

Chapter II

Recovery of Arrears

2.1 Introduction

Tax administration in Central Excise & Service Tax envisages that the assessee makes self-assessment of duty payable and after payment of duty submit returns to the department. The department scrutinizes the returns filed by the assessee and in case of any short /non-levy of duty, takes action by way of issuing demand cum show cause notice (SCN) for recovery of the amount. The SCN is then adjudicated by the appropriate authority. Any amount recoverable from the assessee due to confirmation of demands in favour of the department by virtue of Orders-in-Original (OIOs), or further Orders-in-Appeal (OIA), Tribunal orders, and Courts' Orders, but not paid by the assessee becomes arrears.

Arrears of revenue arise as a result of the following:

- Confirmation of demands by the adjudicating authority
- Rejection of appeal of the assessee by the appellate authority
- Grant of stay applications with condition of pre-deposits
- Order in favour of the department by Tribunals, High courts and Supreme Court.

Recovery of arrears constitutes a crucial function of the department of Revenue. The main statutory provisions dealing with recovery of arrears in Service Tax are as follows:

Section 73 of the Finance Act 1994, empowers Service Tax officers to take action for recovery of arrears by way of issue of demand and pursuing with the assessee.

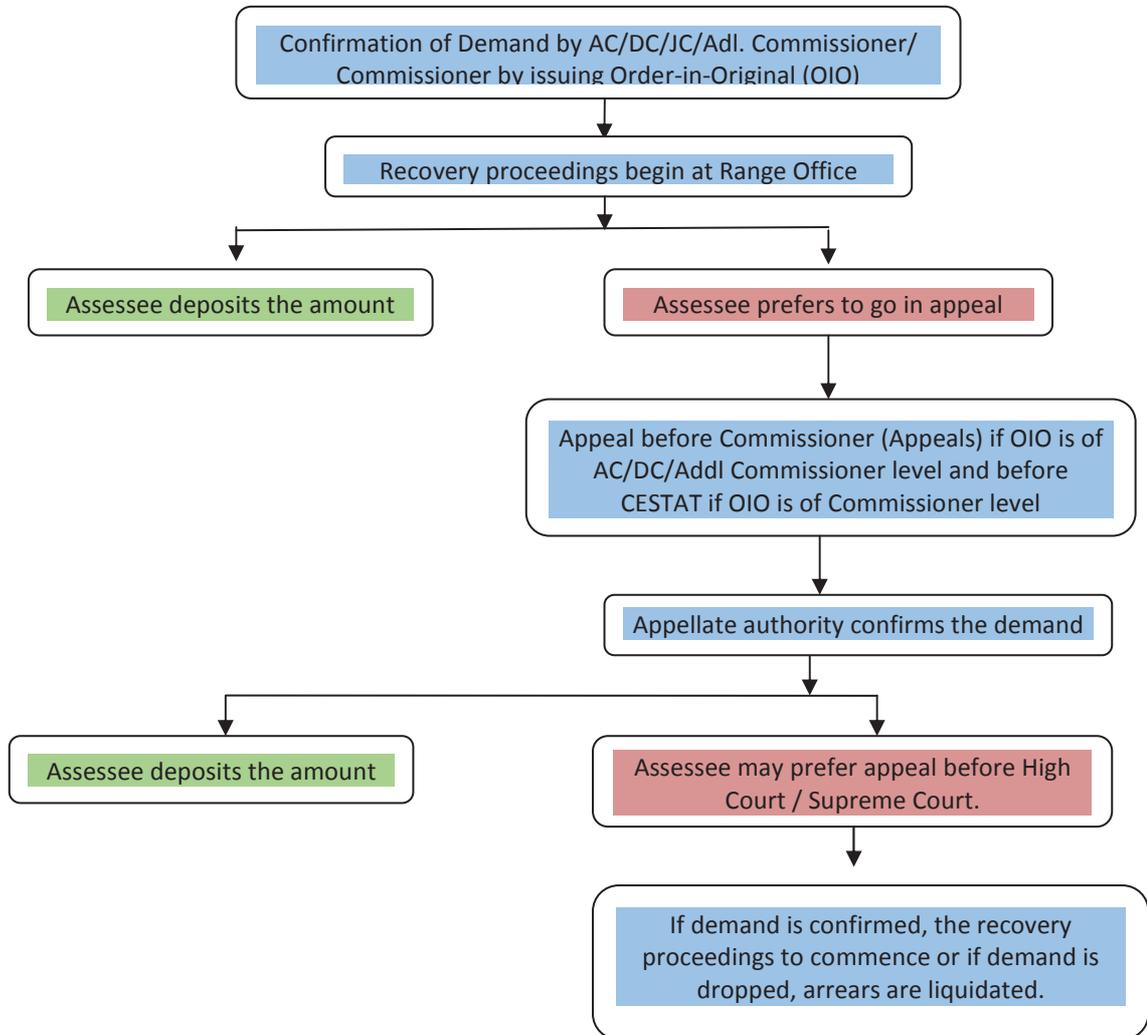
In case recovery is not effected under section 73, section 87 further empowers the department to take coercive actions such as deducting any amount payable to the defaulter, detaining any movable or immovable property or referring the case to District Collector for recovery of the dues as if it were an arrear of land revenues.

Section 83 of Finance Act 1994 provides that provisions of the some sections of the Central Excise Act 1944, as in force from time to time, shall apply to Service Tax also.

The process of recovery of arrears starts with confirmation of demand against the defaulter assessee and includes a number of appellate forums

wherein assessee as well as the department can go for appeal. The process of Recovery of arrears is depicted in following flowchart:

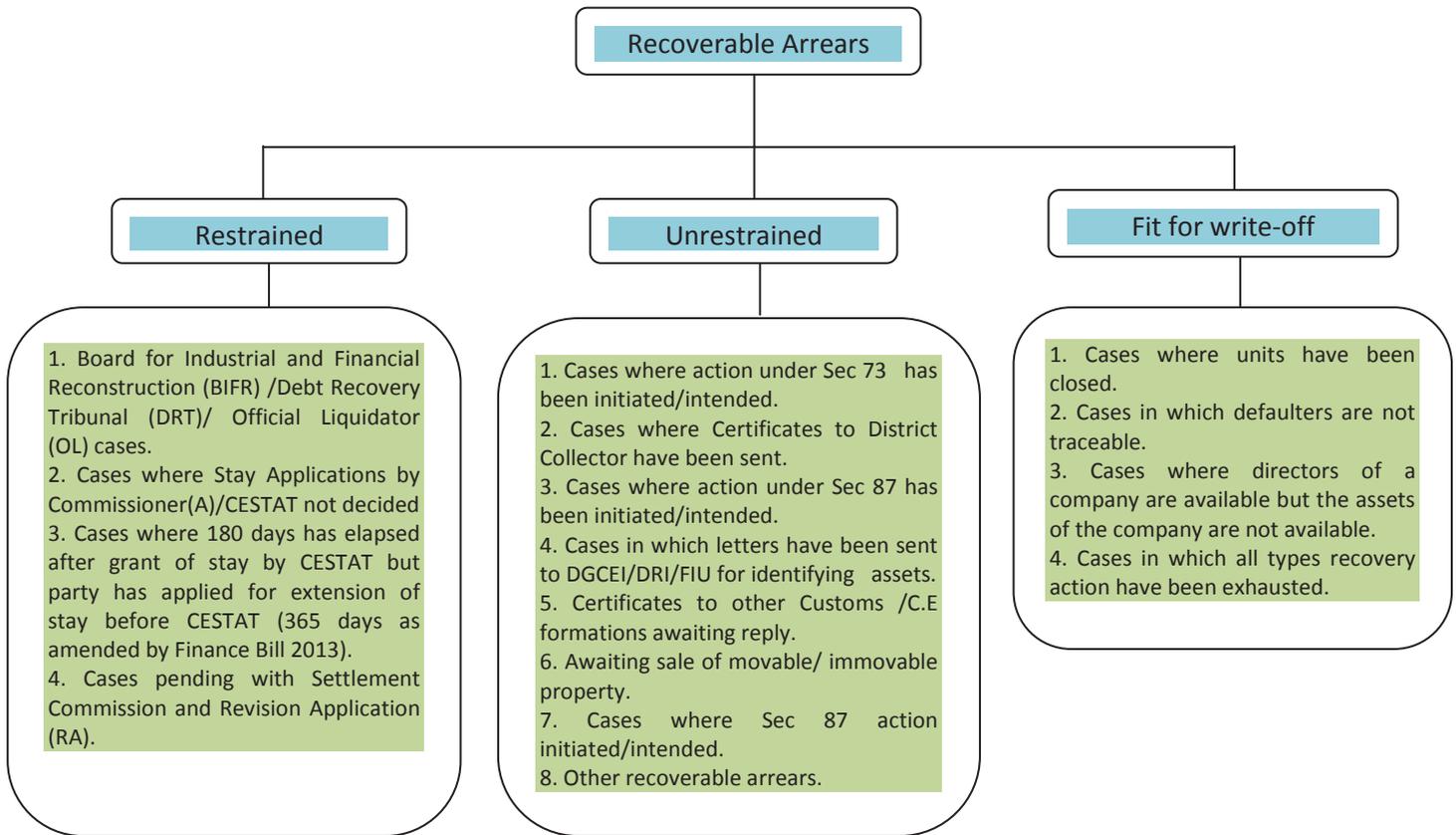
Chart 2.1: The Process of Recovery of Arrears



2.2 Classification of Arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are irrecoverable. The recoverable arrears are further classified as restrained, unrestrained and fit for write off as explained in Chart below:

Chart 2.2: Classification of Arrears



2.3 Organisational Structure

The functions, in respect of recovery of arrears in CBEC, have been divided between field formations and the Task force for recovery as follows:

Field Formations

- Range:** Ranges are the lowest level field formation entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.
- Division:** Divisional Officers (Assistant/ Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are performing their duties in accordance with the prescribed rules/regulations/instructions.
- Commissionerate:** Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of range and divisional officers regarding recovery of arrears. Besides, they should exercise the functions for

vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in the Board for Industrial and Financial Reconstruction (BIFR)/Debt Recovery Tribunal (DRT)/Official Liquidator (OL) etc. and watching progress and performance of Recovery Cell through monthly progress reports and taking follow up action.

- iv. **Recovery Cell:** Recovery Cell operates under the supervision and control of a jurisdictional commissioner. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction and to send a monthly progress report to the Commissionerate regarding arrears.

Task Force for Recovery

The Board (August 2004) constituted a centralized Taskforce for recovery of outstanding arrears of Central Excise and Custom duties, with a view to co-ordinate, facilitate, monitor and oversee the efforts of the Customs & Central Excise field formations towards recovery of arrears. Task force is headed by Chief Commissioner Tax Arrears Recovery (TAR) stationed at New Delhi with Six Nodal Officers TAR at Delhi, Mumbai, Kolkata, Chennai, Vadodara and Nagpur.

The Task Force is entrusted with the following responsibilities:

- Review of extent of revenue arrears
- Formulation and implementation of strategy for recovery.
- Monitoring the efforts of the Central Excise field formations.

As per OM No.F.No.296/34/2004-CX.9 (Pt) dated 11 August 2004, Zonal Chief Commissioners are responsible to identify potential cases of high revenue (i.e., arrear of more than ₹ one crore pending before CESTAT), appeal cases and other cases and furnish the information to the Nodal Officer. Nodal Officer has to make strategy, impart necessary instructions to field formations to deal with such recovery cases and monitor the progress of the same.

2.4 Audit Objectives

The subject specific compliance audit sought to assess

- The level of compliance with the prescribed rules and regulations as well as the guidelines issued by the department relating to recovery of dues

- Effectiveness of monitoring and control mechanism regarding recovery of arrears.

2.5 Audit Coverage

We examined the records of office of the Chief Commissioner (TAR) Delhi, all the six nodal offices under it and 32 Commissionerates out of 117 total Commissionerates¹⁵ dealing with Service Tax. The period covered was from 2012-13 to 2014-15.

2.6 Audit Findings

We found instances of inordinate delay in various steps involved in recovery of arrears viz. communication of OIOs to Range Offices, initiation of recovery proceedings, filing of application for early hearing, transfer of cases to Recovery Cell and updating the status of arrear cases. We also observed absence of mechanism to know status of cases, improper maintenance of Appeal Register as well as relevant records/data at TAR, non-formulation of strategy by zonal TAR, inadequate inspection of the Commissionerates by TAR etc. The observations are discussed in succeeding paragraphs.

2.7 Departmental Performance in Respect of Recovery of Arrears

The performance of the department in respect of recovery of Service Tax arrears, during the years 2012-13 to 2014-15, is depicted below:

Table 2.1: Arrears of Service Tax during last three years

Year	Arrears at Commencement of the Year	Recovered during Year	Arrears Pending at the End of Year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non-Recoverable
2012-13	22,013.85	5,836.42	17,897.94	25,881.29	2,935.37	518.87
2013-14	47,233.47	1,231.82	35,080.29	25,671.64	9,089.78	1,415.78
2014-15	71,257.49	900.70	45,805.94	6,525.85	2,102.63	5.07

Source: Information provided by Directorate General of Performance Management vide letter C.No. CC(TAR)48/2015-14408 dated 18 December 2015

It is observed that the arrears of Service Tax at the beginning of the year **tripled in** 2014-15 as compared to 2012-13. However, the recovery of arrears has shown a decreasing trend over the last three years. Recovery during the year as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 42 *per cent* during 2013-14, decreased to 10 *per cent* during 2014-15.

¹⁵ post restructuring of the field formations by CBEC in October 2014

The performance of 22 Commissionerates out of 32 selected Commissionerates that provided complete data for last three years is given in the table 2.2. As the data furnished by remaining ten Commissionerates¹⁶ was incomplete, no inference could be drawn regarding performance of these Commissionerates.

Table 2.2: Performance of 22 selected Commissionerates during last three years

(₹ in crore)

Year	Arrears at Commencement of the Year	Recovered during Year	Arrears Pending at the End of Year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non – Recoverable
2012-13	5,458.53	158.68	3,538.62	6,706.07	401.46	134.49
2013-14	10,773.91	183.73	7,467.34	7,799.95	1,010.74	28.02
2014-15	18,808.42	211.49	9,764.18	5,886.60	2,597.64	21.31

Source: Information provided by some of selected Commissionerates to audit

It is observed that the arrears of Service Tax at the beginning of the year **tripled in 2014-15** as compared to 2012-13 in these Commissionerates also. Recovery during the year as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 46 *per cent* during 2013-14, decreased to 21 *per cent* during 2014-15. Stayed arrears also almost tripled during the three year period.

From the data provided, it is also observed that:

- In six Commissionerates i.e. Chennai ST-I, LTU Chennai, Ahmedabad ST, Rajkot, Ludhiana and Bolpur, recovery in 2014-15 decreased in comparison of 2012-13.
- In 13 Commissionerates i.e. Chennai ST-I, Puducherry, Trivandrum, Jaipur, Surat-II, Vadodara-I, Raipur, Chandigarh-I, Ludhiana, Panchkula, Kolkata ST-I, Guwahati and Patna, pendency of arrears increased more than 100 *per cent*. Increase in arrears was very steep in Jaipur (9,062 *per cent*) and Surat-II (879 *per cent*). Rajkot, Bolpur and Noida-ST Commissionerates performed well and the arrear pendency decreased in 2014-15.
- In six Commissionerates i.e. Puducherry, Jaipur, Surat-II, Vadodara-I, Kolkata ST-I, and Noida ST, increase in stayed arrear was more than 500 *per cent*.

¹⁶ Bangalore ST-I, Manglore, Ghaziabad, Hapur, Jamshedpur, Delhi ST-II, LTU Delhi, Bhubaneshwar-I, ST-III Mumbai, Nagpur- II

The Ministry offered no comments (December 2016), considering this only statistical information and did not furnish any reply on the performance of these Commissionerates.

2.8 Functioning of Field Formations

2.8.1 Inordinate Delay in Communication of Orders-in-Original to Range Offices

The Board in its circular dated 24 December 2008 stipulated that the details of Adjudication Orders shall be entered in the Confirmed Demand Register and action taken for recovery as laid down in Chapter 18 Part III of the CBEC's Central Excise Manual. However, the circular did not prescribe any time limit for communication of OIO to Range Office.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerate, in case of 73 OIOs in 11 Commissionerates, the time taken to communicate OIOs to the Range offices ranged between 01 to 2,949 days. In absence of a prescribed time limit, considering one week time as acceptable to communicate OIO to Range, audit analysed Commissionerate wise delays and details of the Commissionerates with significant delays are depicted in table below:-

Table 2.3: Delay in communication of Orders-in-Original

Sl. No.	Commissionerate	Delay up to One Month	Delay from One to Three Months	Delay Beyond Three Months	Total Cases with Delay Beyond a Week
1	Hyderabad ST	15	2	1	18
2	Gwalior	0	1	2	3
3	Puducherry	3	0	0	3
4	Trivandrum	8	7	1	16
5	Chennai ST-I	8	3	0	11
6	Bhubaneswar-I	3	2	0	5
7	Delhi ST – II	0	1	0	1
8	Jaipur	2	0	0	2
9	Noida ST	2	0	1	3
10	Surat-II	5	0	0	5
11	Vadodara-I	5	1	0	6
	Total	51	17	5	73

A few cases are illustrated below:

i) In case of M/s Chaturvedi Travels & Tours in Gwalior Commissionerate, two OIOs¹⁷ of October 2006 and December 2007 were

¹⁷ OIO No. 314 /06 dated 24 October 2006 and OIO No. 158/ST/ST/DC/Gwl/07 dated 13 December 2007

delivered to the Range Office on 01 December 2014 i.e. after a delay of 98 and 84 months respectively.

The Ministry stated (December 2016) that in 2 cases OIO were sent to range office and to the party in stipulated period. However, no details were furnished to verify the claim. The Ministry further stated that efforts would be made to get the OIO delivered at the earliest.

ii) In case of M/s. Maswas Travels Pvt. Ltd., in Hyderabad ST Commissionerate, an OIO was delivered to Range Office on 27 July 2007 i.e. after a delay of 107 days.

The Ministry stated that some procedural issues might lead to delay in communication of OIO and that the observation however would be noted for future.

In remaining 70 cases, the Ministry replied (December 2016) as follows:

In 10 cases it was stated that delay period ranging 3-85 days was well within appeal period and in 12 cases, it was stated that delay was around 30 days. In 17 cases it was stated that delay was due to practical problems i.e. preparing multiple copies, printer, stationary, dispatch and involvement of staff in other priority works.

Reply is not tenable as OIO should be communicated to Range within reasonable time, otherwise the next steps in recovery of arrears would be further delayed.

In 16 cases it was stated that instructions have been issued to Divisions/sections to communicate OIO to Ranges without delay, while the Ministry regretted the delay in one case and attributed delay to restructuring in one case.

In all these 57 cases, it was also stated that efforts will be made to get the OIO delivered to range office at the earliest in future.

In six cases it was stated that there were no delay in communication of OIO to range office without forwarding any details in support of this claim.

In seven cases it was stated that though no time limit was stipulated for communicating the order in the Act, the actual communication time was within permissible and plausible time.

Different responses by the Ministry in different cases of delay of similar nature indicate that the Ministry did not have a uniform view on this matter and simply forwarded responses of various field formations. The Ministry needs to specify a time limit for early communication of OIOs to Ranges and ensure monitoring of the same.

2.8.2 Non-initiation/Delay in Recovery Proceedings

The Officers of the Service Tax have been empowered under section 73 and section 87 of the Finance Act 1994 to recover the arrears of revenue of Service Tax.

Section 73 empowers the Central Excise Officer to serve notice to the person, chargeable with service tax, which has not been levied or paid or short-levied or short-paid or erroneously refunded. Time limit for serving a notice under this situation is 'one year' from the relevant date. But in case of fraud, collusion, willful misstatement, suppression of facts, contravention of any of the provisions of this Act or Rules the time limit for serving the notice is extended up to five years.

Section 87 empowers Central Excise officer to recover amount payable by an assessee from a third party who holds money on account thereof.

i) Audit observed (October 2015 to February 2016) that, in 49 cases in eight Commissionerates¹⁸, action for recovery under section 73 and 87 of the Finance Act 1994, was not initiated, which resulted in non-recovery of ₹ 14.86 crore. Commissionerate-wise position is detailed below:

Table 2.4: Non-initiation of recovery proceedings

Commissionerate	Total Cases	Amount	Amount (₹ in lakh)			
			Year wise Break up			
			Less than 5 Years		More than 5 Years	
			Number	Amount	Number	Amount
Ahmedabad S. Tax	2	122.75	0	0	2	122.75
Bhubneshwar	4	61.41	1	2.48	3	58.93
Bangalore ST-I	5	228.2	0	0	5	228.2
Noida ST	1	6.45	1	6.45	0	0
Hapur	12	123.31	2	87.56	10	35.75
Ghaziabad	5	320.79	3	292.83	2	27.96
Patna	2	76.32	1	16.31	1	60.01
Jamshedpur	18	547.2	16	524.24	2	22.96
Total	49	1,486.43	24	929.87	25	556.56

Some cases are illustrated below:

(a) A demand of ₹ 84.37 lakh was confirmed (March 2008) against M/s. Shadow Consultancy Services Pvt. Ltd., in Ahmedabad Commissionerate.

¹⁸ Ahmedabad ST, Bhubaneswar, Bangalore ST-I, Noida ST, Hapur, Ghaziabad, Patna, Jamshedpur

The stay was dismissed by CESTAT (December 2010). The assessee withdrew (August 2012) application filed before Hon'ble Gujarat High Court.

The department issued notices (December 2011) under section 87 to National Textiles Corporation (NTC), and Bank of Baroda/Central Bank of India/ICICI Bank for recovery of arrear. A letter dated 4 January 2012 was issued to Income Tax department. Consequently, an amount of ₹ 6.29 lakh was realised from NTC & Central Bank of India (September 2010).

About 40 months have elapsed from the date of withdrawal of Civil Application filed by the assessee before Honourable Gujarat High Court. However, neither certificate for recovery of arrears was prepared and sent to the District Collector nor any efforts made to identify movable/immovable property in the name of the assessee, its proprietor, partners, directors etc. by approaching other government/non-government agencies, for recovery arrears dues.

The Ministry re-iterating the action taken by the department, stated that no property was identified despite many efforts and that the case would be sent to revenue authority for recovery on identification of property in the name of assessee.

Inaction/insufficient action by the department resulted in non-recovery of dues of ₹ 78.08 lakh.

(b) A demand of ₹ 77.58 lakh was confirmed (November 2011) against M/s. IED Limited Ghaziabad in Ghaziabad Commissionerate which was upheld by the appellate authority (May 2012). The party approached the CESTAT but no stay was granted. The department did not initiate any action to recover the dues.

The Ministry stated (December 2016) that letters were written between February-April 2016 to bank and sub-registrar Ghaziabad to identify property of the defaulter. Thus, action was initiated after being pointed out by Audit i.e. almost four years after appellate authority upheld the demand.

In respect of remaining 47 cases, the Ministry's replies were as follows:

In five cases, the Ministry stated that no action was initiated against the assessee as they were not traceable despite best efforts of the department.

In one case, it was stated that detention notice was issued in March 2013 and letters to assessee, its partners and authorities were written in 2015-2016. Thus the department took action with delay.

In one case it was stated that due to death of the proprietor and no legal heir of the firm, action was being initiated for write off of the arrear.

In four cases it stated that recovery position of the case was being ascertained from the concerned Divisions of the department and final reply is awaited.

In 24 cases, it stated that a series of actions have been taken by the department but no details regarding date of action taken were furnished, in absence of which timeliness of action taken could not be ascertained.

In 12 cases it stated that in case of Service Tax, details of assets of Service providers are not available with the department and the assesses change their addresses without intimation to the department and hence assessee became untraceable and no action could be initiated by the department.

In view of inability expressed by the department to identify assets of defaulters and trace the assessee, the department needs to devise a mechanism to make it mandatory for assesses above a particular threshold limit to furnish as well as update details of assets to the department and also consider strong penal provisions in case of non-intimation of change of address by Service Providers.

ii) It was further noticed that in eight cases amounting to ₹ 1.49 crore, in three Commissionerates¹⁹, the action was taken with delay ranging from 19 to 80 months.

One case is illustrated below:

A demand of ₹ 54.42 lakh was confirmed (March 2010) against M/s Atwal & Associates in Bhavnagar Commissionerate. The appeal of the party was dismissed (22 July 2013) by the appellate authority. Only simple letters were written (December 2013 and March 2015) to the party after five and 20 months from dismissal of appeal and one letter written to third party after 20 months from dismissal of appeal and no other action was taken.

We pointed this out (December 2016). The Ministry stated (December 2016) that action had already been taken under section 87. However, as no details regarding action taken were provided, timeliness of action taken cannot be verified.

In one case it was stated that efforts were made but the assessee was not traceable and as assessee was from unorganized sector and change their premise address frequently, its assets could not be traced.

In one case it was stated that records of the case were dislocated due to restructuring of the Commissionerate, which led to delay.

¹⁹ Bhavnagar, Surat-II, Vadodara-I

In one case, the Ministry stated (December 2016) that action had already been taken under section 87. However, as no details regarding action taken were mentioned in the reply, timeliness of action taken cannot be ascertained.

In four cases it was stated that action was taken and that delay was due to restructuring in October 2014. Reply is not tenable as for the cases pertaining to period 2008 to 2011, delay cannot be attributable to restructuring which took place in October 2014 and action stated in the reply was taken in 2016.

2.8.3 Non-filing of Application for Early Hearing

CBEC, vide circular no. 746/62/2003-CX, dated 22 September 2003, stated that the Commissionerates should file Miscellaneous Applications, in terms of Rule 28C of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) (Procedure) Rules, 1982, for out-of-turn early hearing of the cases with high revenue stakes, indicating clearly the grounds for such prayer. It was further stated that in order to get interim stay orders vacated, the Commissionerates must take proactive measures by filing Miscellaneous Petition before Supreme Court/High Court/CESTAT for early hearing (EHP), specifying the grounds clearly and for prompt follow-up of appeal matters, particularly in respect of Civil Appeals/SLPs before the Supreme Court, through effective liaising with the Directorate of Legal Affairs. Further, Chief Commissioner (TAR) vide letter C.No. CC/TAR/54/2009/3 dated 15 January 2010 instructed field formations to monitor all cases involving revenue of more than ₹ 50 lakh (irrespective of age) and approaching CESTAT for early decision.

i) Audit observed (December 2015 to February 2016) that in 51 cases in nine Commissionerates²⁰, pending from 2 to 10 years involving revenue of ₹ 613.07 crore, applications for early hearing were not filed. Commissionerate wise position is depicted in Table 2.5:

Table 2.5 : Non-filing of Application for Early Hearing

Sl. No.	Name of the Commissionerates	No. of Cases	Amount
1	Bhavnagar	5	11.14
2	Ghaziabad	2	18.51
3	Hapur	1	1.34
4	LTU, Chennai	12	159.40
5	Puducherry	5	61.92
6	Service tax - I, Chennai	14	314.03
7	Surat-II	6	19.27
8	Trivandrum	1	2.39
9	Vadodara-I	5	25.07
	Total	51	613.07

²⁰LTU Chennai, Puducherry, ST-I Chennai, Trivandrum, Noida ST, Hapur, Ghaziabad, Bhavnagar, Surat-II, Vadodara-I

ii) Non-filing of Applications for Early Hearing in High Revenue Cases:

Cases where no action was taken by the department for early hearing included 16 cases pertaining to ten assessees where arrears involved in each case was ₹ 10 crore and above where the stay was granted between 02 August 2010 to 17 June 2014 as detailed in table 2.6:

Table 2.6: Non-filing of application for early Hearing (High Revenue cases)

(in ₹ crore)				
Sl. No.	Name of the Assessee	Commissionerate	Amount of Arrears	Date of grant of stay
1	M/s. Freight System India Pvt. Ltd.,	Chennai ST-I	168.63	02.08.2012
2	M/s. Royal Sundaram Alliance Insurance Company Ltd.,	Chennai LTU	85.58	12.12.2012
3	M/s. Wipro Ltd.,	Puducherry	53.10	02.07.2014
4	M/s. CITI Lights Property Pvt. Ltd.	Chennai ST-I	37.86	10.04.2013
5	M/s. Sify Technologies Pvt. Ltd. (3 cases)	Chennai LTU	35.86	17.06.2014
6	M/s. CH Robinson Worldwide Freight India Pvt. Ltd.	Chennai ST-I	35.58	14.03.2013
7	M/s. Dishnet Wireless Ltd.	Chennai ST-I	32.52	02,08,2010
8	M/s. Alston T&D India Ltd., (formerly M/s. Areva T &D India Ltd.) (5 cases)	Chennai LTU	24.93	09,05,2011, 04.12.2012, 23.01.2013, 07.03.2013, (two cases)
9	M/s. Plaza Maintenance and Services	Chennai ST-I	15.56	07.09.2010
10	M/s. Uttam Toyota	Ghaziabad	10.69	21.01.2011

We pointed out these 16 cases (between February 2016 to March 2016). The Ministry, in four cases stated (December 2016) that as per RFD report, Early Hearing Petition (EHP) has to be filed in CESTAT in cases involving revenue of ₹ five crore and above and pending for more than one year.

In case of M/s. Freight System India Pvt. Ltd., it was replied that EHP had already been filed, though, date of filing of EHP was not provided. It was further stated that CESTAT, as a matter of practice, does not give importance to the EHP applications and determine the cases on the basis of their own criteria.

In eight cases, it was stated that action was being taken for filing EHP and in three cases, it was informed that EHP was filed.

iii) Non-utilisation of Opportunity Given by CESTAT for Early Hearing

Audit further noticed that (December 2015) in case of M/s Gulshan Rai II in Ghaziabad Commissionerate involving arrears of ₹ 7.81 crore, the CESTAT observed (May 2012), that as the matter was concerned with certain legal aspects and also demand was running into crores of rupees, it would be proper to hear the appeal early, if any of the parties file necessary application in that behalf. But no early hearing application was filed even after a lapse of three years though draft for the application was sent (November 2013) to Additional Commissioner.

Thus, the opportunity given by CESTAT to speed up the case was not utilised by the department which resulted in arrears remaining unrealised.

In respect of remaining 34 cases the Ministry replies were as follows:

In 15 cases, it was stated that EHP has been filed or under process.

In 10 cases, it was stated that as per RFD report/Action Plan dated 01 September 2014, EHP has to be filed in CESTAT in cases involving revenue of ₹ five crore and above and pending for more than one year. It was further stated that CESTAT, as a matter of practice, does not give importance to the EHP applications and determine the cases on the basis of their own criteria.

In one case, it was stated that as duty involved in the case was less than ₹ one crore, there was no need to approach CESTAT for early hearing. The reply is not tenable as the instructions contain the word 'Arrear' not 'Duty' and total arrear in this case was ₹ 1.76 crore.

In one case, it was stated that EHP was filed but it was dismissed by CESTAT stating that there was no urgency for early hearing of appeal in view of the pendency of huge demand cases.

In one case, it was stated that revised instruction requires to approach CESTAT for early hearing of cases involving revenue ₹ one crore.

In five cases, it was stated that CESTAT in its judgment {2008 (230) ELT 64 (Tri-Mum)} stated that revenue of more than ₹ one crore can not be the only criteria for early hearing and should also include other factors as issue covered by SC/HC/tribunal decision, issue being of recurring nature and revenue involved being substantially high or any extraordinary situation.

In one case, reply was awaited (December 2016).

The Ministry forwarded replies of various Commissionerates which mentioned different threshold limits to approach CESTAT for early hearing viz. Revenue involving ₹ five crore and above and pending for more than five years, Duty involving ₹ one crore, Revenue ₹ one crore. Thus, the Ministry simply forwarded differing views given by various Commissionerates to CAG without analyzing and taking a stand on the same.

The Ministry needs to examine the issue in consultation with CESTAT and issue suitable and clear instructions to field formations for compliance so that early hearing applications of the department are not dismissed by CESTAT.

2.8.4 Bunching of Cases

CBEC vide circular No. 296/34/2004-CX.9(Pt) dated the 11 August, 2004, stipulated that the Jurisdictional Commissioner should also organize bunching of cases on same issues involving substantial revenue and request the Tribunal for disposal on priority.

Audit observed (November 2015 to January 2016 and July 2016) that bunching of cases on same issues involving substantial revenue was not done in any of the 13 Commissionerates²¹ and Tribunal was not requested for disposal of those cases on priority, at any time. The information from rest of 19 Commissionerates was not received.

Detailed examination in two Commissionerates, out of the 13 Commissionerates mentioned above, revealed that there were eight cases which could have been bunched, as detailed in Table 2.7:

Table 2.7: Bunching of Cases not Done

			(₹ in crore)
Sl. No.	Name of the Commissionerate	No. of Cases	Amount
1.	Hyderabad ST	02	41.64
2.	LTU Chennai	06	15.61
	Total	8	57.25

Thus, inaction of the department to send the list of identical issues to CDR, for requesting CESTAT for early disposal of the case, resulted in pendency of revenue arrear of ₹ 57.25 crore.

Two illustrative cases are given below:

- i) Demand of ₹ 9.63 crore in three OIOs was confirmed against M/s PLR Projects Ltd. in Hyderabad Service Tax Commissionerate for “Non inclusion of

²¹ Hyderabad Service Tax, LTU Chennai, Service Tax-I Chennai, Service Tax-I Kolkata, Guwahati, Bolpur, Jamshedpur, Patna, Bhavnagar, Surat-II, Vadodra-I, Gwalior & Raipur

value of free supply materials by the Service Receiver in Gross Receipts”. The demand was stayed by the appellate authorities but the bunching of cases was not done by the department.

ii) Demand of ₹ 32.01 crore in three OIOs was confirmed against M/s BGR Mining & Infra Pvt. Ltd. In Hyderabad Service Tax Commissionerate for “Irregular availment of CENVAT credit on Tippers/ Dumpers”. The demand was stayed by the appellate authorities but the bunching of cases was not done by the department.

The Ministry stated (December 2016) that in both the cases, the Commissioner (AR) was asked to request the tribunal for linking of the subject appeals and for early hearing of the matter. Further progress regarding filing of appeal is awaited.

In five cases the Ministry stated (December 2016) that action was being taken for filing of application for bunching of cases and in one case it was stated that application for bunching was filed (August 2016).

2.8.5 Non-transfer of Cases to Recovery Cell

The Central Excise Officers have been empowered to attach and sell movable and or immovable properties of any person who has failed to pay any sum due to the government vide Notification No. 48/97-CE(NT) dated 2 September 1997 issued under section 12 of the Central Excise Act, 1944 which made section 42 (1)(C) (ii) of the Customs Act, 1962 applicable to like matters in Central Excise.

If no recovery is made by departmental efforts, cases needs to be transferred to Recovery Cell which have been empowered to take action for recovery by attachment and sale of property of the defaulter.

Further, the Board desired²² (October 2000) that all cases, of 1999 and earlier years already referred to District Authorities, where there is no effective action or response, should be referred to Recovery Cell of the Commissionerate where the assessee may have, as per available information, some movable/immovable property so that action can be initiated as per circular No. 365/81/97-CX dated 15 December 1997.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, only Guwahati Commissionerate, transferred 2,108 cases involving ₹ 264.54 crore to Recovery Cell during audit period and no information was provided by four Commissionerates. In the remaining 27

²² vide circular No 552/48/2000-C Dated 4 October 2000

Commissionerates²³ no cases were transferred to Recovery Cell during any of the year. Four out of the 27 Commissionerates did not provide details of arrears. Further in 23 Commissionerates, which provided data of arrears for the year 2014-15, amount in arrear was ₹ 16,857 crore at the beginning of the year 2014-15. Further in the data furnished by five Commissionerates²⁴ regarding cases transferred to Recovery Cell, it was mentioned that revenue of arrears was nil while in these Commissionerates there were 6,960 cases of arrears involving ₹ 5,956 crore pending.

Thus non-transfer of cases has not only resulted into Recover Cell being redundant but also has led to piling of arrears and poor recoveries thereof.

We pointed these out between (January 2016 to March 2016).

The reply of the Ministry (December 2016) in respect of 31 Commissionerates was as follows:

In one case, it was stated that Audit observation had been noted.

In five cases, it was stated that there was no Recovery Cell and recovery was being monitored at Division level. In nine cases, Recovery Cell existed but recovery was still being monitored by Division. In two cases, it was stated that Recover Cell was made functional recently.

In five cases, it was stated that Recovery Cell was functional / cases were being transferred to Recovery Cell, however, no details of cases transferred were provided.

In four cases, it was stated that there was no case fit for transfer to Recovery Cell.

In one case, it was stated that that cases of arrears more than ₹ 50 lakh are being monitored by Recovery Cell.

In two cases, it was stated that no cases were being transferred from Divisions to Recovery Cell.

In one case, it was stated that there was no provision in Service Tax requiring transfer of cases to Recovery Cell.

In one case it was stated that the circular no. 368/81/97-CX dated 15 December 1997 suggested referring of cases to the Recovery Cell of those Commissionerates where the assessee may have some movable/immovable property. The Recovery Cell is therefore expected to deal with the references

²³ Puducherry, LTU Chennai, Service Tax - I, Chennai, Trivandrum, Chandigarh-I, Chandigarh-II, Ludhiana, Punchkula, Bangalore ST-I, Mangalore, Noida Service Tax, Ghaziabad, Jamshedpur, Patna, Delhi ST-II, Gwalior, Raipur, Ahmedabad ST, Bhavnagar, Jaipur, Rajkot, Surat-II, Vadodara-I, Hyderabad ST, Bhubaneswar-I, ST-III Mumbai, Nagpur-II

²⁴ Puducherry, LTU Chennai, ST-I Chennai, Ludhiana, Jaipur

received from other Commissionerates in the form of Appendix-I giving details of movable and immovable property in this Commissionerate. Therefore all the arrears of the Commissionerate are not expected to be transferred to the Recovery Cell.

The reply is not tenable as the circular no. 365/81/97-CX dated 15 December 1997 does not limit to the extent of the cases received to Recover Cell from other Commissionerates (have to be transferred to Recovery Cell). There are cases where the property of the defaulter may exist in the same Commissionerate and the authorised officer has to issue Appendix II accordingly. Further, the Board vide circular no. 552/48/2000-CX dated 4 January 2000, also instructed that all cases, where departmental efforts do not yield results, are to be taken up for action by Recover Cell. Thus, the Commissionerate has to identify the cases where no recovery is made by departmental efforts and transfer all such cases to Recovery Cell of same or different Commissionerates where any asset/property is available.

Thus, the Recovery Cell exists in most of the Commissionerates but same is not functional and different field formations are having different views on the function of Recovery Cell. Further, the Ministry has simply forwarded the contradictory views of field formations to CAG without any analysis, including response in one case about absence of provision in Service Tax requiring transfer of cases to Recovery Cell and another response that Recovery Cell is responsible for cases transferred from other Commissionerates only. This shows casual approach of the Ministry to observations raised by the CAG.

The Board may issue clear instructions to field formations for effective functioning of Recovery Cell and ensure effective monitoring of the same.

2.9 Internal Control

2.9.1 Non-updation of Status of Arrear Cases

We observed in some cases that lack of monitoring of the recovery cases resulted in improper categorization of the cases as detailed below:

i) We noticed (December 2015) that in three cases in Bhubaneswar Commissionerate, assesseees who were regularly filing their income tax returns to Income Tax Department were classified as 'defaulters not traceable' involving revenue arrear of ₹ 23.22 lakh. The department could have approached Income Tax department to ascertain the whereabouts of the assesseees.

The Ministry stated (December 2016) that name of defaulters involved in 3 cases had not been furnished. The reply is not tenable as the names were provided to the department with the audit observations.

ii) We noticed (November 2015) that a demand of ₹ 4.80 lakh was confirmed on 31 January 2006 against M/s S M Telesys, in the jurisdiction of Service Tax Commissionerate, Noida. As per the TAR for the month of March 2015, the case was categorised “pending with BIFR”, whereas the case was already decided by the BIFR in May 2011. Thus, the case was wrongly categorized and as a result wrongly monitored for further action.

The Ministry admitted the observation (December 2016) and stated that action under section 87 had been initiated to recover the dues.

iii) We noticed (November 2015) that a demand of ₹ 1.53 crore was confirmed against M/s Logix Soft Tele Pvt. Ltd. Noida in the jurisdiction of Service Tax Noida Commissionerate on 17 February 2014. As per the TAR for the month of March 2015, the case was categorized “under appeal period not over” whereas appeal period was already over on 18 May 2014.

The Ministry admitted the observation (December 2016) and stated that case has since been shown in ‘CESTAT stay category’ as stay has been granted by the CESTAT in the case.

2.9.2 Inflated Arrears

The monthly Tax Arrear Report reflects the amount of arrears outstanding against the defaulter at the end of the each month. Audit noticed that in Hapur Commissionerate and Ghaziabad Commissionerate the arrears were shown in excess by ₹ 37.68 lakh in three cases as discussed below:

i) We observed (January 2016) that a demand of ₹ 1.94 crore was confirmed against M/s Harish Aneja & Others, Bareilly in Hapur Commissionerate. The party deposited ₹ 27.00 lakh out of the confirmed demand, which was not appropriated in the arrears shown in TAR. Thus, the arrears were inflated by ₹ 27.00 lakh.

The Ministry admitted the observation and stated (December 2016) that arrear has been reduced in the TAR report accordingly.

ii) We observed (January 2016) that a demand of ₹ 2.03 crore was confirmed against M/s Commercial Motors, Bareilly in Hapur Commissionerate. The party deposited ₹ 7.63 lakh out of the demand confirmed, which was not appropriated in the arrears shown in TAR. Thus the arrears were inflated by ₹ 7.63 lakh.

The Ministry stated (December 2016) that the party deposited on ₹ 1.12 lakh and not ₹ 7.43 lakh and arrears had been reduced accordingly in TAR.

The reply is not tenable as the party deposited ₹ 7.63 lakh vide Challan No. 00433 dated 26 February 2013 (₹ 1.12 lakh) and Challan No. 00310 dated 20 May 2015 (₹ 6.51 lakh) which was also confirmed by the Range Officer.

iii) We observed (January 2016) that a demand of ₹ 12.24 lakh was confirmed against M/s H. M. Construction, Moradabad, Hapur Commissionerate. The party deposited ₹ 3.05 lakh, out of the demand confirmed, which was not appropriated in the arrear shown in TAR. Thus, the arrear was inflated by ₹ 3.05 lakh.

The Ministry stated (December 2016) that the party had not deposited any amount and therefore the amount of arrears as shown in the TAR report was correct. The reply is not tenable as the deposit of ₹ 3.05 lakh by the party was mentioned in the stay order of CESTAT.

2.9.3 Lack of Coordination Among Different Wings within the Department

We observed (December 2015) that reconciliation was not being done by Rayagada Division in Bhubaneswar Commissionerate with the Tribunal section of the Commissionerate (Hqrs.). 13 and 20 cases being shown as pending in CESTAT and Commissioner (Appeal) involving ₹ 70.87 crore and ₹ 3.82 crore respectively were shown as pending by the Division. But cross verification of the position of pending stayed arrears in Tribunal section of the Commissionerate (Hqrs.) revealed that these cases were not actually pending. One such case viz., M/s. K.K. Thakar involving an amount of ₹ 1.02 crore though disposed off by CESTAT in October 2015 was shown as pending. Non-reconciliation by Recovery Cell/Divisions led to the cases being shown as pending and recovery is stalled resulting in inaction of the department to recover the government dues of ₹ 74.69 crore.

The Ministry stated (December 2016) that Divisional officer had been requested for the reconciliation of differences and initiate recovery action.

2.10 Monitoring

2.10.1 Absence of Mechanism to Know Status of Cases

We observed (December 2015) that there is no mechanism in field formations to know the status of the cases of recovery. During the scrutiny of records, it was noticed that in most of the cases, the department requested the assesseees to furnish the status of the cases pending in the CESTAT, rather than monitoring the cases itself. A few instances are mentioned below:

i) A demand of ₹ 2.24 lakh and equal penalty besides interest at applicable rates was confirmed (September 2010) against M/s Samrat Studio & Colour Lab., Jaipur in Jaipur Commissionerate. Scrutiny of records revealed

that the assessee filed an appeal (June 2012) in the CESTAT against the order. The Range office requested (December 2015) the assessee to inform the present status of the case instead of monitoring the status of the case by Range Office.

The Ministry admitted the observation in this case and stated (December 2016) that status of case is ascertained from HQ Review branch as the CESTAT website is not functional and in present case, Range Officers erroneously asked the status from the assessee. It further stated that from this instance alone it is not appropriate to infer that there is no mechanism in the department to know the status of cases.

The Board needs to strengthen the mechanism such as periodical reports from legal representative etc. to ascertain the status of cases.

ii) A demand of ₹ 10.37 crore and equal penalty besides interest at applicable rates was confirmed (January 2013) against M/s. Prajay Engineers Syndicate Ltd., in Hyderabad Commissionerate. Scrutiny of records revealed that the Range Officer Service Tax requested (06 November 2015) the assessee to intimate the present status of the case. Audit noticed that stay of demand was already granted by CESTAT on 16 June 2015.

The Ministry stated (December 2016) that the facility to know the status of cases pending at CESTAT Hyderabad was not available on website, hence, the assessee was requested to intimate the present status of case.

iii) We noticed (November 2015) that a demand of ₹ 4.80 lakh was confirmed (31 January 2006) against M/s S M Teleys, in the jurisdiction Service Tax Commissionerate, Noida (as pointed out in para 7.3.1 (ii)). The assessee informed (March 2011) the department that the company is declared sick (February 2007) by the Board for Industrial and Financial Reconstruction (BIFR). The department requested (February 2013) the BIFR for the present status of the case. The department came to know (November 2013) that the premises were auctioned.

It indicates that the department neither took timely action for the recovery of dues nor was aware that the assessee was declared a sick firm and the property was auctioned.

The Ministry stated (December 2016) that an officer was deputed to the office of BIFR and the case was decided by BIFR in September 2013. Later, departmental officer visited the premises and came to know that property of the defaulter was auctioned by IFCI and acquired by Lavanya Ayurvedic Hospital. The department is pursuing the matter with IFCI and banks. However, details of departmental action in BIFR i.e. lodging of the

department claim, details of BIFR proceedings etc were neither available on the case file scrutinised by audit nor provided by the Ministry.

2.10.2 Use of Software Application by the Department to Monitor Recovery of Arrears

Though the positions of recoveries are reflected in Tax Arrear Reports, there is no software/module exclusively for arrears compilation and monitoring. Use of an IT system/ computer software/program in the department for recovery of arrears may be an effective tool. Adequacy of the system, application and procedural controls, availability of MIS reports for management and sharing of information etc. cannot be ensured in the absence of such IT system /computer software/program.

Audit noticed that in 18 Commissionerates, the department had no computerized software/program or a system to monitor the extent of arrears of revenue, compliance of prescribed rules and regulations at different level of execution etc., ensuring arrears recovery by the department in an efficient and effective manner. The information from rest of the 14 Commissionerates was not received as of date.

Lack of IT enabled system has resulted in poor monitoring of recovery process.

When we pointed these out between (January 2016 to March 2016), the Ministry stated (December 2016) that the Board has taken initiatives to monitor the recovery of arrears electronically. Monthly reporting of arrears by field formation has been digitized and efforts are underway to digitize the manual registers.

It is expected that the digitization would improve the monitoring of recovery of arrears.

2.10.3 Non-maintenance of Appeal Register

The Board circular No 224/37/2055-CX 6 dated 24 December 2008 prescribed various measures such as preparation of draft para-wise comments on the appeal filed by the assessee and regular upkeep of register through monthly review of records for effective monitoring of cases pending with legal forums.

We observed (October 2015 to February 2016) that the Appeal Register was not being maintained in 18 Ranges in the jurisdiction of four Commissionerates.

We pointed these out between January 2016 and February 2016. The Ministry stated (December 2016) that instructions have been issued to field formations to maintain Appeal Register.

2.11 Functioning of Task Force for Recovery

2.11.1 Non-formulation of Strategy by Zonal TAR

The Board (CBEC) constituted (August-2004) a Centralised Task Force (CTF) to co-ordinate, facilitate, monitor and oversee the efforts of Customs and Central Excise field formations in recovery of arrears. CTF was entrusted with a vital task of reviewing the position of arrears of revenue of Central Excise and Customs and to finalise and implement the strategy for realisation of arrears with the objective of meeting the targets. This strategy covers all cases before CESTAT, Commissioner (Appeals) and Settlement Commission. Apart from them, in respect of Commissioners' undisputed arrears, CTF was to formulate a collection strategy. The nodal officer was also required to take up monthly monitoring of cases, where defaulters were not traceable and their assets not available which have been referred to DGRI/DGCEI.

We observed that though the department was entrusted with the finalising and implementing strategies for realisation of arrears, it did not take any such action for realization of arrears. This may be correlated with the fact that huge arrears were pending in CESTAT due to indefinite timeline for stay where the CTF did not finalise any planning / issue direction in this regard. The facts were also evident that as of March 2015, in respect of Service Tax, cases involving arrears of an amount of ₹ 67,399.89 crore were pending with the CESTAT (All India), arrears of ₹ 24.60 crore with Settlement commission and arrears of ₹ 1,769.81 crore were outstanding with the Commissioner (Appeals) against a total arrears of revenue of ₹ 79,743.46 crore (all zones). These constituted 86.77 per cent of the total arrears of recovery. Thus, due to ineffective strategy, these arrears could not be liquidated and showed a continuously increasing trend.

When we pointed this out (January 2016), the Ministry stated (December 2016) that strategies have been formulated by the TAR involving a number of initiatives and the same are being followed by the Commissionerates and monitored by TAR. In respect of cases before legal entities, the Ministry stated that these are independent entities and departmental instruction cannot override them.

The reply is not tenable as Audit has not insisted on directing the legal entities but on making strategies to pursue the cases with legal entities by way of request for early hearing, vacation of stay, etc. as envisaged in TAR functions.

2.11.2 Non-maintenance of Relevant Records/Data at TAR.

Maintenance of relevant data is the basis to formulate strategy and action plan to discharge functions effectively. To discharge its functions envisaged by O.M. dated 11 August 2004, Zonal TARs are required to maintain data relating to arrears of field formations in its jurisdiction.

In TAR Nagpur, the information could not be compiled due to restructuring and shifting of office.

Information in respect of TAR Chennai and Vadodara were not provided by the department.

In the absence of data, Audit could not comment on the working of these TARs.

We pointed these out (February 2016), the Ministry stated (December 2016) that restructuring of TAR has taken place in August 2015 shifting the responsibility of CC(TAR) to Director General of Performance Management (DGPM) and placing zonal nodal offices under Director General of Tax Payers Services (DGTPS). The transition was taking place at the time of Audit, due to which records could not be furnished to Audit.

Reply is not tenable as the Board should ensure proper change management/transition plan to ensure that functioning of the department is not hampered.

2.11.3 Non/Inadequate Inspection of the Commissionerates by TAR

OM No. F. No. 296/34/2004-CX 9 (PT) dated 11 August 2004, prescribes test check of the performance of the Commissionerates by initial inspection in all the Commissionerates in his charge and thereafter by periodical inspection/interaction with jurisdictional officers.

We observed (November 2015) that the Nodal Office Kolkata did not carry out any inspection during 2013-14, and only three Commissionerates were inspected out of 19 Commissionerate under its jurisdiction in 2014-15.

Thus, the Nodal Officers, TAR Kolkata did not comply with the Board instructions for inspection of the Commissionerates in its jurisdiction.

Information in respect of TAR Chennai and Vadodara was not provided by the department, and hence, we are not in position to comment on working of TAR at Chennai and Vadodara.

We pointed these out (February 2016) and the Ministry stated (December 2016) that nodal offices could not carry out inspections as there was shortage of staff due to restructuring/transition of TAR.

Reply is not tenable as the objection pertained to period 2012-13 to 2014-15 and restructuring took place in August 2015. Further, the Board should ensure that at the time of change management/transition, functioning of the department should not be hampered.

2.12 Conclusion

Recovery of arrears is not being given due importance despite the mounting arrears. Elaborate instructions of the Board regarding monitoring of arrears, taking effective steps like requesting for early disposal, bunching of cases, and prompt action on finalization of Appeals or vacation of stay to safeguard the government revenue are neither understood by field formations nor being complied with. Special institutional arrangements like creation of Recovery Cell and Task force have not made any significant impact on the recovery process. In the age of digital environment, the Board has failed to exploit the potential of IT for monitoring of arrears.