was issued (February 2001) to M/s. Mahindra Ashtech Ltd. Mumbai by DGFT Mumbai with cif value of Rs.3.01 crore and fob value of Rs.3.52 crore. The licensee imported goods worth Rs.2.78 crore during February 2001 to April 2001 but failed to produce evidence for exports made even after the lapse of three and a half years from September 2002 (last date for completion of EO). The custom duties foregone amounting to Rs.1.33 crore along with interest of Rs.1.03 crore were recoverable from the licensee for non fulfilment of EO. No action was taken either by the customs department or by the licensing authority to recover the dues.

On this being pointed out (June 2006), the licensing authority issued (September 2006) a demand notice and the customs department stated (June 2006) that the matter was being pursued. Further progress was awaited (December 2006).

6.2.2 A QBAL was issued to M/s. Modesty Garments in December 2000 to export goods worth Rs.93.75 lakh. Against import of goods valued at Rs.1.57 crore during December 2000 to December 2001, the licensee failed to export any goods during validity of the licence (upto June 2002). As such the licensee was liable to pay custom duty amounting to Rs.1.14 crore along with interest of Rs.94.37 lakh. No action was taken by the customs department or by the licensing authority to recover the dues.

On this being pointed out (June 2006), the customs department stated (June 2006) that the matter was being pursued. Reply from the licensing authority was awaited (December 2006).

6.2.3 An advance licence was issued (October 2002) by JDGFT, Jaipur to M/s. Alcobex Metals Ltd., Jodhpur for import of 550.45 MT of 'cupro-nickel scrap' (cif of Rs.6.32 crore) against fulfilment of EO of 505 MT of 'cupro-nickel tubes' (fob of Rs.7.21 crore). Against the imports of 562.285 MT of raw material, the licensee exported 352.363 MT of the finished product upto expiry of the EO period (April 2004). Thus, there was a shortfall of EO of 152.637 MT involving excess utilisation of 166.37 MT of the imported goods on which duty foregone amounting to Rs.55.58 lakh and interest of Rs.21.86 lakh beside penalty of Rs.6.67 lakh was recoverable.

On this being pointed out (December 2004/April 2005), the Ministry stated (October 2006) that the DGFT, New Delhi has granted extension in EO period upto 18 April 2006. Further progress was awaited (December 2006).

6.2.4 A QBAL was issued to M/s. Toshniwal Exports Ltd. by DGFT, Mumbai on the basis of self declaration norms in January 2002 for import of three different raw materials to export 1,33,334 kg of '2 methoxy 4 nitro aniline (fast red B base)'. The EO was to be fulfilled within extended period (January 2004). The Advance Licensing Committee (ALC), however, fixed the input norms in February 2003 and accordingly the quantity of import of raw materials was reduced.

Audit scrutiny revealed that against import of inputs as per self declared norms the licensee exported only 87460 kg of the final product till the expiry of EO period, resulting in short fulfilment of EO. Due to short fulfilment of EO and excess import of raw materials the licensee was required to pay customs duty of Rs.36.36 lakh and interest thereon.

On this being pointed out (October 2005), the department issued refusal order (September 2006) for further issue of new licences. Further progress was awaited (December 2006).

6.2.5 M/s. Sudershan Laboratories Ltd, Secunderabad was issued (May 2002) an advance license with cif value of Rs.51.50 lakh and EO to export 5000 Kg of 'ciprofloxacin hydrochloride base', valued at Rs.68.91 lakh. Audit scrutiny revealed that against the imports of raw material for Rs.44.27 lakh, the licensee could not make any exports within the validity period of the license. As such the licensee was liable to pay duty saved amounting to Rs.18.27 lakh and interest of Rs.7.54 lakh.

On this being pointed out (October 2005), the department stated (October 2005) that action would be taken. Further progress was awaited (December 2006).

6.2.6 An advance licence was issued (November 2001) to M/s. Vorin Laboratories Ltd, by licensing authority at Hyderabad for cif value Rs.1.78 crore to import 480 Kgs of '2.3-didehydro- 3 deoxy thymidine' to export 400 kgs of 'stavudine' valued at Rs.2.37 crore within 18 months from the date of issue of licence. The quantity allowed to be imported was 1.2 kg for every 1 kg of export product subject to final fixation of input output norms by the ALC, New Delhi. The licensee imported 300 kgs of raw material.

The ALC fixed (March 2002) norms as per which the licensee was eligible to import only 1.10 kg of '2.3 didehydro 3- deoxy thymidine' for 1 kg of export product 'stavudine'. The licence was revalidated and EO period extended first upto May 2004 and further up to July 2004. Audit scrutiny revealed that the licensee exported only 163 kgs of export product 'stavudine' upto July 2004, as such was eligible to import only 179.3 kgs (163x 1.1) of '2.3 didehydro 3- deoxy thymidine' as per the norms fixed by ALC, as against the actual import

of 300 kgs. As such, the licensee was liable to pay the customs duty of Rs.28.42 lakh on excess imports made together with interest of Rs.18.47 lakh.

On this being pointed out (October 2005), the department stated that action would be taken. Further progress was awaited (December 2006).

6.3 Non achievement of positive NFEP

In terms of para 6.22 of the Exim Policy read with Appendix-14 E, HBP Vol.I 2002-07, the guidelines for monitoring the performance of EOU/STP units, if at the end of the third or subsequent year, NFEP/EP is not achieved, SCN will be issued. Action is required to be taken for cancellation of LOP/LOA on units, which are not operating for more than one year. Further, in terms of notification No.52/2003-cus dated 31 March 2003, in case of failure of NFEP, duty along with interest is leviable on the duty free imports, in proportion to the unachieved portion of NFEP.

M/s. Techna Digital Services Private Limited, Kolkata was granted a LOP for operating as a STP unit in April 1994 and on completion of two terms, its LOP was renewed for a third term in June 2002. During the third term, the unit imported (July 2002 to October 2003) computer hardware and software of Rs.3.06 crore and Rs.5.05 crore respectively and exported (September 2002 to December 2003) software with foreign exchange realisation of Rs.3.40 crore. Thereafter, the unit seized operations. The cumulative NFEP of the unit was 16 per cent during 2002-03, (-) 71 per cent during 2003-04 and (-) 89 per cent during 2004-05. Thus, as per policy provisions and governing customs notifications, due to failure to achieve positive NFEP as well as due to failure to remain operational for more than one year, the LOP/LOA was liable to be cancelled and duty and interest on the imported CG recovered. However, the STP authorities as well as the customs authority failed to initiate any action against the non-performing unit for realisation of duty and interest amounting to Rs.63.40 lakh.

On this being pointed out (January 2006), the department stated (September 2006) that SCN cum demand notice has since been issued.

Further progress was awaited (December 2006).

6.4 Non imposition of late cut on DFRC licences

In terms of para 4.34 of HBP Vol-I, 2002-07, the application for DFRC shall be filed within six months from the date of realisation reckoned from the last date of realisation, in respect of shipments/supply for which DFRC is being claimed. Para 9.3 of the HBP further provides that wherever any application is received after the expiry of the last date for submission of such application but within six months from the last date, such application may be considered after imposing a late cut at the rate of ten per cent on entitlement.

Scrutiny of records of the JDGFT, Jaipur, revealed that in 15 cases, applications involving cif value (entitlement) of Rs.6.41 crore were received after the expiry of prescribed date of receipt but within six months of such dates. DFRC licences were issued without imposing late cut of Rs.64.13 lakh on entitlement.

This was pointed to the department in May/June 2005, their reply was awaited (December 2006).

6.5 Irregular grant of exemption under DEPB scheme

In terms of para 4.42 of the HBP Vol-I (2002-2007) valid up to 31 August 2004, credit under DEPB may be utilised for payment of customs duty on any item, which is freely importable except CG. However, with its replacement by a New Foreign Trade Policy with effect from 01 September 2004, the restriction of importation of CG through the DEPB scheme was withdrawn. Thus, importation of CG through DEPB licence issued prior to 01 September 2004 is not permissible. Further, as per definition under para 9.10 of the HBP Vol-I (2002-2007), CG means 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 up gradation or expansion.

M/s. National Aluminium Company Limited, Bhubaneswar imported 'computer systems, communication systems and maintenance equipments' etc. through Kolkata (Air) customs. These goods were cleared from a warehouse in December 2004 by debiting customs duty from DEPB licence issued on 31 May 2004 under notification No.34/97-cus dated 7 April 1997. The imported goods are CG in terms of para 9.10 of the ibid HBP, since they are to be used either directly or indirectly for production of goods. Thus, grant of exemption amounting to Rs.39.62 lakh under DEPB licence, issued prior to 01 September 2004, was irregular.

This was pointed to the department in August 2005; their reply was awaited (December 2006).

6.6 Other cases

In 21 other cases of non fulfilment of EO, irregular clearance of goods etc., short levy of Rs.1.65 crore alongwith interest of Rs.50.52 lakh were pointed out as per table below. Department/Ministry admitted objections in 12 cases.

(Amount in lakh of rupees)

Sl. No.	Irregularity	Name of the importers/exporters (M/s.)	Commissionerate	Amount objected	Interest	Whether accepted
1.	Irregular clearance of goods	Sandip Exports Ltd.	Chennai	19.50	--	No
2.	Non fulfilment of EO	Sai Ramana Rice Industries	Hyderabad	9.26	9.37	Yes
3.	Non fulfilment of EO	Sharp Industries	Mumbai	8.87	8.53	Yes
4.	Non fulfilment of annual average export	Vidyasagar Textile Ltd.	Coimbatore	8.41	7.15	Yes
5.	Irregular availment of DFSEC certificate	Price Waterhouse, Kolkata & another	Kolkata	12.45	1.68	Yes
6.	Non fulfilment of EO	The National Leather Cloth Manufacturing Co.	Mumbai	7.79	4.97	Yes

7.	Irregular availment of DFSEC certificate	OHI, Kolkata & four others	Kolkata	12.65	--	No reply
8.	Incorrect exemptions under DEPB scheme	SAIL, Rourkela	Kolkata	12.08	--	No reply
9.	Incorrect exemptions under DEPB scheme	Veejay Impex	Kolkata	11.82	--	Yes
10.	Excess import of raw material	EMI Transmission Ltd.	Mumbai	6.33	3.01	Yes
11.	Non fulfilment of EO	Jyoti General Industries Ltd. & another	Jaipur	4.46	3.86	Yes
12.	Non fulfilment of EO	Ganesh Anhydride Ltd.	Mumbai	5.01	3.13	No reply
13.	Non fulfilment of EO	Palak Metals	Rajkot	5.42	2.33	Yes
14.	Excess imports	Roots Multiclean & another	Coimbatore & Chennai	4.87	2.59	No reply
15.	Non imposition of late cut on DFRC	Ralco Exports	Ludhiana	6.63	--	Yes
16.	Excess imports	Alcobex Metals Ltd.	Jaipur	4.49	1.78	No reply
17.	Excess credit	Yeshas Exports & another	Bangalore	3.96	2.12	Yes
18.	Incorrect grant of DEBP	KPR Spinning Mills & another	Coimbatore & Chennai	5.40	--	Yes
19.	Excess credit	MRF Ltd. & others	Chennai	5.08	--	No reply
20.	Incorrect grant of DEPB	Paramount Mills (P) Ltd.	Madurai	5.05	--	No reply
21.	Excess credit	MRF Ltd., Chennai	Chennai	5.00	--	No
	Total			164.53	50.52	

CHAPTER VII : OTHER TOPICS OF INTEREST

7.1 Non disposal/delay in disposal of warehoused goods

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 warehousing period, the removal of such goods should be treated as ‘improper removal’ and the rate of customs duty payable should be at the rate applicable on the date on which the permitted warehousing period came to an end”. Further, as per the CEGAT’s decision in the case of M/s. KPJ Plastics Ltd versus the Commissioner of Customs, Chennai {2000 (117) ELT 108 (Tribunal)}, benefit of concessional rate of duty under DEEC Scheme is not admissible in respect of goods improperly removed at a later date.

7.1.1 M/s. Craftech Numerics Private Ltd, Noida warehoused four consignments of alloy steel inserts on 23 August 2002 and one consignment on 10 September 2002 and the period of warehousing for these consignments expired on 22 August 2003 and 9 September 2003 respectively. The importer did not clear the goods within this validity period of warehousing nor did he apply for any extension of the warehousing period. The department allowed clearance of the goods under DEEC issued on 28 March 2005, without levying any duty. The action of the department was irregular in terms of both judicial pronouncements and section 72 of Customs Act, 1962. The improper removal of the goods as well as incorrect extension of DEEC benefit resulted in loss of customs duty of Rs.1.87 crore, including interest.

This was pointed to the Ministry (August 2006); their reply was awaited (December 2006).

7.1.2 Scrutiny of the records of an importer in Central Excise commissionerate-I, Jaipur revealed that he had imported ‘FAG bearings’ and deposited these in warehouse (within the factory premises of the importer). Warehousing period of the goods expired on 30 November 2001. Extension of warehousing period was rejected by the competent authority in March 2002. The said goods, however, were removed from the warehouse on 20 August 2004 on payment of duty at lower rates prevailing on the date of clearance, instead of duty prevalent on the date of expiry of the warehousing period in terms of judicial pronouncement of the Supreme Court. This resulted in short levy of duty Rs.24.83 lakh including interest.

On this being pointed out (November 2005), the Ministry stated (September 2006) that the importer had since deposited the entire amount short levied.

7.1.3 In terms of section 61(b) of Customs Act, 1962, goods may be kept in the warehouse in which they are deposited for a period of one year or such extended period as the Commissioner or the Chief Commissioner of Customs may allow. If the warehoused goods are not removed within the prescribed period, the proper officer has to demand full amount of duty chargeable on such goods together with all penalty, rent, interest and other charges payable in respect of the goods and the importer shall pay the demanded amount and clear the goods. In case of failure to pay the amount demanded, the importer is liable for recovery action under section 142 of Customs Act. Besides, as per the provisions of section 72 of Customs Act, the Assistant Commissioner/Deputy Commissioner of Customs is required to immediately proceed to detain the goods and take action for recovery of duty by auctioning the goods.

Audit scrutiny of records of ICD, Sanathnagar, revealed that in respect of 12 into bonds, warehoused goods valued at Rs.68.67 crore, involving duty amount of Rs.1.33 crore were not

cleared even after expiry of a period of one year. In all these cases, no extensions of warehousing period were sought by the importer. No action was initiated by the department to demand duty under the provisions of section 72 of Customs Act.

On this being pointed out (December 2004/February/April 2005), the department stated (August 2005), that only in respect of two into bonds, the goods were lying uncleared beyond one year and in respect of other ten into bonds, the goods were actually cleared though entries of ex-bond were not made in the registers by the time audit took place, which have since been made. The reply is not based on facts, as on subsequent verification, it was found that entries in support of the clearances, were not made against the respective items as of June 2006 nor were the ex-bond bills of entry numbers furnished to audit.

7.2 Non-levy of interest on delayed clearance of warehoused goods

In accordance with section 61 (2) (ii) of the Customs Act 1962, goods remaining in a warehouse beyond a period of 90 days attract interest at the specified rates on the amount of duty payable at the time of clearance.

7.2.1 M/s. Ellen Barrie Exim Limited, Kolkata imported 15 consignments of 'non-alloy steel wire rod' through the Kolkata Sea Customs and warehoused them between June and October 2005.

Audit scrutiny revealed that after expiry of 90 days from the date of warehousing, the department allowed the importer to clear the goods by debiting a portion of duty from DFCEC and collecting the balance amount of duty in cash. However, the department charged interest only on the portion of duty that was paid in cash and it did not charge any interest on the amount of duty debited to the DFCEC. As interest was chargeable on the total amount of duty payable as per sub-section 2 (ii) of section 61 of Custom Act, 1962, this resulted in non-levy of interest of Rs.36.26 lakh.

This was pointed to the department during February to May 2006; their reply was awaited (December 2006).

7.2.2 Thirty five consignments of 'crude palm oil' etc. imported by M/s. SSD Oil Mills, Chennai and 12 others were cleared under DEPB from a warehouse in Chennai (Sea) commissionerate, during the period from January 2003 to June 2003 and from March 2005 to June 2005 after the expiry of 90 days, without levy of interest of Rs.26.51 lakh.

On this being pointed out (July 2003 to November 2003 and August 2005 to December 2005), the department stated (December 2005) that for the clearances made between January 2003 and June 2003, demand notices have since been issued in all the cases, except where these were time barred. For the clearances made between March 2005 and June 2005, they stated that the High Court of Chennai passed an interim injunction in September 2005.

7.3 Non-levy NCCD on imports

As per section 134 of Finance Act 2003, NCCD is leviable on import of 'crude oil' classifiable under CTH 27.09.

Audit scrutiny revealed that NCCD was not collected on 201919.252 MT of crude oil imported by M/s. Kochi Refineries Ltd. during July 2003 to January 2004 under DEEC Scheme. This resulted in short levy of customs duty of Rs.1.35 crore including interest.

On this being pointed out (January 2005), the department intimated (April 2006) recovery of Rs.1.30 crore. Recovery of interest amount was awaited (December 2006).

7.4 Non disposal of seized goods

In terms of section 110 (1A) of the Customs Act, 1962 and notifications issued thereunder, Central Government is empowered to dispose of specified goods, soon after their seizure having regard to their perishable or valuable nature and depreciation in their value with the passage of time. Seized medicine is a scheduled item of perishable nature and warrants immediate disposal.

Eight consignments of medicines seized between September 2003 and April 2004 by the Aurangabad Customs Preventive Unit of the Krishnanagar Customs Division, under the commissionerate of Customs (Preventive), West Bengal were not disposed of after their seizure and these goods had expired/damaged due to prolonged storage. This resulted in loss of Rs.76.85 lakh.

This was pointed to the department in December 2005; their reply was awaited (December 2006).

7.5 Non finalisation of provisional assessment

According to CBEC manual, it is to be ensured that most of the cases of provisional assessments are finalised within six months of the date of provisional assessment including those subject to test report.

Audit scrutiny of the records of ACC, Gujarat Pipavav Port Limited (GPPL) revealed (March 2004) that a consignment of 8000 MT of coking coal imported by M/s. Maa Bhagwati Coke (Gujarat), Pvt. Ltd., in January 2003 was provisionally assessed on 30 January 2003 and cleared at concessional rate of duty under the notification No.21/2002-cus dated 1 March 2002. Though test result was received in April 2003, no action was taken by the department to finalise the provisional assessment and recover differential duty of Rs.23.61 lakh including interest.

On this being pointed out (October 2004), the Ministry stated (November 2006) that a demand for Rs.23.61 lakh has since been confirmed. The importer preferred an appeal against the adjudication order before Commissioner(Appeals), who had remanded the case for de novo adjudication, which was awaited (December 2006).

7.6 Short collection of cost recovery charges

CBEC Circular No.128/95-cus dated 14 December 1995, while formulating guidelines for appointment of custodians of ICD/CFS, clarified that the custodian would bear the cost of customs staff posted at ICD/CFS. As per Ministry of Finance letter dated 1 April 1991, cost of officer's post is fixed at 1.85 times of monthly average cost of the post, plus DA, CCA, HRA etc. As per provisions contained in clause 10 of the circular, *ibid*, the Commissioner of Customs shall decide the number of officials required to be posted at ICD/CFS considering the work load in the station.

7.6.1 The department deployed 16 AOs/superintendents and four examining officers/POs in excess of sanctioned strength during the period from 1 April 2005 to 31 March 2006 to the CFS {M/s. Gateway Distri Park Ltd and M/s. Punjab Warehousing Corporation}. However cost recovery charges for these excess staff were not recovered from the CFS. This resulted in short collection of cost recovery charges of Rs.98.49 lakh.

On this being pointed out (June 2006), the department stated (July 2006) that there is no excess deployment and these staff are working on diversion basis only to cope with the increase of work load. The reply of the department is not tenable because these staff were actually posted and working in the CFS to cope up with the work load. As such cost of charges was to be recovered as per clause 10 of CBEC circular of December 1995.

7.6.2 Audit scrutiny of records of ICD, Ballabgarh (Faridabad) under the control of Commissioner of Central Excise, Delhi IV, Faridabad revealed that customs department posted 17 officers/officials against sanctioned strength of 13 at the ICD Faridabad during 2003-04 and 2004-05. Against cost recovery charges of Rs.1.04 crore, M/s. Associated Container Technical Limited (ACTL), Faridabad (Custodians) paid Rs.72.18 lakh in respect of 13 sanctioned staff instead of 17 actually posted at ICD, Faridabad. This resulted in short recovery of cost recovery charges of Rs.31.34 lakh.

On this being pointed out (March 2005), the Deputy Commissioner of Customs, ICD Faridabad stated (March and May 2006) that the proposal for creating continuation of posts on cost recovery basis for additional staff posted due to increase in work load at ICD Faridabad had been sent to Ministry for approval in December 2005. Custodians cannot be insisted upon to pay the charges for all the present staff unless sanction of the present strength is approved by the Board.

Further progress was awaited (December 2006).

7.7 Non-levy of anti-dumping duty

As per section 9A of the Customs Tariff Act, 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 'citric acid mono, ceramic tiles, synthetic rubber,' etc. from time to time.

Audit scrutiny revealed that 125 consignments of above articles imported by 52 importers were cleared without levying/short levying anti dumping duty. This resulted in short levy of anti dumping duty of Rs.3.49 crore.

On this being pointed out (December 2003 to June 2006), the Ministry/deparment admitted short levy of Rs.2.03 crore in 64 consignments and reported recovery of Rs.1.17 crore in 40 cases.

7.8 Excess payment of drawback

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 13 cases, where excess payment of drawback amounting to Rs.6.16 crore had

been pointed out, the department admitted the facts in eight cases and reported recovery of Rs.44.47 lakh in six cases.

7.9 Other cases

Of 18 cases, which audit pointed out involving short levy of duty of Rs.1.63 crore as detailed below, the department accepted objections in ten cases involving duty effect of Rs.1.01 crore and reported recovery of Rs.56.98 lakh in seven cases.

(Amount in lakh of rupees)

Sl. No.	Subject	Importer/exporter M/s.	Amount objected	Amount admitted	Amount recovered
1.	Irregular clearance of warehoused goods	Manaksia Ltd.	19.13	19.13	--
2.	Non-levy of duty	Cairn Energy (I) Pvt. Ltd.	13.00	13.00	13.00
3.	Non-levy of education cess	Bharti Cellular Ltd.	11.90	11.90	11.90
4.	Short recovery of establishment charges	Concor & another	11.86	11.86	11.86
5.	Short recovery of establishment charges	Cochin Shipyard Ltd.	11.18	11.18	6.35
6.	Non-levy of cess	Dainik Bhaskar & 27 others	10.45	Not admitted	--
7.	Short recovery of establishment charges	All Cargo Movers (I) Ltd.	9.47	Not admitted	--
8.	Short recovery of establishment charges	Balmer and Lawrie	9.47	Not admitted	--
9.	Non-levy of interest	Cargill India (P) Ltd.	7.77	7.77	7.77
10.	Non-levy of special excise duty	Spic Net Ltd & another	7.51	Not admitted	--
11.	Non-levy of education cess	Star Pipe Products (I) Pvt. Ltd. & eight others	7.50	7.50	0.33
12.	Incorrect adoption of foreign exchange rates	Shiva Impex & another	7.44	7.44	--
13.	Non-levy of cess	Dainik Bhaskar & 15 others	6.54	Not admitted	--
14.	Non-levy on short landed goods	Krishna Clearing Agency & another	6.40	Not admitted	--
15.	Short recovery of establishment charges	Commissioner of Customs (General), Mumbai	6.12	Not admitted	--
16.	Short recovery of establishment charges	Krishna Enterprises	5.78	5.78	--
17.	Incorrect application of tariff rates	Sachdeva Steel Products & others	5.77	5.77	5.77
18.	Incorrect application of rate of duty	Kesoram Industries Ltd.	5.29	No reply	--
	Total		162.58	101.33	56.98

7.10 Miscellaneous

One hundred and thirty eight other cases involving duty of Rs.27.01 lakh were also pointed out. The department has accepted all the objections and reported recovery of Rs.25.33 lakh.