

CHAPTER I: PROVISIONAL ASSESSMENT

1.1 Highlights

➤ Assessable value involved in provisionally assessed cases in 25 commissionerates represented 31 percent of entire assessments. Number of provisional assessments as well as their bond value increased year after year and finalisation of provisional assessment cases did not keep pace with fresh receipts leading to more than doubling of cases from 2001 to 2004.

(Paragraphs 1.4.1 and 1.4.2)

➤ Age analysis of 44,169 cases with bond value of Rs.83,924 crore as on 31 December 2004 revealed pendency of 77 percent for more than a year and 23 percent for more than three years.

(Paragraph 1.4.3)

➤ Non obtaining of security deposit from importers in violation of Customs (Provisional Assessment) Regulations, 1963 in 569 non valuation cases amounted to Rs.1,521.24 crore. Non recovery of extra duty deposit of Rs.28.18 crore in 754 cases involving valuation dispute was also noticed.

(Paragraphs 1.5.6 and 1.6.1)

➤ Non compliance of Customs Valuation Rules, 1988 in 525 cases resulted in non/short levy of duty amounting to Rs.395.12 crore.

(Paragraph 1.6.2)

➤ Failure to follow clear instructions to not resort to provisional assessment in cases of misdeclaration, short landing etc. or to assess goods on higher assessable value resulted in postponement of duty amount of Rs.6.49 crore in 126 cases.

(Paragraph 1.6.3)

➤ Twenty five unfinalised cases of project imports on account of non/delayed submission of requisite documents within prescribed period in accordance with Project Import Regulations, 1986, involved non realisation of customs duty of Rs.70.15 crore.

(Paragraph 1.7.2)

➤ Despite submission of relevant documents for finalisation of provisional assessment, 79 cases involving bond value of Rs.10.95 crore remained un-finalised for six months to six and a half years.

(Paragraph 1.7.3)

➤ Of demand notices for Rs.34.89 crore issued in 575 cases, department was able to recover only Rs.1.20 crore in four cases.

(Paragraph 1.7.4)

➤ **Improper maintenance of records and lack of internal control mechanism causing incorrect reporting of pendency by commissionerates to Board, as well as inconsistency in data of assessment group and special valuation branch/special intelligence and investigation branch (SVB/SIIB) along with ineffective electronic data interchange (EDI) system was in evidence.**

(Paragraphs 1.8.1 and 1.8.3)

1.2 Introduction

Entry and exit of carriers, vessels, crafts, goods, passengers, etc., is regulated by statutory provisions of Customs Act, 1962. Goods are imported or exported to/from India through sea, air or land, through post, parcel or as baggage with passengers. Once declaration is submitted in the prescribed form (bill of entry or shipping bill) containing relevant information with documents, duty leviable on imported goods or export goods, if any, is assessed by customs officer. Sometimes, it may however not be possible to assess duty due to non-availability of some relevant information or document or due to any other reason. Withholding clearance of goods in such cases may cause hardship to importers by way of payment of demurrage, detention charges, disturbance in production schedule and other financial losses. Similarly in exports, delay in clearance may cause cancellation of export order, increase in interest liability and other financial losses. To meet such exigencies, provisions have been made in section 18 of the Act *ibid* to assess duty provisionally and allow clearance of goods by taking bond with appropriate security.

Procedures to be adopted for provisional assessments are detailed in Customs (Provisional Duty Assessment) Regulations, 1963. Accordingly, the proper officer is to estimate duty likely to be levied on goods. Importer is to execute bond binding himself to produce such further information required by the department within one month or within extended period as proper officer may allow and to pay up deficiencies of duty, if any, between provisionally assessed amount and final amount of duty determined or be eligible for refund as apt. Bond should be for a sum equal to difference between provisional duty amount and final duty payable with such surety or security or both (i.e. such sum not exceeding 20 percent of provisional duty) as the proper officer deems fit. Normally requirement of surety and or security is dispensed with in respect of government departments and government undertakings.

In case of warehoused goods, the proper officer may, where duty finally assessed is in excess of duty provisionally assessed, require importer to execute bond, for a sum twice the amount of excess duty.

1.3 Audit objectives

Audit findings from an earlier review on 'provisional assessments' were reported in Audit Report No.4 of 1992. The current review covers three years i.e. 2001-02, 2002-03 and 2003-04 and is based on test check of 40,697 cases of ¹bond value of Rs.1,30,160 crore. Records of 26 customs commissionerates out of 35 were examined in audit with objective of seeking assurance that:-

¹ Bond value of test checked cases exceeded bond value of current cases due to inclusion of pendency of more than three years in Jamnagar and Kolkata (port) commissionerate.

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- (a) there was compliance to rules, regulations and procedure framed under Customs Act 1962, Customs (Provisional Duty Assessment) Regulations, 1963 and Appraising Manual.
- (b) provisional assessments had been finalised without undue delay and without causing loss of revenue to exchequer and
- (c) internal controls and monitoring mechanism were in place to ensure check on misuse of the facility.

1.4 Trend analysis**1.4.1 Total assessment vis a vis provisional assessment of 25 commissionerates as on 31 March 2004**

(Amount in crore of rupees)

Year	Total No. of bills of entry presented & assessed		Bills of entry assessed provisionally		
	No.	Assessable Value	No.	Assessable Value	Bond Value
2001-02	926164	180024	31592	61365	23802
2002-03	1314035	267422	44638	75690	31948
2003-04	1359076	278959	49913	88555	38752
Total	3599275	726405	126143	225610	94502

1. In most of the cases bonds were for assessable value instead of differential duty.
2. Ahmedabad, Jamnagar, Kolkata (port) and Kandla – Data furnished by commissionerates was incomplete and mismatched. Data provided by units/computed by audit was adopted.
3. CC (I&G Delhi) – Data compiled by audit on basis of information supplied by groups/EDI branch.
4. Chennai (sea) - Bond value is only for B/E through EDI system since manual figures were not available.
5. Data of NCH Mumbai not furnished by department.

Above table reveals that though in terms of number, cases assessed provisionally were 3.5 percent of total assessment made, assessable value involved therein was around 31 percent of entire assessments. In Jamnagar, Mangalore and Visakhapatnam, however percentage of provisionally assessed cases was as high as 74, 60 and 38, while value involved therein was 97, 85 and 56 percent (approx) respectively. Ministry admitted the position with reference to Kolkata custom house and stated (November 2005) that in most ports like Jamnagar, Mangalore and Vishakhapatnam, bulk cargo of coal, fertilisers and oil are imported on provisional assessment for want of draft survey report, test report etc.

1.4.2 Cases provisionally assessed vis a vis finalised in 24 commissionerates as on 31 March 2004.

(Amount in crore of rupees)

Year	Cases provisionally assessed		Cases finalised	
	No.	Bond value	No.	Bond Value
Cases as on 1 April 2001	14782	50388	-	-
2001-02	18375	24269	18242	11099
2002-03	27019	32125	17024	5297
2003-04	30005	38250	16866	23830
Total	90181	145032	52132	40226
*Closing balance	47035	86088		

*According to data compiled from figures furnished by department, pendency should be 38,049 whereas this is reported as 47,035 and bond value therefore comes to Rs1,04,806 crore against Rs.86,088 crore reported. Data of NCH and ACC Mumbai not furnished by department.

Aforesaid table reveals increasing number of provisionally assessed cases as well as their bond value in the three year span. Also number of finalised cases had been decreasing in those years. Closing balance of 47,035 cases as on 31 March 2004 against opening balance of 14,782 cases revealed that pace of finalisation was slow resulting in more than doubling of pendency during the period of three years with corresponding increase in bond value by Rs.35,700 crore. Moreover, data of 15 out of 24 commissionerates was mismatched and arithmetically inaccurate resulting in un-reconciled status of 8,986 cases reported as pending and under reporting of Rs.18,718 crore bond value. Ministry admitted (November 2005) slow pace of finalisation in Kolkata custom house.

1.4.3 Age-analysis of pendency in 23 commissionerates as on 31 December 2004

(Amount in crore of rupees)		
Pendency	No of cases	Bond value
Over 5 years	2939	3123
Over 4 year and below 5 year	2821	13197
Over 3 year and below 4 year	4706	19049
Over 2 year and below 3 year	9175	13493
Over 1 year and below 2 year	14423	22560
Below 1 year	10105	12502
Total	44169	83924

Data of NCH, ACC Mumbai and Visakhapatnam not furnished by the department. Kolkata (port) data computed by audit.

Analysis of pendency reveals finalisation of only 2,866 cases (47,035 - 44,169) during nine months period. Seventy seven percent were pending for more than one year and 23 percent were pending for more than three years. Ministry stated (November 2005) that special drive had been launched to finalise assessment in import and general (I and G) commissionerate New Delhi to improve clearance. Bangalore's slow pace of finalisation/age wise pendency was admitted.

Major audit findings are contained in the succeeding paragraphs.

1.5 Inconsistencies in execution of bonds/bank guarantee (BG)

1.5.1 Improper execution of provisional duty (PD) bonds

Para 3 (x) of Chapter-I of Appraising Manual, Vol.II. provided that importer or exporter, claiming provisional assessment, was required to execute bond for difference between duty that might be finally assessed and provisional duty. Further, para 3 (A)(2) of Chapter-2, Part-VI of the manual ibid stipulated that amount of bond not be inflated unnecessarily.

Scrutiny of records in 20 commissionerates revealed that PD bonds were taken largely for full assessable value instead of for possible differential duty, while in some other cases bonds executed were for full duty amount payable for imported goods. In Ahmedabad, Jamnagar and Kandla in 11,410 cases of bond value of Rs.27,525 crore, bonds were obtained for an amount equivalent to duty assessed or for assessable value.

In air cargo complex (ACC) Bangalore, 29 bonds had been registered as "dummy bonds" for amounts ranging from Rs.1 to Rs.3.7 lakh and in Delhi I and G, inland container depot and

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Tughlakabad (ICD and TKD) commissionerates, bonds for token amount of Rs.1/Rs.10 in four cases had no link with differential duty. Reasons for executing such type of bond, which were not provided in the rules, were not on record.

Ministry stated (November 2005) that dummy bonds were executed to satisfy the requirement of EDI system which had since been cancelled and PD bonds were taken for full assessable value to adequately safeguard revenue in absence of any other quantifiable and viable method prescribed under law and further stated that instructions of Board were being reiterated. Reply however did not contain options of new quantifiable and viable methods to be adopted during provisional assessments. Reply is not tenable as practice followed is violative of provisions of Appraising Manual and Customs (Provisional Duty Assessment) Regulation 1963.

1.5.2 Non revalidation of PD bonds/BG

According to rule 2 of Customs (Provisional Duty Assessment) Regulation 1963, importer is to execute provisional duty bonds binding himself to pay deficiencies of duty, if any, between provisionally assessed duty and finally assessed duty amount. PD bonds/BGs executed were valid only for the period mentioned therein unless renewed within validity period.

Following was the data furnished by 19 commissionerates for bond and BG obtained in provisional assessment cases upto March 2004.

(Amount in crore of rupees)

Year	No of cases	Bond value	No. of cases	BG value
2001-02	15389	21842	1327	41
2002-03	15455	27469	1602	49
2003-04	16988	30509	2323	40
Total	47832	79820	5252	130

Data of NCH, ACC Mumbai, Chennai (sea and air), Tuticorin, Trichy and Coimbatore not furnished by department. Kolkata (Port) data computed by audit.

Audit scrutiny revealed that 2,522 bonds and 331 BGs executed by importers in 14 commissionerates for Rs.74,120.96 crore and Rs.20.49 crore respectively had already expired between January 1997 and March 2005 and were not renewed. Non initiation of action to revalidate bonds and renew BGs defeated their purpose of safeguarding differential duty. Bond value not safeguarded represented 93 percent of total bond value obtained in these 19 commissionerates.

Ministry admitted the facts for Kolkata (port) and stated that BGs were being strictly monitored. At present BGs are being accepted with self renewal clauses.

Illustrative cases are narrated below:-

M/s. Indian Oil Corporation (IOC Jamnagar) executed 467 continuity bonds for Rs.26,838.33 crore between August 2002 and August 2003 for import of crude oil during 1998-1999 and 2003-2004. M/s. Reliance Industry Ltd. executed continuity bonds worth Rs.5,450 crore between August 2000 and April 2003 for import made during August 2000 to March 2004. As per Para 15 (2) of Chapter-I, Appraising Manual Vol.-II, continuity bonds were valid for calendar year in which they were executed but those with specified validity

period were not revalidated on their expiry. Department stated (August 2004) that crude oil was removed under bond to refineries where it was fully accounted for and on receipt of re-warehousing certificate, liability of customs department was over. Reply is not acceptable as these bonds are executed under section 67 of Customs Act whereas provisional assessment bonds are executed under section 18 *ibid*. Ministry stated (November 2005) that cases have been examined and corrective action is being taken to revalidate continuity bonds wherever assessments are still provisional.

An importer, M/s. 3D Networks Pvt. Ltd. Bangalore executed bond on 27 January 2003 for Rs.50 lakh but bond ledger was credited for Rs.78.63 lakh. Neither was any action taken to finalise assessment nor was bond revalidated. Case involved valuation dispute but no action was taken to get extra duty deposit (EDD) revised from one percent to five percent which worked out to Rs.3.15 lakh of assessable value, as importer failed to furnish reply to questionnaire of department in terms of Central Board of Excise and Customs (Board) circular No.11/2001. Ministry stated (November 2005) that the second bond paper for Rs.50 lakh could not be readily located and an additional bond of Rs.50 lakh had been taken for clearances already made to safeguard revenue.

In ACC Bangalore, M/s. Philips (India) Ltd. executed bond for Rs.2.31 lakh, which expired on 22 April 2003. Neither was assessment finalised nor was bond revalidated. Twenty eight other bonds were not entered in the register by bond cell and expired during January 2003 to December 2004 after validity period of 12 months. Ministry stated that the case had since been finalised and details of 28 bonds not entered earlier in manual ledger have been corrected now.

In five cases, (I and G, ICD and air cargo export, New Delhi) BGs for Rs.34.74 lakh expired between April 2002 to November 2004 and in 18 cases involving differential duty of Rs.16.69 lakh no BGs or security deposit was taken to safeguard revenue. As such revenue of Rs.51.43 lakh was at risk.

In case of M/s. National Lamination Industries Mumbai (Chennai sea) CEGAT had ordered importer to furnish further BG of Rs.30 lakh as pre-condition for hearing appeals. Instead, existing BG of Rs.25 lakh was revalidated by importer on 29 July 2004. Ministry stated (November 2005) that non compliance of the order was brought to notice of CESTAT Mumbai on 19 January 2005 and further progress was being monitored.

1.5.3 Deficiency in execution of bonds

Para 15 (3) of Chapter I of Appraising Manual Vol.II provided that continuity bonds were to be covered by surety of a scheduled bank.

In New Delhi (ICD and I&G) commissionerates, 287 continuity bonds were executed without any surety available on record. Further, in 44 cases (Hyderabad-II) involving assessable value of Rs.5.27 crore, PD bonds were obtained for nil amount or without mentioning PD bond value, which served no purpose as they would not be legally enforceable.

Ministry admitted (November 2005) deficiency pertaining to ACC New Delhi stating that instructions were issued by commissioner for execution of proper bonds with full value and adequate surety as per section 18 of Customs Act.

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1.5.4 Irregular execution of bonds

An importer M/s. Carrier Refrigeration Pvt. Ltd., (ACC Bangalore) executed provisional duty bond for Rs.35 lakh on 11 February 2003, which expired on 10 February 2004. Thereafter, importer was asked (September 2004) to get it re-validated and submit documents for finalisation of provisional assessment. Importer filed revised bond for Rs.35 lakh on 10 February 2004 using stamp paper purchased from State Bank of Mysore on 23 February 2004, which was accepted by department on 16 November 2004 after delay of nine months. It is not clear how importer was able to file revised bond on an earlier date on stamp paper, sold at a later date. Ministry admitted (November 2005) retrospective execution of bond and stated that the case was pending at Chennai SVB and would be finalised on receipt of its orders.

1.5.5 Irregular cancellation of bonds

In ICD Bangalore, 68 bonds/BG of M/s. Kid Kemp Bangalore for Rs.1.25 crore/Rs.20.57 lakh were cancelled without final assessment of goods.

1.5.6 Security deposit not obtained from importers

Rule 2 of Customs (Provisional Assessment) Regulations, 1963 provides for deposit of such sum not exceeding 20 percent of provisional duty.

Test check revealed that in 19 cases of new custom house (NCH) Mangalore while provisional duty of Rs.201.53 crore was collected during 2002-03, security deposit of Rs.40.31 crore had not been obtained from importers. In another 550 cases of ACC, ICD Bangalore and NCH Mangalore, security deposit of Rs.1,480.93 crore at the rate of 20 percent of provisional duty was also payable by importers in non SVB cases. Ministry stated (November 2005) that security of 20 percent was not a prescribed amount, only the maximum limit. In absence of lower limit financial implications are based on amount quoted in Rule *ibid*.

1.6.1 Non/short levy of EDD

With a view to elicit early response from importers in cases of valuation disputes, Board's circular No.11/2001-Cus dated 23 February 2001 provided for EDD at one percent of assessable value while referring of case to SVB. If they did not furnish complete reply to questionnaire issued by custom house within 30 days of receipt thereof, EDD was to be increased to five percent till date of receipt of reply by department. In such cases provisional assessment was to be finalised within four months from date of reply. If no decision was taken within that time, EDD could be discontinued and concerned deputy commissioner/assistant commissioner (DC/AC) be held responsible for inexplicable delay in finalisation.

Scrutiny revealed that in 754 cases non-responding to questionnaire of SVB entailed recovery of Rs.28.18 crore in ACC Bangalore and Kochi. In ACC Bangalore, acceptance of bond in two cases in lieu of cash deposit of one percent EDD was not in consonance with provisions. In NCH Mumbai, 297 bonds referred to SVB were pending as on 31 March 2004 for more than a year. The cases were liable to five percent EDD for delay of more than 30 days due to non responding to questionnaire by importers in terms of Board's circular *ibid*. Ministry stated (November 2005) that in Mumbai of 297 cases, 174 were completed provisionally with

five percent EDD and rest assessed with one percent as endorsed by SVB. In 729 cases of ACC Bangalore enhanced EDD could not be recovered as no instructions for enhancing EDD from one percent to five percent were received from SVB. This is indicative of lack of coordination between assessment group and SVB in cases where valuation disputes are not decided within specified time.

1.6.2 Non/short levy due to under valuation

Rule 10-A of Customs Valuation Rules 1988 provided for rejection of declared value when there was sufficient reason to doubt value declared. It also required department to call for correspondence and other details from importer relating to imports. The other option open to department was to make reference to SVB to investigate the matter.

Scrutiny of records revealed 525 cases in seven commissionerates wherein assessments were made at lower assessable value due to non compliance of aforesaid provisions which resulted in non/short levy of duty amounting to Rs.395.12 crore.

Illustrative cases are narrated below:-

In ACC (Mumbai), mobile telephone/software imported by M/s. Reliance Infocom Ltd., with four others were being assessed provisionally since 2001. In 447 bills of entry of M/s. Reliance Infocom Ltd. relating to such imports, the department had finally assessed the bills of entry and recovered duty of Rs.86.80 crore after correctly clubbing the value of software alongwith hardware value for determining assessable value and applicable duty.

However, 503 bills of entry pertaining to five importers including M/s. Reliance Infocom Ltd. of similar imports with an assessable value of Rs.674.30 crore were further assessed provisionally and were referred to SIIB for investigation, though these cases should have also been finalised after clubbing the value of hardware and software. The decision of the department to refer these cases to SIIB in spite of precedence in 447 bills of entry on the same issue involving the same importer was not appropriate and has led to undue delay in finalisation of the assessments and consequent non realisation of differential duty of Rs.383.14 crore.

On being pointed out in audit, the Ministry stated (November 2005) without providing any reasons that the analogy of M/s. Reliance Infocom cases can not be applied in these cases and the assessments would be finalised after completion of investigation. Reply of the Ministry is neither clear nor convincing and accordingly is not acceptable in audit.

Directorate of Revenue Intelligence, Chennai directed commissioner of customs Chennai (sea) in December 2002 that goods of M/s. Pushpa Silks be examined in the presence of directorate of revenue on account of under valuation of imported silk fabrics.

Goods worth Rs.27.42 crore were assessed provisionally on 27 December 2001. Based on request of directorate of intelligence, they were detained for investigation. Importer filed writ petition in the High Court in March 2003 and requested for their release. Department filed counter affidavit stating that importer had mentioned only generic description viz. grammage, quantity and contracted price and not indicated commercial variety which was the crucial factor for deciding price of the fabric imported and further stated that contract price quoted by the firm was 40 percent less than contemporaneous price. On direction of High Court the goods were examined (11 March 2003) and it was found that the imported fabrics contained high value variety like crepe, georgette and satin. Goods were released on 25 April 2003 after provisional assessment.

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Though test reports confirming that the consignments contained high value fabrics were received in October 2003, no action was taken by department to finalise the assessment as on date. Resultantly, there was blockage of government revenue to the tune of Rs.10.47 crore, besides unauthorised financial accommodation extended to importer. On this being pointed out (July 2004), Ministry stated (November 2005) that legal opinion had been sought for finalising assessment.

1.6.3 Irregular provisional assessments

Para 3 (VII) of Chapter-I of Appraising Manual Vol-II provided that in cases where misdeclaration was suspected and goods were available for examination, investigation must be completed and penal action, if necessary taken. Para 12 *ibid* provided that where goods are short landed, entire quantity of goods as originally declared in provisional duty bill of entry is to be finally assessed without making any deduction for short landed goods. Duty should be adjusted on entire consignment and refund on short landed goods subsequently granted in due course on fulfilment of conditions for such refunds. Provisional assessment procedure should not be resorted to and the goods should not be allowed clearance.

Scrutiny of records in eight commissionerates revealed that 107 bills of entry were either not eligible for provisional assessment or despite requisite clarifications available with department, cases were wrongly assessed provisionally postponing recovery of duty amounting to Rs.5.40 crore for period ranging from one to eight years apart from notional loss of interest of Rs.1.12 crore in four cases.

Illustrative cases are as under:-

M/s. Industrial Training Institute (ITI) Ltd. Bangalore had imported fixed wireless telephones (FWT) worth Rs.10.24 crore through Chennai (air) during July to September 2004. Importer classified goods under customs tariff heading (CTH) 85252017 and claimed concessional rate of duty at five percent under notification No.21/2002 dated 31 March 2002. Department classified goods under CTH 85252019 (Others) on merit rate of duty at 15 percent. Importer however requested department (September 2004) to assess the goods provisionally under CTH 85252019 at ten percent of basic customs duty based on order of CESTAT issued in case of M/s. Tata Tele Services Ltd., vs CC Chennai (Appeal filed by commissioner of customs was pending in Supreme Court). Based on request, the goods were assessed provisionally at ten percent. Under Chapter-I of Appraising Manual Vol. II, provisional duty shall be levied on the higher side to safeguard interest of revenue. In the instant case, provisional duty was collected at the rate of ten percent instead of at 15 percent, which resulted in short collection of duty by Rs.60.97 lakh, besides unauthorised financial accommodation being extended to the importer. On this being pointed out (February 2005), Ministry denied (November 2005) that there was irregularity in assessing goods at ten percent basic customs duty instead of 15 percent. However, this contradicted Ministry's own stand adopted in its appeal to Supreme Court.

An importer M/s. Cochin Shipyard Ltd. (Kochi) was engaged in ship building activity. Scrap generated from ship building activity continued to be cleared on provisional basis as there was dispute as to whether scrap/waste was to be assessed in terms of section 65(2)(a) or 65(2)(b) of Customs Act 1962. Ministry in their letter dated 28 December 2001 clarified that if goods manufactured were meant for export, duty on scrap was to be charged under section 65(2)(a) classifying it as scrap and valuing it as such scrap under section 14 of Customs Act;

else corresponding scrap generated was to be charged duty as applicable for mother material contained in it according to section 65(2)(b) *ibid*.

Department issued demand letters during the period from November 2004 to May 2005 for differential duty of Rs.1.85 crore for finalisation of 18 provisional assessments cases relating to period from 1996 to 2001. Of this, demand of Rs.59.11 lakh in five cases was confirmed on 11 April 2005 along with demands relating to two other cases. However, no amount was remitted by the assessee till date. Delay in issuing demand letters resulted in blockage of revenue to the tune of Rs.1.85 crore apart from notional loss of interest of Rs.79.46 lakh. On this being pointed out, Ministry stated (November 2005) that subsequent demand letters were issued and confirmed in 21 cases (including seven cases reported above) for Rs.2.36 crore apart from interest of Rs.5.09 lakh issued in July and September 2005. Realisation was awaited.

Health department of Andhra Pradesh, imported four consignments of medical equipment between November 2001 and November 2003 (ICD Hyderabad II) under adhoc exemption order No.24 dated 1 July 2003. Scrutiny revealed that the said order covered only three of the above consignments and one (November 2003) pertaining to syringes involving assessable value of Rs.2.31 crore was not supported by any exemption order. The said bill of entry was, therefore, assessed provisionally for want of duty exemption certificate on obtaining PD bond for Rs.2.31 crore. Duty foregone in the case was Rs.93.46 lakh. Non furnishing of exemption certificate led to blockage of revenue to the extent of Rs.93.46 lakh apart from loss of interest of Rs.19.21 lakh. Ministry while confirming fact reported (November 2005) that demand of Rs.93.46 lakh had been confirmed.

Loss of revenue due to non realisation of penalty for short landed goods

According to section 116 of Customs Act, 1962, if any goods loaded in a conveyance for importation into India are not unloaded at their place of destination in India, or if quantity unloaded is short of quantity to be unloaded at the destination, and failure to unload or deficiency is not accounted for to satisfaction of AC/DC of customs, person-in-charge of conveyance shall be liable to penalty not exceeding twice the duty that would have been chargeable on goods not unloaded or deficient goods, as the case may be, had such goods been imported. Further, according to para 7 of Board's circular No.96/2002-Cus. dated 27 December 2002, liability of master/agent would continue to be fixed by comparing ship's ullage quantity at the port of discharge with ship's load port ullage quantity or bill of lading quantity if the former was not made available by the master/agent.

Scrutiny of records relating to import of crude petroleum oil by M/s. IOC (Kolkata port) revealed that all such imports were provisionally assessed and importer paid customs duty as applicable on shore tank receipt quantity. However, from import manifest clearance register (IMCR) from October 2003 to April 2004, it was seen that in 19 cases landed quantity as per the vessel's ullage survey report at the port of discharge was less to the extent of 4767.925 MTS than import general manifest (IGM) quantity i.e. quantity to be unloaded in India even after allowing for one percent evaporation loss.

Since short landed quantities fell outside purview of provisional assessment, explanations should have been called for from the shippers/importers and penalties upto Rs.1.09 crore levied immediately thereafter in cases where satisfactory explanations were not received.

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However, neither had any explanation been called for nor were any penalties imposed. On this being pointed out (June 2005), Ministry stated (November 2005) that finalisation was under progress.

1.6.4 Lack of monitoring of re-export cases

As per rule 5(1) of Customs Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods (IGCRDMEG) Rules 1996, DC/AC customs at the port of importation shall allow benefit of exemption notification to importer on basis of application countersigned by DC/AC of central excise having jurisdiction over the manufacturer's factory and as per sub rule 5(2), the former shall forward copy of bill of entry containing particulars of import, amount of duty paid and other relevant particulars to central excise counterpart. However, goods imported are to be re-exported in terms of notification under which it had been imported duty free.

Scrutiny of records in six commissionerates revealed that in 51 cases goods imported under aforesaid rules or under other relevant notifications subject to re-export within the stipulated period, had not in fact been re-exported. Thus, lack of monitoring of re-export cases resulted in blockage of revenue due to non enforcement of bonds of Rs.3.30 crore. Of these, duty involved in 22 cases amounted to Rs.25 lakh.

Illustrative cases are as under:-

In 29 cases, (Kolkata port) re-export bonds valid for six months executed during September 2000 to March 2004, expired but no re-export had been made. In 20 cases, no demand for customs duty/refund of drawback had been made. In nine cases, demand notices had been issued in June and July 2004, but no realisation had been made till May 2005. Ministry stated (November 2005) that 21 cases would be finalised shortly by enforcing export bonds. In nine cases recovery was in progress.

1.7 Delay in finalisation of provisional assessment

Para 3 of Customs (Provisional Duty Assessment) Regulations 1963 provides that where provisional assessment was allowed pending production of any document or furnishing of information by importer, terms of bond shall be that such document shall be produced or such information be furnished within one month or within such extended period as the proper officer may allow. No time limit has been prescribed for finalising assessments in section 18 of Customs Act, 1962. However, according to Board's instructions issued on 23 April 1973 and 9 January 1978, provisional assessments were to be finalised expeditiously well within six months from the date of provisional assessments. During the course of review, it was observed that there was abnormal delay in finalisation of provisional assessments.

Data covering 20 commissionerates as shown in the table below revealed that out of 57,604 cases involving bond value of Rs.77,039 crore, only 11,489 cases involving bond value of Rs.14,768 crore (20/19 percent) were finalised within period of six months while 12,057 cases with bond value of Rs.8,815 crore (21/11 percent) were delayed beyond six months but stood finalised by December 2004.

(Amount in crore of rupees)

Year (No. of Commissionerates in brackets)	Cases registered		Cases finalised within six months		Cases finalised after six months but before 31 December 2004		Cases pending for finalisation as on 31 December 2004	
	No.	Bond Value	No.	Bond Value	No.	Bond Value	No.	Bond Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2001-02 (17)	16589	20325	3999	5688	4269	1282	5407	6955
2002-03 (18)	17274	26550	4045	5039	4162	3748	7075	10684
2003-04 (20)	23741	30164	3445	4041	3626	3785	15780	16979
Total	57604	77039	11489	14768	12057	8815	28262	34618

Data of 12 commissionerates, does not tally with pendency shown as on 31 December 2004 due to discrepant figures of commissionerates.

1.7.1 Audit conducted detailed scrutiny of reasons for pendency in 17 commissionerates and found that 28,355 cases involving bond value of Rs.42,891.61* crore were pending and awaiting final assessment from one to 12 years as on 31 March 2004. Non-adherence to the aforesaid time limit to finalise the assessments led to blockage of approximate duty amount of Rs.1,683.52 crore as detailed below.

(Amount in crore of rupees)

Sr. No.	Reasons of delay	No. of Cases/bonds	Bond/Assessable value	Duty involved	Delay in years
1.	Pendency for want of ullage report/original documents/ DEEC.	21986	31117.01	*1558.66	One to 12 years
2.	Pendency for want of chemical test reports.	348	294.72	*14.71	One to 4 years
2 (a)	Pendency despite receipt of chemical test reports.	1277	297.90	*14.92	One to 4 years
3.	Pendency for want of correct valuation.	1498	1299.08	*72.17	One to 10 years
3 (a)	Pendency despite availability of instructions/clarifications.	1024	42.99	*2.24	One to 10 years
4.	Other pendencies due to litigation, non adjudication of SCNs and cases transferred to call book	2222	9839.91	20.82	Six months to 12 years
	Total	28355	42891.61	1683.52	

*Since bond value does not represent differential duty, duty has been calculated at minimum tariff rate of five percent of bond/assessable value where the same was not available on record.

Pendency for want of ullage reports/original documents/DEEC etc.

In response to contents of table, Ministry reported (November 2005) that 5914 bonds for Chennai (sea) had been cancelled, 42 of Trichy finalised and action for finalisation taken for the rest.

An illustrative case is narrated below.

An importer M/s. SAIL, Bhilai (Kolkata port) imported two consignments of 'parts of gyratory crusher' in August 1996. Goods were assessed provisionally as complete machines by accepting PD bond for assessable value of Rs.60.92 lakh and Rs.3.74 crore respectively in

* Pendency of Rs.34,618 crore as on 31 December 2004 has been compiled on the basis of data provided by the department whereas actual audit scrutiny revealed pendency of Rs.42,891.61 crore in 28,355 cases.

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December 1992. Bonds stipulated that importer was required to submit valid import licence and other documents as evidence of completion of full shipment within 12 months. However, the two cases, involving bond value of Rs.4.35 crore, remained un-finalised (March 2005) i.e. for more than eight years for want of requisite documents. In reply, Ministry stated (November 2005) that importer had been asked to submit details of shipments.

Pendency for want of chemical test reports

In case of chemical test report (ICD Coimbatore), import of vitrified tiles by two importers were misdeclared as ceramic tiles. Samples were sent for chemical test (May 2004) and test report received (June 2004). Assessments were finalised (March 2005) after being pointed out by audit (January 2005). Department reported recovery of duty/interest Rs.5.02 lakh in Chennai (sea). Ministry stated in response to audit findings depicted in table (November 2005) that 142 cases (17 in Chennai sea, 91 in ICD TKD, 28 in Ahmedabad, five in NCH Mumbai and one in Hyderabad-II) had been cancelled/finalised.

Pendency for want of correct valuation/non referred to SVB

In nine commissionerates, 1,498 cases involving bond value of Rs.1,299.08 crore were pending for want of valuation reports/price verification from SVB/SIIB or DRI etc. Of these 271 cases (West Bengal preventive) of betel nut imports (February 2002 to March 2004) and 95 cases of Hyderabad-II (August 1998 to March 2004) had not been referred to SIIB/SVB for investigation at all.

These cases involved blockage of duty amounting to Rs.72.17 crore (approx) for a period ranging one to ten years. Ministry stated (November 2005) that 117 cases (one in Kolkata port, 33 in ICD TKD and 83 in Jamnagar) had since been finalised. For M/s. Abstract Frames and Supplies Pvt. Ltd. (Kolkata port) case, Ministry stated that matter was proposed to be finalised ex-parte due to non response of importer. In Hyderabad-II, position was under verification.

Illustrative case :-

Twelve cases of imports (Trichy) of PAS Noodles by M/s. Hindustan Lever Ltd. during September 2002 to January 2003 referred to SVB Mumbai were pending for want of valuation reports. Repeated transmission of cases of the same importer and their continued pendency for long durations coupled with non/ineffective follow up action to obtain valuation reports and finalise assessments was indicative of providing undue financial accommodation to the importers. Ministry stated (November 2005) that the cases would be finalised on receipt of order from SVB Mumbai.

Non finalisation despite Board's guidelines

In 1024 cases involving bond value of Rs.42.99 crore pertaining to marbles and bearings, cases had not been finalised despite clarification of Board leading to blockage of duty amounting to Rs.2.24 crore (approx) for one to ten years in three commissionerates.

Illustrative case:-

One such case of departmental laxity involving assessment of bearings revealed that Kolkata (port) regularly sought advice and guidance from Mumbai commissionerate on assessment of bearings, in particular, for matters relating to valuation.

In September 1997, Mumbai commissionerate informed Board that it had formulated a set of principles to make final assessment of various brands of bearings in consultation with valuation directorate and local bearing manufacturers. The principles/guidelines were sent to various customs commissionerates including Kolkata (port). In January 1998, Mumbai commissionerate forwarded to the Board a set of detailed proposals for finalisation of provisional assessments of bearings done since September 1994. The proposals in turn were forwarded to all commissionerates in March 1998.

However, it was seen from monthly technical reports (MTRs) on “major items of pendencies” that, as on March 2004, total of 975 PD bonds involving Rs.39.07 crore, pertaining to provisional assessment of bearings, were pending. Of the above, 761 PD bonds (80 percent), were pending for more than three years. Moreover, disposal figures for February and March 2004 revealed that while 11 PD bonds involving Rs.1.31 crore against provisional assessments of bearings were added, there were no disposals. In spite of existence of clear guidelines and instructions for finalisation and disposal of bearing imports assessed provisionally from September 1994 onwards, the department had not taken steps for finalisation of such cases.

In November 2005, Ministry stated that eight cases involving Rs.1.46 crore pertaining to review period had been finalised in July 2005.

Non adjudication of SCNs

Section 28 of Customs Act, 1962 provides for recovery of duty not levied, short levied or erroneously refunded. Normally a period of 15 days is given to the importer to respond to the SCN and adjudication is required to be completed within one year according to the provisions of section 28 (2A) *ibid*.

Scrutiny of records in four commissionerates revealed that though SCNs were issued in 78 cases between November 2000 and January 2005, they had not been finalised. Delay ranging from six months to four years led to non realisation of duty amounting to Rs.20.82 crore apart from extending undue financial accommodation to the importers. Ministry stated (November 2005) that four cases in Jamnagar and two in Hyderabad-II had since been finalised.

Pendency of cases in call book registers

Scrutiny of records in three commissionerates revealed that 1764 cases involving bond value of Rs.7793.72 crore were pending in call book registers for a period ranging from one to 12 years.

No follow up action to review on monthly basis or to submit quarterly report to competent authority to watch progress of disposal of cases kept in call book was taken by the department according to circular No.53/90-Cx. issued in September 1990 read with circular No.385/18/98-Cx. dated 30 March 1998.

1.7.2 Delay in finalisation of provisional assessment under project imports.

The scheme “project imports” was introduced in 1965 for importing items of machinery, equipment, raw materials etc., required for setting up or for substantial expansion of project at uniform rate of duty subject to certain procedural requirements to be complied with by importers. Object of the scheme was to simplify procedures with a view to facilitate quicker customs clearance of goods imported for initial setting up or substantial expansion of project. The scheme was governed by Project Imports Regulations 1986 issued under section 157 of Customs Act 1962.

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Rule 7 of Regulations *ibid* stipulated that importer has to furnish documents such as statement of goods imported, value and quantity required by the proper officer for finalisation of contract within three months of date of clearance of the last import for finalisation of assessment failing which, project concession already granted would be denied and the goods be re-assessed on merit rate of duty with resultant short collection of duty being realised.

Scrutiny of records in four commissionerates revealed that in four cases of Chennai (sea) importers did not submit requisite documents though the last import took place between 14 January 1988 and June 2003. Of these in one case, department confirmed demand of Rs.1.48 crore in 2004 but the importer was not traceable. In two other cases documents were submitted in March 2004 and January 2005 after delay of ten and 28 months respectively, but assessments were still awaiting finalisation. In nine cases of Kolkata (Port), project imports were completed more than three years ago, but no steps were taken to finalise the cases. In Kandla, one case was finalised but the firm went to BIFR since February 2005. In a case of Kochi, where last import was made in September 1999 the case was finalised in July 2003 leading to loss of notional interest of Rs.6.70 lakh and undue financial accommodation to the importer for more than 37 months.

Total duty involved in 25 cases was Rs.70.15 crore awaiting realisation on finalisation of provisional assessments apart from notional interest of Rs.6.70 lakh in one case. Ministry stated (November 2005) that in two cases of Chennai (sea) M/s. BHEL and Alstom Power Boilers Ltd. have since been finalised for closure and referred to IAD for concurrence.

Two indicative cases are narrated below:-

M/s. Bharath Earth Movers Ltd., Chennai registered a contract for import of 'rear dumpers'* under project imports. Imports were made for Rs.78.51 crore between June 2002 and June 2003 and were assessed provisionally under section 18(1) of Customs Act 1962, at concessional rate of duty after obtaining bond for Rs.97.23 crore. The last consignment was cleared on 18 March 2003. Even after expiry of one and half years, the importer had not furnished the required documents. Department too did not initiate action to enforce the bond and recover differential duty with interest amounting to Rs.27.98 crore. On this being pointed out (March 2005), Ministry stated that adjudication proceedings were under way.

M/s. Soumag Electronics Ltd. registered a contract with department, on 20 January 1989 to import "computerised PCB in circuit test, validator for the manufacture of microprocessor based ticketing machines including access control systems". Two imported consignments, were provisionally assessed under section 18(1) of Customs Act 1962 at concessional rate of duty after obtaining PD bond. The last consignment was imported on 24 October 1989 but documents in proof of total import had not been submitted. Department, after a lapse of twelve and half years, had issued SCN on 30 June 2004 to which no reply was received. Subsequently demand for Rs.1.48 crore being differential duty was confirmed vide order-in-original to which again there was no response from the importer. Due to failure of department to issue SCN in time (January 1990), by enforcing bond and BG, there was loss of revenue of Rs.4.80 crore, (including interest). Importer was reported to be non traceable and, therefore, chance of recovery of Government revenue was remote. Ministry stated (November 2005) that recovery action had been initiated under section 142 (1) (c) (ii) of Customs Act.

* Rear Dumpers is an excavation machine.

1.7.3 Non/delayed finalisation of provisional assessment despite submission of documents

Board's instructions issued in April 1973 and 1978 provided for expeditious finalisation of provisional assessment cases well within six months from date of provisional assessment including the time taken in investigation, obtaining test reports and other requisite documents.

During course of review, it was noticed that 79 cases involving bond value of Rs.10.95 crore remained unfinalised for period of six months to six and a half years in four commissionerates despite submission of relevant documents/clarifications/ certificates etc.

Ministry stated (November 2005) that seven cases (three cases of Kolkata port, four ACC New Delhi) had since been finalised while in one case of ICD TKD demand has been raised.

Illustrative cases are narrated below:-

M/s. SREI International Finance Ltd. (Kolkata port) imported MRI scanner in four consignments for which PD bond was submitted for Rs.3.33 crore with surety for like amount, valid upto May 1998. Goods were provisionally assessed duty free under notification No.11/97-Cus dated 1 March 1997. After clearance of the last part-shipment in November 1997, importer furnished necessary documents in January 1998 for finalisation of assessment and cancellation of PD bond. However, assessment was not finalised inspite of passage of more than six and a half years since submission of documents by the importer. Meanwhile, the surety furnished became invalid, jeopardising chances of recovery. Ministry stated (November 2005) that the case had since been finalised.

Despite decision (May 2003) of chief commissioner I and G Delhi for closure of 33 PD bonds for Rs.1.55 crore, the cases remained unfinalised. Similarly commissioner (ICD) ordered (January 2005) finalisation of 15 cases with bond value of Rs.98.36 lakh of rags and worn clothing which have not been finalised. Another 22 continuity bonds worth Rs.4 crore, (I&G New Delhi) despite orders of SVB dated 28 January 2003 accepting the transaction value declared in the invoice have neither been finalised nor was any entry made in PD bond register. Ministry stated (November 2005) that except 33 PD bonds of I and G Delhi where details were awaited, remaining 41 cases of ICD TKD, I and G and ACC New Delhi had been finalised.

1.7.4 Non/delayed realisation of differential duty

Section 28 of Customs Act, 1962 provided for recovery of duty not levied, short levied or erroneously refunded. Normally period of 15 days is given to importer to respond to SCN. If confirmed demand is not paid within three months and no stay has been obtained recovery proceedings are initiated.

Scrutiny of records in six commissionerates revealed that despite submission of test reports or other relevant documents/certificates, final assessments were made belatedly and despite issue of demand notices for Rs.34.89 crore in 575 cases, department could realise only Rs.1.20 crore in four cases.

Delayed finalisation/non realisation of duty resulted in notional loss of interest amounting to Rs.4.55 crore beside financial accommodation to importers.

Few other cases are narrated below:-

M/s. Sudharsan Pine Products Pvt. Ltd., Bangalore (Chennai Sea), imported 64 consignments of "oleo pine resin" during 2002-2003 and claimed assessment at 'nil' rate of additional duty (CVD) under CETH 130190 (Others). Due to dispute between department and importer

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regarding classification of imported goods under CETH, the goods were allowed to be cleared at 'nil' rate of CVD, under provisional assessment in view of commissioner's orders.

Since conditions regarding country of origin stipulated under the CETH 130190 were not satisfied, DC customs duty entitlement pass book (DEPB) ordered on 30 April 2003 finalisation of all provisional assessments after classifying imported goods under CETH 130110 by levying CVD at the rate of 16 percent. Differential duty worked out to Rs.72.36 lakh. Importer had filed appeal before commissioner of customs (appeals), wherein order of lower authority was upheld. Thus, delay in recovery of differential duty resulted in postponement of government revenue to the tune of Rs.72.36 lakh for more than two years. On this being pointed out (February 2005), Ministry stated (November 2005) that importer had been addressed (31 August 2005) to pay the amount as no stay was granted by CESTAT.

To prevent refined palm oil being passed off as crude palm oil (CPO) by importers to avail concessional import duty at the rate of 65 percent BCD, twin criteria for acid value of two percent or more and total carotene (as beta carotene) in the range of 500-2500 mg/kg were introduced vide notification No.120/2003-Cus dated 1 August 2003. Samples of imported CPO which failed to meet above specifications were to be classified as others-palm oil and assessed to duty at the higher rate of 70 percent BCD.

Examination of records of 345 such imports made (by Kolkata port) revealed that, in all cases, imported goods failed to meet aforesaid criteria as per test reports. Hence, they were liable to be charged at higher tariff value and higher rate of basic customs duty. Differential duty thus realisable amounted to Rs.24.82 crore.

Although test reports were received within six months from dates of provisional assessment in most of the cases, department delayed issue of demand notices for differential duty upto one year and five months from the date of test reports.

This resulted in blockage of government revenue and notional loss of interest amounting to Rs.2.51 crore, calculated at 15 percent per annum and allowing for 15 days grace period from the date of receipt of test reports. On this being pointed out, Ministry stated (November 2005) that an amount of Rs.25 crore had since been realised from five importers even before finalisation of assessment.

In 45 cases, imports of tiles (CFS Mulund) were assessed provisionally without levy of anti dumping duty. Demand notices for Rs.4.43 crore in respect of these imports were issued during September and December 2003 but department had not taken any action to recover duty. On this being pointed out (June 2005), Ministry stated (November 2005) that 11 cases had since been closed, remaining 34 were under adjudication process.

In 17 cases of M/s. IOCL (Visakhapatnam), provisional assessment was made during March 1995 to November 1999 for want of original documents/ullage survey report, etc obtaining PD bonds for Rs.191.85 crore. Though these were received between May 1997 and January 2000, cases were finalised only in May 2005. Department noticed short collection of Rs.2.23 crore in 15 cases on finalisation of provisional assessments but did not even intimate short levy to the importer on finalisation.

Delay in finalisation resulted in blockage of revenue/financial accommodation to the extent of Rs.2.23 crore for periods ranging from 58 to 97 months and consequential notional loss of interest of Rs.1.97 crore from the date of receipt of original documents. On this being pointed out (May 2005), Ministry accepted that delay in finalisation of provisional

assessment was for reasons beyond control of customs house on account of various instructions from Board and various judgements and further stated that short collection was immediately brought to notice of importers in March 2005 as such there was no real loss of interest. Reply is not tenable since delay caused delayed realisation of duty and consequent notional loss of interest.

1.8 Improper maintenance of records and lack of internal control mechanism

Para 14 of Appraising Manual Vol.II, provided that each provisional assessment made was to be entered in a provisional duty register (Form-321 CBR). Full particulars relating to such cases from registration to their finalisation i.e. name of importer, description of goods, bill of entry number, value, reasons for provisional assessment, duty payable, particulars of bonds and their validity period were to be recorded. Column 16 and 22 of the format were specifically meant for duty amount on provisional/final assessment. The register also provided for recording of date of receipt of documents, test results etc. On finalisation of the cases, particulars regarding refund/collection of differential duty were to be recorded and the bonds closed.

Scrutiny of records in 21 commissionerates revealed that in most of the groups, PD registers were not being maintained in prescribed format and wherever maintained, most of the columns were kept blank, important details remained unrecorded and these were not being submitted to AC nor were forwarded at monthly intervals to internal audit department (IAD) who had to bring such cases to his notice requiring further investigation. Monitoring mechanism and internal control seemed very ineffective in tracking outcome of provisionally assessed cases, revalidation of bonds etc. ACC Trivandram intimated (May 2005) that they started maintenance of register after it was pointed out in audit. Ministry accepted (November 2005) non maintenance of records in some commissionerates, stating that such information could be retrieved from EDI system. The reply is not tenable as information even in EDI system was not complete.

Bond and BG Cell

Consequent on recommendation of PAC in their 92nd report (eighth Lok Sabha) on lack of monitoring of bonds and bank guarantees executed by importers, Board issued instructions in July 1991 requiring custom houses to have (i) common bond cell for accepting and discharging bonds so that a particular set of officers could work with uniformity and disputes arising out of legal/technical points could be taken care of, (ii) conditions of bonds were to be enforced immediately after expiry of prescribed time limit, (iii) custom house agents should also be made responsible for not complying with conditions of bond, (iv) since computerisation had been introduced in custom houses, this work could also be computerised to make discharging of bond liabilities effective, (v) original bond be kept under safe custody in cash department.

Consequently a centralised bond and BG cell was ordered for creation in Kolkata custom house with effect from 5 August 2001. In ACC and JNCH Mumbai, bond and BG cell was formed, whereas from other commissionerates details regarding the cell were not forthcoming.

Since no such process of centralised monitoring mechanism seemed to be in place, following instances of lapses were noticed in audit, which were indicative of system failure.

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(i) In West Bengal (preventive), due to non-maintenance of BG register prior to April 2004, details of 11 unfinalised BGs, could not be ascertained. Ministry accepted non establishment of centralised BG cell.

(ii) In 597 cases (I and G, ICD Delhi) involving bond value of Rs.362.70 crore, reasons for provisional assessment were not recorded; as such, further action taken could not be ascertained.

(iii) Out of 223 cases (I and G Delhi) of continuity bonds details of only first bills of entry were recorded in 66 cases, in remaining 157 cases, no details of imports were on record. Similar was the position in ICD New Delhi in respect of 64 cases. Only first import was on record in 59 cases leaving subsequent imports unrecorded while no details of imports were on record in five cases.

(iv) In all three commissionerates of Delhi, list of cases where importers failed to produce required documents/information were not being maintained as stipulated in para 11 of Chapter-I of Appraising Manual Vol.II.

(v) In Hyderabad-II commissionerate, scrutiny of bills of entry revealed that 34 cases of provisional assessments were not recorded in the register at all.

Ministry admitted (November 2005) the objection and stated that steps had been taken to enter cases in PD bond register.

Incorrect reporting of pendency of PD bonds

Performance of commissionerates relating to disposal of work during a month was being compiled in the form of MTR and sent every month to chief commissioner of customs for onward transmission to Director General of Inspection, CBEC.

Audit scrutiny of records and MTRs in eight commissionerates for the period 2001 to 2004 revealed 5,680 cases in which commissionerates had either over reported or under reported number of bonds as well as bond value of pending cases of provisional assessments. Three field formations in Hyderabad-II commissionerate had reported to audit 174 cases outstanding against 74 cases shown in their MTRs furnished to commissionerate. The department (Hyderabad-II) while admitting the fact stated that the figures furnished to audit were reconciled now.

Incorrect reporting is indicative of lack of monitoring and internal control mechanism in the department.

A few illustrative cases are narrated below:-

Scrutiny of file relating to clearance of crude oil imports by M/s. IOC, (Kolkata port), revealed that PD bonds for Rs.57,579 crore were submitted by a public sector undertaking during the period from 1994 to 2004 (upto 31 March 2004).

Provisional assessments of crude oil imports against above bonds amounting to Rs.57,579 crore (2,100 bills of entry) were actually as per audit scrutiny pending finalisation (March 2005) whereas bond amount of Rs.13,565.04 crore only, was reported by commissionerate to the Board through its MTRs. Thus there was under reporting of pendency to the extent of Rs.44,013.96 crore. Ministry accepted the error in compilation of MTR and stated the same was being reconciled.

MTR of Kochi for the month of March 2004 showed pendency of 54 PD bonds under section 18(a) of Customs Act, whereas statement of bonds and project contract register showed pendency of 636 cases, implying under reporting to the extent of 582 cases.

1.8.1 Difference in pendency between data of assessment group and SVB/SIIB

SVB specialises in investigation of transactions involving special relationship and certain special features having bearing on value of imported goods. Suspected cases of under valuation due to relationship between seller and buyer are referred to it for investigation and determination of assessable value.

Board's circular No.11/2001-Cus dated 23 February 2001, provided that investigation by SVB should be completed within four months from date of reply of importer to questionnaire issued by them.

Scrutiny of records in five commissionerates revealed that of pendency of 1202 cases involving bond value of Rs.602.72 crore in assessment groups, 68 cases involving bond value of Rs.181.58 crore were pending in SVB Chennai and Delhi. In Chennai (sea) 80 cases were pending in assessment group for want of report from SIIB. On cross verification of records in SIIB section, only 17 cases were noticed by audit pending investigation. Lack of coordination and reconciliation between assessment group and SVB/SIIB led to discrepancy in cases reported through MTRs.

On this being pointed out (April 2005), SIIB Chennai replied that files pertaining to release of goods after provisional assessment were not monitored separately. There was therefore no proper mechanism to monitor and pursue cases after registration in SVB till receipt of their verdict.

Ministry admitted (November 2005) discrepancy in the reported figures.

1.8.2 Functioning of SVB not in conformity with Board's guidelines

Board in their circular dated 23 February 2001 laid down clear guidelines for referral of valuation dispute cases involving provisional assessment to SVB located in four major custom houses. The instructions therein even incorporated provision of fixing responsibility on concerned DC/AC for inexplicable delay in finalisation of investigations beyond four months from date of reply to the relevant questionnaire by the importer.

SVB Kolkata unit's monthly pendency report for March 2004 revealed that 57 cases were pending with them, of which, 48 were pending for more than a year. Though number of cases were pending from 1989-1990 in the unit's register, except SVB file number and importer's name, no other particulars were available therein. This indicated that Board's guidelines were not being followed by department.

1.8.3 Deficiency in EDI System

During course of review, following deficiencies were noticed in EDI System for processing provisional assessment cases.

ACC Bangalore - EDI system allowed loading of EDD at the rate of one percent of FOB/invoice value instead of assessable value. If FOB value was not available, system allowed one percent loading of duty payable. This is in violation of circular dated January 1998-Cus and November 2001-Cus, which provide for one percent/five percent EDD of assessable value in cases of under valuation and 20 percent in other cases as per Customs

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Regulations 1963. Though this problem was identified by department in June 2002, it had not been rectified (May 2005).

Kolkata (port) – Though department stated (June 2005) that system for monitoring provisional assessments and related bonds/BGs existed in EDI system, verification of 11 cases revealed that BGs expired between June 2002 and December 2004 but the same were shown as pending in EDI system as well as in manual records.

I and G New Delhi – Master screen of bills of entry showed that assessments were final even for cases where assessments were provisional. There was no provision in the system to distinguish provisional duty bonds in categories like testing, SVB, valuation, market enquiry etc. It was observed that a single IEC code shown as belonging to two importers M/s. AVL Biomedical Pvt. Ltd. and M/s. Roche Diagnostics was accepted by the system. Such acceptance defeated the very purpose of identification. In another case, M/s. Ray Ban sun optics (India) Ltd. executed PD continuity bond of Rs.2 crore but the same was not debited in EDI. Department accepted that it occurred inadvertently due to oversight and stated that PD bond was debited manually. No evidence of provisional assessment and manual debit was produced. However, in Delhi, Chennai (sea and air), NCH, JNCH and ACC Mumbai, it was observed that reasons for provisional assessment, date of finalisation, reasons for non finalisation, revalidation of bond/BG, details of duty paid at the time of provisional assessment and rate of duty levied on finalisation were not available in EDI. There was no provision for showing balance after debit of current imports against PD continuity bond as per para 15 (6) of Chapter-I Appraising Manual Vol.II. Final assessments are made manually and not through EDI system, as such EDI data on pending provisional assessment was not complete.

Ministry admitted (November 2005) audit observation and stated the matter has been taken up with DG (System) for proper modification of module in EDI.

1.9 Absence of provisions to levy interest

Section 18 of Customs Act 1962, does not provide for levy of interest on differential duty to be collected after finalisation of provisional assessment. Absence of such provision in the Customs Act has resulted in deferring duty on delayed final assessment without any interest liability.

Test check revealed notional loss of interest of Rs.4.45 crore in only two commissionerates of Tuticorin and Trichy for delayed final assessment besides unauthorised financial accommodation to importers in 61 cases due to postponement of realisation of differential duty of Rs.25.78 crore for one month to 24 months. The implication of revenue loss on finalisation of 28,262 cases pending as on 31 December 2004 involving bond value of Rs.34,618 crore would be much more and would increase with corresponding delay in finalisation of these cases.

Ministry stated (November 2005) that necessary steps have been taken to draft suitable amendment in section 18 *ibid*.

1.10 Audit impact

The review contains audit comments involving financial implication of Rs.554.71 crore arising out of non compliance of provisions of Act, Rules and instructions etc. apart from

audit observations of procedural/lacunae/shortcomings in rules and regulations besides notional loss of interest of Rs.10.19 crore. At audit's behest, demand of Rs.29.11 crore was confirmed in five cases (one each in Hyderabad, Cochin, Coimbatore, Chennai (sea) and Kolkata), of which Rs.25.05 crore was recovered by Kolkata and Coimbatore commissionerates.

1.11 Conclusion

The review has revealed abnormal delay in finalisation of provisional assessment and consequent blockage of revenue. Provisional assessment was being resorted to even when final assessment was possible. Various irregularities pointed out in earlier audit report still continued. Lack of monitoring and ineffective internal control mechanism further contributed to postponement of substantial revenue.

In the absence of any statutory time limit for finalisation of cases or provision for levy of interest on delayed payment of differential duty, there was no onus on either the department or importers to finalise expeditiously.

1.12 Recommendations

Audit, therefore, recommends:

- **introduction of statutory specific time limit for finalisation of provisional assessment cases.**
- **the large scale practice of obtaining PD bonds for total assessable value instead of for differential duty should receive specific attention of the Ministry/Board.**
- **pendency at SVB or for chemical reports seems very high. There should be time bound programme for finalisation of these, as well as time bound clearance of present cases held up despite decisions being available.**
- **Ministry may strengthen its internal control and monitoring mechanism and use EDI effectively to track provisional assessments to the final stage.**

Review was issued to Ministry/Board in September 2005. Board were in broad agreement with conclusions and recommendations of the review and stated (November 2005) that the recommendations had been noted and suitable guidelines were being formulated for implementation at the field formations.