सत्यमेव जयते

Report of the
Comptroller and Auditor General of India

भारतीय लेखापरीक्षा और लेखा विभाग

INDIAN AUDIT AND ACCOUNTS DEPARTMENT

लोकहितार्थ सत्यनिष्ठा

Dedicated to Truth in Public Interest

Union Government
(Department of Revenue – Customs)
(Compliance Audit)
No. 18 of 2021

Report of the
Comptroller and Auditor General
of India

for the year ended March 2020

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Laid on the table of Lok Sabha and Rajya Sabha on ………………..

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PREFACE

This Report for the year ended March 2020 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Department of Revenue – Customs under the Ministry of Finance, and Director General of Foreign Trade under Ministry of Commerce and Industry.

The Government has made significant investment in Indian Customs EDI System (ICES) which has resulted in comprehensive, paperless, fully automated customs clearance system and availability of transactional information in the form of electronic data. This would provide a good opportunity to Audit to hundred *per cent* review of data, instead of test check of transactions in a few locations, and would provide a high level of assurance to the Government and the Parliament on the correctness of application of tax law across all Customs Commissionerates. The availability of complete data would also reduce the requirement of physical visits of Audit to the Customs premises for test check of transactions. However, since the Department did not provide complete data for pan-India transactions, Audit was carried out in 41 out of 70 Customs Commissionerates.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2019-20 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

EXECUTIVE SUMMARY

Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution). Customs receipts form part of the indirect tax revenue of the government.

Duties of Customs are levied under the Customs Act, 1962, and the rates of duties are governed under the Customs Tariff Act, 1975 and notifications issued from time to time.

Customs receipts before the introduction of Goods and Service Tax (GST) comprised of the Basic customs duty (BCD), Additional Duty and Special Additional Duty of customs (SAD). After introduction of GST w.e.f. 1 July 2017, the Additional Duty and SAD on import of all commodities, except petroleum products and spirits, have been subsumed and replaced by integrated tax (IGST).

Department of Revenue under Ministry of Finance is responsible for administration of Direct and Indirect Union Taxes, through two statutory Boards namely, the Central Board of Indirect Taxes and Customs (CBIC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963.

The levy and collection of Customs duty and cross-border preventive functions are administered by the CBIC through 70 Customs Commissionerates across the country.

The Department of Commerce under Ministry of Commerce and Industry, through Director General of Foreign Trade (DGFT) formulates, implements and monitors the Foreign Trade Policy (FTP) which provides the basic framework of policy and strategy to be followed for promoting exports and trade.

During FY 20, exports worth ₹22.19 lakh crore (1,37,43,809 transactions) through 405 Customs ports (203 EDI, 44 Non-EDI, 2 Manual & 156 SEZ ports) and ₹33.61 lakh crore worth of imports (1,20,87,439 transactions) through 437 Customs ports (183 EDI, 29 Non-EDI, 2 Manual & 223 SEZ ports) took place.

During FY 20, the Customs receipts to GDP ratio was 0.54 *per cent* while customs receipts as percentage of gross tax receipts was 5.44 *per cent*. Customs receipts as a percentage of indirect taxes was 12.72 *per cent*.

The compliance audit of Customs revenue covers transactions involving levy and collection of Customs Duties, any other levies of Customs, transactions of imports and exports undertaken under various schemes implemented under the Foreign Trade policy and specific compliance areas reviewed by audit from time to time.

The sample of Commissionerates selected for test check included 41 out of total of 70 Customs Commissionerates. We audited 285 assessment units and 206 non-assessment units working under the Customs Commissionerates selected for audit. The audit was based on the examination of bills of entry (BsE) and shipping bills (SBs) filed electronically into the Indian Customs EDI System (ICES) through a Customs House Service Centre or web based ICEGATE. In non-EDI Customs locations, the BsE and SBs are physically filed and assessed. The ICES uses Risk Management System (RMS) to processes the data through a series of automated steps and results in an electronic assessment. This assessment determines whether the BE will be taken-up for action, i.e. manual appraisal by assessing officer or examination of goods, or both, or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. We audited BsE and SBs cleared by both the RMS and manual appraisal system.

Audit of incentives provided under Foreign Trade policy was carried out in 21 regional authorities under the DGFT through test check of license files under various schemes of the FTP.

This report is divided into four chapters. Chapter I provides a brief description of functions of Department of Revenue and Department of Commerce and an overview of high level statistical information regarding Customs receipts, India's Imports and Exports, performance of Special Economic Zones, arrears of Customs receipts and results of the Department's internal audit. Chapters II describes the CAG's audit mandate, scope and results of audit efforts. Chapters III, and IV contain significant audit findings. There are 137 paragraphs with revenue implication of ₹143 crore in this report. The Ministry of Finance and Ministry of Commerce have responded in 74 out of 137 cases issued. In 130 paragraphs involving money value of ₹127 crore, rectificatory action has been taken by the department/Ministry in the form of issuing show cause notices, adjudicating of show cause notices and recovery of ₹40 crore in 93 cases has been effected till date.

Responses received from the Department of Commerce and the Department of Revenue have been included at appropriate places.

Chapter I: Overview- Customs Revenue

During FY 20, Customs receipts realised were ₹1,09,283 crore as against ₹1,17,813 crore realised in FY 19. One of the reasons for decrease in the Customs receipts during FY 20 may be attributed to the fact that after introduction of GST, Customs receipts comprise of only BCD excluding Additional Duty and SAD, which earlier used to be part of Customs receipts, being subsumed into IGST.

{Paragraphs 1.6.1 and 1.6.2}

Imports registered decline of (-) 6.50 *per cent* in FY 20, while Exports also registered a fall of (-) 3.81 *per cent* during the same period.

{Paragraph 1.7}

India's imports decreased in value to ₹33.60 lakh crore during FY 20 from ₹35.95 lakh crore in FY 19, and exports also decreased to ₹22.19 lakh crore in FY 20 from ₹23.07 lakh crore in FY 19.

Imports in FY 20 was led by five major commodity groups namely, (i) Mineral fuels, Mineral oils and products, (ii) Natural or Cultured Pearls/Precious or semi-precious stones, Gold and articles thereof, (iii) Electrical machinery and equipment and parts, (iv) Machinery and appliances and (v) Organic chemicals. These commodities accounted for 67 *per cent* share of the total imports made during FY 20.

{Paragraphs 1.7 and 1.8}

During last five years, (FY 16 to FY 20) India's top ten trading partners were China, USA, UAE, Saudi Arabia, Iraq, Hong Kong, Korea, Indonesia, Singapore and Germany. The share of imports in FY 20 of six out of 10 trading partners (Hong Kong, Singapore, Iraq, Saudi Arabia, UAE, USA) as compared to FY 16 had shown a positive increase, stagnated at the level it was in FY 16 with three partners (Germany, Indonesia, Korea) and declined in respect of one country (China).

{Paragraph 1.7.3 }

The top five commodity groups exported during FY 20 were (i) Mineral fuels, Mineral oils and products, (ii) Natural or Cultured Pearls, Precious or semi-precious stones, Precious metal and articles thereof (iii) Nuclear reactors, Machinery and Mechanical appliances and parts thereof (iv) Organic chemicals and (v) Vehicles other than Railways or Tramway and parts and accessories thereof in their respective order.

{Paragraph 1.8.2}

Chapter II: CAG's audit mandate and extent of Audit

During FY 20, audit issued 299 inspection reports to the respective Commissionerates/ Regional licensing authorities containing 2,266 observations and carrying a total revenue implication of ₹2,186 crore. Out of these, 137 audit observations with revenue implication of ₹143 crore noticed during FY 20 have been covered in this report. The remaining cases are being pursued by the respective field formations. The Ministry of Finance and Ministry of Commerce have responded in 74 out of 137 cases issued. Additionally, in 57 cases, responses were received from the local Customs Commissionerates/Regional Authorities. The Ministries/ Departments have accepted 130 paragraphs and taken rectificatory action involving money value of ₹127.38 crore in the form of issue of SCNs, adjudication of SCNs and have reported recovery of ₹39.68 crore in 93 cases of incorrect assessment of Customs duties.

{Paragraph 2.6}

Chapter III: Non-compliance to provisions of Customs Act, Customs Tariff Act and Tariff notifications

Pan India data requisitioned (June 2019) by audit for import and export transactions for the FY 19, 20 and 21 was not received, despite repeated requests. In the absence of Pan India transactional data, audit was conducted through CRA Module interface of ICES, which had its limitations. The limitations in the CRA and ICRA modules were also communicated to the CBIC. Accordingly, the conclusions in this chapter on compliance audit were based on limited audits carried out by physically visiting the 41 Commissionerates.

During FY 20, a total of 1.21 crore BsE and 1.37 crore SBs were generated, out of which Jurisdictional Audit offices, based on local risks, selected a sample of 4.11 lakh BsE (3.39 *per cent*) and 8.12 lakh SBs (5.93 *per cent*) for physical audits. The samples were selected at the level of individual field formations in the absence of Pan- India data, which is sub-optimal. Significant audit observations with revenue implication of ₹10 lakh or more noticed during test check of import/export documents in the Customs Commissionerates have been covered in this Report. Minor observations were issued to the respective Commissionerates through Inspection Reports for corrective action.

The cases of non-compliance noticed during audit could be broadly categorized as follows:

- Misclassification of imports (Paragraphs 3.7.1 to 3.7.11)

- Incorrect application of notifications (Paragraphs 3.8.1 to 3.8.8).
- Other irregularities (Paragraph 3.9).

Audit noticed 102 cases of under assessments of applicable Customs duties due to, misclassification of imported goods, incorrect application of notifications and incorrect levy of applicable levies and other charges, as result of which revenue of ₹122 crore was at risk.

{Paragraphs 3.7 to 3.9}

Chapter IV: Non-compliance to provisions of various Export Promotion schemes of Foreign Trade Policy

Irregularities in Export promotion schemes of Foreign Trade Policy

Test audit of 21 Regional authorities and eight Development Commissioners revealed instances of violations of prescribed rules, procedures framed to give effect to the provisions of the Foreign Trade Policy and procedures regarding fulfilment of export obligations and awarding export incentives. Revenue of ₹21 crore was due from exporters/importers who had availed the benefits of the duty under Export promotion schemes but have not fulfilled the prescribed obligations/ conditions.

{Paragraphs 4.2.1 to 4.2.6}

General Recommendations

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that audit paragraphs in this Report are only a few illustrative cases. There is a likelihood that such errors of omission and commission, whether in RMS based assessments or manual assessments, may exist in many more cases. It is pertinent to note that a large number of BsE examined by audit in test check had been assessed through the RMS which indicated that the assessment rules mapped into the RMS to facilitate system based assessments were inadequate. The process of mapping and updating of risk parameters in the RMS also needs to be reviewed.

{Paragraphs 3.10}

Glossary of terms and abbreviations

Abbreviation	Expanded form
AA	Advance Authorization
ACC	Air Cargo Complex
ADD	Anti Dumping Duty
ADGFT	Additional Director General of Foreign Trade
AEO	Authorised Economic Operator
ANF	Aayat Niryat Form
AO	Assessing Officer
APRs	Annual Performance Reports
ATN	Action Taken Note
AV	Assessable Value
BCD	Basic Customs Duty
BE	Bill of Entry
BE	Budget Estimates
BG	Bank Guarantee
BRC	Bank Realization Certificate
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCSP	Customs Cargo Service Provider
CE	Central Excise
CESTAT	Customs Central Excise Service Tax Appellate Tribunal
CEIB	Central Economic Intelligence Bureau
CFS	Container Freight Station
CIF	Cost Insurance Freight
CGST	Central Goods and Service Taxes
Commissionerate	Commissionerate of Customs
CRA	Customs Receipt Audit
CRC	Cost Recovery Charge
CSEZ	Cochin Special Economic Zone
CTH	Customs Tariff Heading
CVD	Countervailing Duty
CWC	Central Warehousing Corporation
DC	Development Commissioner
DEEC	Duty Exemption Entitlement Certificate
DEL	Denied Entity List
DFCE	Duty Free Credit Entitlement
DGFT	Directorate General of Foreign Trade
DGOV	Directorate General of Valuation
DoC	Department of Commerce
DoR	Department of Revenue

Abbreviation	Expanded form
DRI	Directorate of Revenue Intelligence
DTA	Domestic Tariff Area
e-BRC	Electronic Bank Realisation Certificate
EDI	Electronic Data Interchange
EO	Export Obligation
EODC	Export Obligation Discharge Certificate
EOU	Export Oriented Unit
EPCG	Export Promotion Capital Goods
EXIM	Export and Import
FEMA	Foreign Exchange Management Act
FOB	Free on Board
FTP	Foreign Trade Policy
FTDR Act	Foreign Trade (Development and Regulation) Act
FY	Financial Year
GDP	Gross Domestic Product
GST	Goods and Services Tax
GTR	Gross Tax Revenue
HBP	Hand Book of Procedures
HSN	Harmonized System of Nomenclature
ICD	Inland Container Depot
ICEGATE	Indian Customs Electronic Commerce Gateway
ICES	Indian Customs Electronic Data Interchange System
ICRA	Import Customs Receipt Audit
IEC	Importer Exporter Code
IGST	Integrated Goods and Service Tax
ITC HS	International Trade Clarification Harmonized System
JDGFT	Joint Director General of Foreign Trade
LOP	Letter of Permission
LRM	Local Risk Management
MEIS	Merchandise Exports from India Scheme
MIDC	Maharashtra Industrial Development Corporation
MoCI	Ministry of Commerce and Industry
MoF	Ministry of Finance
MOU	Memorandum of Understanding
MPR	Monthly Performance Report
MTR	Monthly Technical Report
NFE	Net Foreign Exchange
NIC	National Informatics Centre
NSEZ	Noida Special Economic Zone
OIO	Order in Original
OM	Office Memorandum

Abbreviation	Expanded form
PH	Personal Hearing
PNC	Pre Notice Consultation
Pr.CCA	Principal Chief Controller of Accounts
Prev.	Preventive
₹	Rupee
RA	Regional Authority
RE	Revised Estimates
RMS	Risk Management System
SAD	Special Additional Duty of Customs
SB	Shipping Bill
SCN	Show Cause Notice
SEIS	Service Exports from India Scheme
SEZ	Special Economic Zone
SFIS	Served from India Scheme
STP	Software Technology Park
SWS	Social Welfare Surcharge
YOY	Year on Year
ZDGFT	Zonal Director General of Foreign Trade

CHAPTER I

Customs Revenue

1.1. Nature of Customs Duties

1.1.1 Customs Duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution). Customs Receipts form part of the indirect tax revenue of the Government.

1.1.2 Duties of Customs are levied under the Customs Act, 1962, and the rates of duties are governed under the Customs Tariff Act, 1975 and notifications issued from time to time.

1.2 Customs Revenue Base

1.2.1 The Customs revenue base comprises of the Importers and Exporters issued with Importer Exporter Code (IEC) by the Directorate General of Foreign Trade (DGFT). As on March 2020, there are 3,06,011 active IECs. During FY 20, exports worth ₹22.19 lakh crore (1,37,43,809 transactions) through 405 Customs ports (203 EDI, 44 Non-EDI, 2 Manual & 156 SEZ ports) and ₹33.61 lakh crore worth of imports (1,20,87,439 transactions) through 437 Customs ports (183 EDI, 29 Non-EDI, 2 Manual & 223 SEZ ports) took place.

1.3 Organisation and Functions of Administrative Departments

1.3.1 The Department of Revenue (DoR) under the Ministry of Finance is the apex department of the Government of India responsible for administration of the Direct and Indirect Union Taxes, through two statutory Boards namely, the Central Board of Indirect Taxes and Customs (CBIC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963.

1.3.2 The levy and collection of Customs Duty and cross-border preventive functions are administered by the CBIC through 20 Zones headed by Chief Commissioners across the country.

1.3.3 The Department of Commerce (DoC) under the Ministry of Commerce and Industry (MoCI), through DGFT formulates, implements and monitors the Foreign Trade Policy (FTP) which provides the basic framework of policy and strategy to be followed for promoting exports and trade. Besides, the DoC is also entrusted with responsibilities relating to multilateral and bilateral commercial relations, Special Economic Zones (SEZs), state trading, export promotion and trade facilitation, and development and regulation of certain export oriented Industries and commodities.

1.3.4 The FTP is implemented through the Regional Authorities (RAs) of DGFT who are responsible for providing IECs and granting licenses under various schemes of export promotion. During FY 20, there were 38 RAs located across India till October 2019; 14 RAs were merged. As on March 2020 there were 24[1] RAs in existence.

1.4 Customs Receipts

1.4.1 Customs Receipts, before the introduction of Goods and Services Tax (GST) in July 2017, comprised of the Basic Customs Duty (BCD), Additional Duty[2] and Special Additional Duty (SAD). All imports are also subjected to Social Welfare Surcharge (SWS) in place of Education Cess and Secondary and Higher Education Cess w.e.f. February 2018[3]. In addition, Anti-dumping duty, Countervailing duty (Section 9) and Safeguard duty are leviable wherever applicable

1.4.2 After introduction of GST w.e.f. 1 July 2017, the Additional Duty and SAD on import of all commodities, except petroleum products and alcohol, have been subsumed and replaced by IGST. The IGST is in addition to the applicable BCD which is levied as per the Customs Tariff Act. In addition, GST compensation cess is also leviable on certain luxury and demerit goods under the GST (Compensation to States) Cess Act, 2017. Levy of anti-dumping duty and safeguard duty remains unchanged.

1.5 Budget Estimates and Actual Receipts

1.5.1 The Revenue Budget of the Union Government provides budget estimates of tax and non-tax revenues of the Government. Comparison of budget estimates with actual receipts is an indicator of quality of fiscal management. The actuals may differ from the estimates either due to unexpected events or due to unrealistic assumptions.

1.5.2 Budget Estimates (BE), Revised Estimates (RE) and Actual Customs Receipts during FY 16 to FY 20 are given in **Table 1.1** overleaf.

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[1] https://www.dgft.gov.in/CP/?opt=dgft-organization.

[2] Additional duty of Customs levied under Section 3 (1) of the Customs Tariff Act 1975 equal to excise duty, sales tax, local taxes and other charges, commonly known as Countervailing Duty.

[3] SWS is an additional charge on import of goods being levied under clause 108 of the Finance Bill (Act), 2018.

Table 1.1: Budget and Revised Estimates, Actual Receipts

Year	Budget estimates ₹ in Cr.	Revised estimates ₹ in Cr.	Actual receipts ₹ in Cr.	Diff. between Actual and BE ₹ in Cr.	*Per cent* variation between Actual and BE	Diff. between Actual and RE ₹ in Cr.	*Per cent* variation between Actual and RE
FY 16	2,08,336	2,09,500	2,10,338	(+)2,002	(+)0.96	(+)838	(+)0.40
FY 17	2,30,000	2,17,000	2,25,370	(-)4,630	(-)2.01	(+)8,370	(+)3.86
FY 18	2,45,000	1,35,242	1,29,030	(-)1,15,970	(-)47.33	(-)6,212	(-)4.59
FY 19	1,12,500	1,30,038	1,17,813	(+) 5,313	(+)4.72	(-)12,225	(-)9.40
FY 20	1,55,904	1,25,000	1,09,283	(-)46,621	(-)29.90	(-)15,717	(-)12.57

Source: Union Budget and Finance Accounts for respective years.

1.5.3 The variation between RE and Actual Receipts ranged between (-)12.57 *per cent* to 3.86 *per cent* during FY 16 to FY 20. Variation between BE and Actuals was in the range of (-)47.33 *per cent* to 4.72 *per cent* during the same period.

1.5.4 Actual Customs Receipts during FY19 were more than BE by 4.72 *per cent* (by ₹ 5,313 crore), while during FY 20, they were short by (-) 29.90 *per cent* (by ₹46,621 crore) in comparison to their BE. The variation between Actual Receipts and RE increased continuously from (-) 4.59 *per cent* in FY 18 to (-) 12.57 *per cent* in FY 20.

The Department of Revenue (DoR) stated (March 2021) that BE and RE for a financial year were fixed while taking various economic factors into account and the final outcome of these factors for the whole year was not known in advance.

1.6 Growth of Customs Receipts

1.6.1 **Table 1.2** below gives the relative growth of Customs Receipts with reference to Gross Domestic Product (GDP), Gross Tax Revenue (GTR) receipts and Gross Indirect Tax receipts during FY 16 to FY 20.

Table 1.2: Growth of Customs Receipts

Year	Customs Receipts ₹ in Cr.	Year on year growth per cent	GDP ₹ in Cr.	Customs Receipts as % of GDP	Gross Tax Revenue (GTR) ₹ in Cr.	Customs Receipts as % of GTR	Gross Indirect Taxes ₹ in Cr.	Customs Receipts as % of Indirect Taxes
FY 16	2,10,338	12	1,35,76,086	1.55	14,55,891	14.45	7,10,101	29.62
FY 17	2,25,370	7	1,51,83,709	1.48	17,15,968	13.13	8,62,151	26.14
FY 18	1,29,030	(-)43	1,67,73,145	0.76	19,19,183	6.72	9,16,445	14.07
FY 19	1,17,813	(-)09	1,90,10,164	0.62	19,68,456	5.99	8,43,177	13.97
FY 20	1,09,283	(-)07	2,03,51,013	0.54	20,10,059	5.44	8,59,122	12.72

Source: Finance Accounts for respective years

1.6.2 Customs Receipts growth rates, on Year on Year (YoY) basis were in the range of 7 to 12 *per cent* during the years from FY 16 to FY 17, but exhibited a negative trend in FY 18 to FY 20 compared to the previous years. Customs Receipts have gradually declined from FY 18 to FY 20. This is partly because, after introduction of GST (July 2017), Additional Duty and SAD on imports, except petroleum products and alcohol, have been subsumed and replaced by IGST.

1.6.3 During FY 20, the percentage of Customs Receipts to GDP was 0.54 *per cent* compared to 0.62 *per cent* in previous year FY 19. Customs Receipts as a percentage of GTR had declined to 5.44 *per cent* in FY 20 as compared to 5.99 *per cent* in FY 19. The decrease in percentage of Customs Receipts as compared to GDP/GTR during FY 18 to FY 20 was partly because, after introduction of GST, IGST is being collected under a different Accounting Head. The DoR stated that the decline in growth of Customs Receipts during FY 20 was because imports of edible oils, precious metals, electronic hardware and mineral fuels had dropped, which contributed to decline in Customs Duty collections.

1.6.4 During FY 20, the Customs Receipts to GDP ratio was less than one *per cent* (0.54 *per cent*) while Customs Receipts as a percentage of GTR was 5.44 *per cent*. Customs Receipts as a percentage of Indirect taxes was 12.72 *per cent* during FY 20.

1.7 India's Imports and Exports

1.7.1 **Table 1.3** depicts the trend of growth of India's imports and exports during FY 16 to FY 20.

Table 1.3: India's Import and Export

Year	Imports ₹ in Cr.	% growth over previous year	Exports ₹ in Cr.	% growth over previous year	Trade Imbalance ₹ in Cr.
FY 16	24,90,298	(-) 9.00	17,16,378	(-) 9.49	(-)7,73,920
FY 17	25,77,422	3.49	18,52,340	7.92	(-)7,25,082
FY 18	30,01,033	16.44	19,56,515	5.62	(-)10,44,518
FY 19	35,94,675	19.78	23,07,726	17.95	(-)12,86,949
FY 20	33,60,954	(-)6.50	22,19,854	(-)3.81	(-)11,41,100

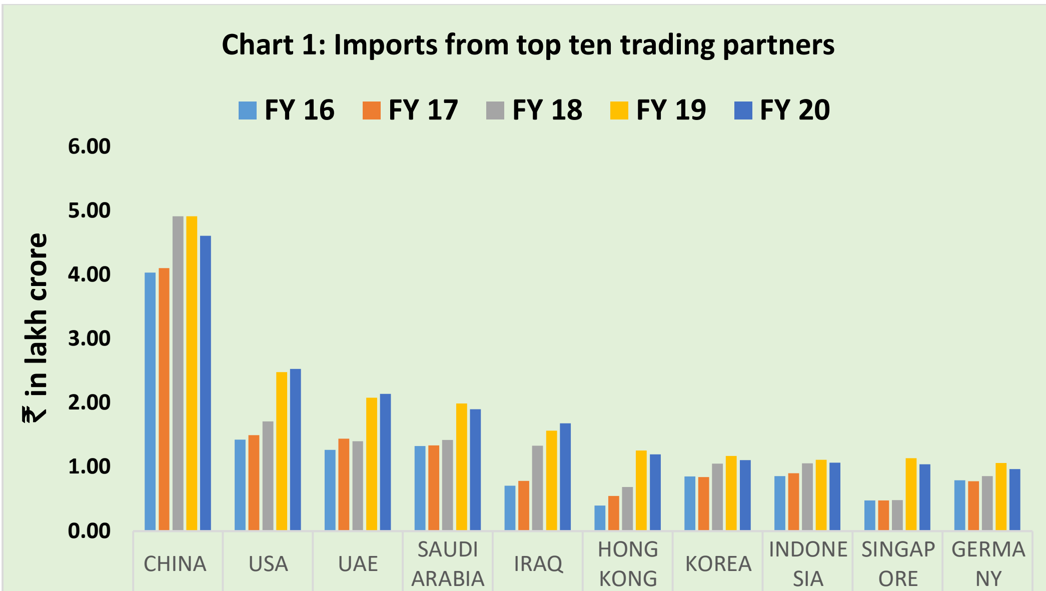
Source: EXIM Data, Ministry of Commerce & Industry

1.7.2 India's imports decreased in value to ₹33.60 lakh crore during FY 20 from ₹35.95 lakh crore in FY 19, and exports also decreased to ₹22.19 lakh crore in FY 20 from ₹23.07 lakh crore in FY 19.

YoY growth rate of imports increased during FY 17 to FY 19 after a negative growth of (-) 9 *per cent* during FY 16, but declined during FY 20. The growth rate in exports also increased from (-) 9.5 *per cent* in FY 16 to 17.95 *per cent* in FY 19. The YoY growth rate of imports dropped to (-) 6.50 *per cent* in FY 20 over FY 19, while YoY growth rate of exports also declined to (-) 3.81 *per cent* during the same period.

1.7.3 Trade with top 10 trading partners

During the last five years (FY 16 to FY 20) India's major trading partners were China, USA, UAE, Saudi Arabia, Iraq, Hong Kong, Korea, Indonesia, Singapore and Germany. Of these, the share of imports in FY 20 of six out of 10 trading partners (Hong Kong, Singapore, Iraq, UAE, Saudi Arabia, USA) increased as compared to FY 16; with three partners (Germany, Indonesia, Korea) stagnated at the level it was in FY 16 and declined in respect of one country (China). **Chart 1** depicts the import share of top trading partners during last five years.

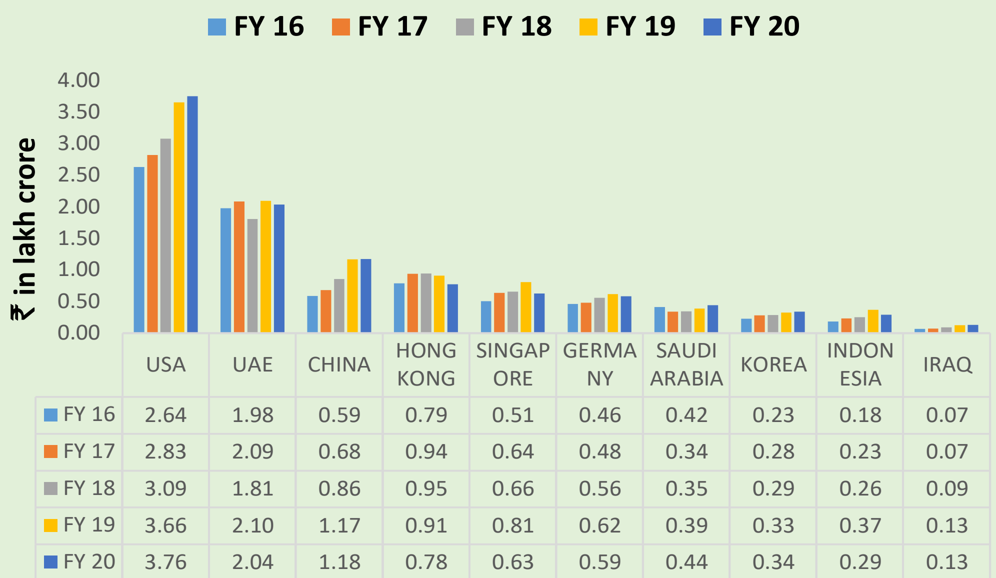


	CHINA	USA	UAE	SAUDI ARABIA	IRAQ	HONG KONG	KOREA	INDONESIA	SINGAPORE	GERMANY
FY 16	4.04	1.43	1.27	1.33	0.71	0.40	0.85	0.86	0.48	0.79
FY 17	4.11	1.50	1.44	1.34	0.79	0.55	0.84	0.90	0.48	0.78
FY 18	4.92	1.72	1.40	1.42	1.33	0.69	1.05	1.06	0.48	0.86
FY 19	4.92	2.49	2.09	1.99	1.57	1.26	1.17	1.11	1.14	1.06
FY 20	4.62	2.53	2.14	1.90	1.68	1.20	1.11	1.07	1.04	0.97

In terms of YoY growth of FY 20 and FY 19 over FY 18, imports from three partners (China, Korea, Indonesia) had declined, increased in respect of six partners (USA, UAE, Saudi Arab, Iraq, Hong Kong, and Singapore), while it remained at the same level with one country (Germany).

Of these, exports in FY 20 to two countries (Iraq and China) as compared to exports in FY 16 have doubled, there was significant export growth with five partners (USA, Germany, Korea, Singapore, Indonesia), marginal growth with two partners (UAE, Saudi Arabia) and exports to one partner have declined (Hong Kong). Exports to the top ten trading partners is depicted in **Chart 2.**

Chart 2 : Exports to top ten trading partners



During FY 20 India's trade imbalance with its top 10 trading partners was 71 *per cent* {(-) ₹8,08,098 crore} of the total trade imbalance. The details of imports and exports from top ten trading partners during FY 20 are depicted in **Table 1.4:**

Table 1.4: India's top 10 trading partners

	FY 20	**Values:**	**₹ in crore**	
Rank	**Country**	**Export**	**Import**	**Trade Balance**
1	USA	3,76,166	2,53,363	1,22,803
2	China	1,17,673	4,61,525	-3,43,852
3	UAE	2,04,238	2,14,447	-10,209
4	Saudi Arabia	44,267	1,90,245	-1,45,978
5	Hong Kong	77,752	1,19,999	-42,247
6	Iraq	13,287	1,68,354	-1,55,067
7	Singapore	63,027	1,04,394	-41,367
8	Germany	58,723	96,928	-38,205
9	Korea RP	34,338	1,10,883	-76,545
10	Indonesia	29,299	1,06,727	-77,428
	Total of Top Ten trading Partners	***10,18,769***	***18,26,867***	***-8,08,098***
	India's Total	**22,19,854**	**33,60,954**	**-11,41,100**
	% Share of Top Ten trading Partners	*45.89*	*54.36*	*70.82*

Source: EXIM Data, Ministry of Commerce & Industry

Of the top ten trading partners, India ran a significant trade surplus with the United States (₹1,22,803 crore in FY 20), while it ran trade deficits with all its other major partners with China being the largest (₹3,43,852 crore in FY 20).

Imports from top 10 trading partners during FY 19 and 20 accounted for about half of the total imports made during the period (Table 1.5). Imports from six out of ten major trading partners during FY 20 had shown a declining trend as compared with imports made during FY 19. The major decline of (-) 6.21 *per cent* was in imports from China during FY 20. Imports from three out of ten major trading partners had increased during the same period.

Table 1.5: Imports from top ten trading partners
Year on Year growth FY 20 over FY 19

Sl. No.	Country	FY 19 (₹ in crore)	% Share of Total Imports FY19	FY 20 (₹ in crore)	% Share of total imports FY 20	Growth % FY 20 over 19
1	China	4,92,079	13.69	4,61,525	13.73	-6.21
2	USA	2,48,554	6.91	2,53,363	7.54	1.93
3	UAE	2,08,551	5.80	2,14,447	6.38	2.83
4	Saudi Arabia	1,99,395	5.55	1,90,245	5.66	-4.59
5	Iraq	1,56,601	4.36	1,68,354	5.01	7.51
6	Hong Kong	1,25,972	3.50	1,19,999	3.57	-4.74
7	Korea	1,17,255	3.26	1,10,883	3.30	-5.43
8	Indonesia	1,11,149	3.09	1,06,727	3.18	-3.98
9	Singapore	1,13,919	3.17	1,04,394	3.11	-8.36
10	Germany	1,06,131	2.95	96,928	2.88	-8.67
	Sub total	18,79,606		18,26,865		
	%age		52.29		54.36	
	Total	**35,94,675**	**100.00**	**33,60,954**	**100.00**	**-6.50**

Source: Source: EXIM Data, Ministry of Commerce & Industry

1.8 Share of Top Five Commodity groups in Imports and Exports during FY 20

1.8.1 Imports in FY 20 was led by five major commodity groups, namely,

(i) Mineral fuels, Minerals oils and products (Chapter 27 of Customs Tariff)

(ii) Natural or Cultured Pearls, Precious or semi-precious stones, Gold and articles thereof (Chapter 71 of Customs Tariff)

(iii) Electrical machinery and equipment and parts (Chapter 85 of Customs Tariff)

(iv) Machinery and appliances and parts (Chapter 84 of Customs Tariff) and

(v) Organic chemicals (Chapter 29 of Customs Tariff)

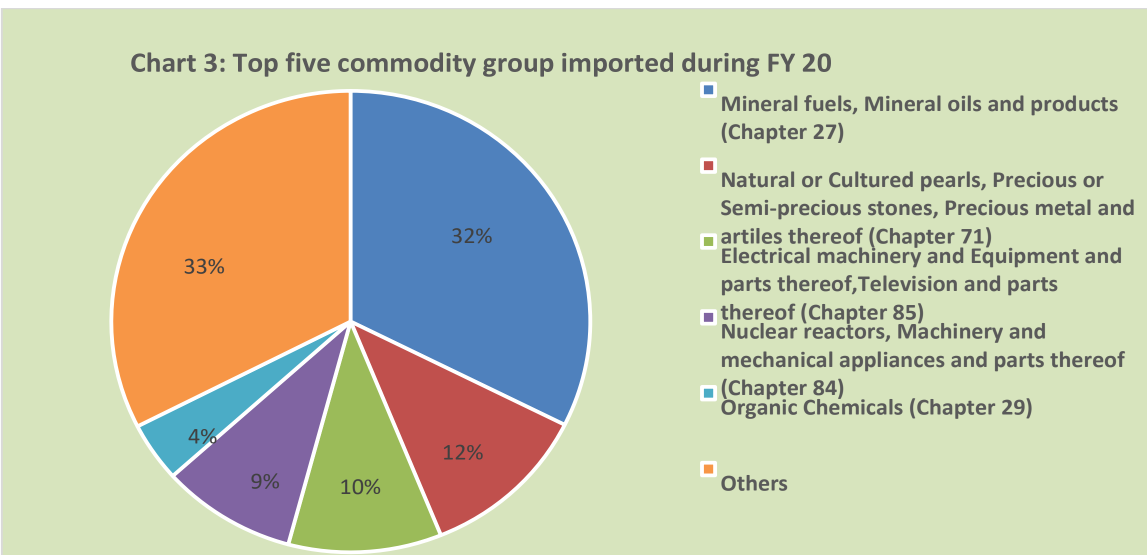
During the last 5 years (FY 16 to FY 20), there was a steady increase every year in respect of these top five commodity groups imported except in FY 20. The increase in imports during FY 20 was in the range of 4.24 *per cent* (Chapter 71) to 72.23 *per cent* (Chapter 27) over FY 16 **(Table 1.6)**.

Table 1.6: Top five import commodity groups

Sl No.	Import Commodity group	FY 16 (₹ in crore)	FY 17 (₹ in crore)	FY18 (₹ in crore)	FY19 (₹ in crore)	FY20 (₹ in crore)	FY 20 over FY 16 (% growth)
1	Chapter 27	6,32,022	6,91,912	8,52,697	11,74,715	10,88,559	72.23
2	Chapter 71	3,69,481	3,60,262	4,81,705	4,51,505	3,85,140	4.24
3	Chapter 85	2,35,587	2,58,697	3,11,103	3,64,152	3,48,091	47.75
4	Chapter 84	2,15,429	2,15,230	2,43,816	3,06,368	3,07,067	42.54
5	Chapter 29	1,01,986	1,03,798	1,23,761	1,56,552	1,40,205	37.47
	Sub Total	15,54,505	16,29,899	20,13,082	24,53,292	22,69,062	
	% share of top five commodity groups	62	63	67	68	67	
	Total	**24,90,306**	**25,77,675**	**30,01,033**	**35,94,675**	**33,60,954**	

Source: Source: EXIM Data, Ministry of Commerce & Industry

The share of the top five commodity groups imported during FY 20 was 67 *per cent* as depicted in **Chart 3** below.



1.8.2 The top five commodity groups exported during FY 20 were:

(i) Mineral fuels, Minerals oils and products (Chapter 27 of Customs tariff)

(ii) Natural or Cultured Pearls, Precious or semi-precious stones, Precious metals and articles thereof (Chapter 71 of Customs tariff)

(iii) Nuclear reactors, Machinery and Mechanical appliances and parts thereof (Chapter 84 of Customs tariff)

(iv) Organic chemicals (Chapter 29 of Customs tariff) and

(v) Vehicles and parts and accessories thereof (Chapter 87 of Customs tariff) in their respective order.

All the major commodity groups exported have exhibited a steady increase every year during FY 16 to FY 20 except in FY 20 when the exports of these commodities have decreased over the previous year **(Table 1.7)**.

Table 1.7: Top five export commodity groups

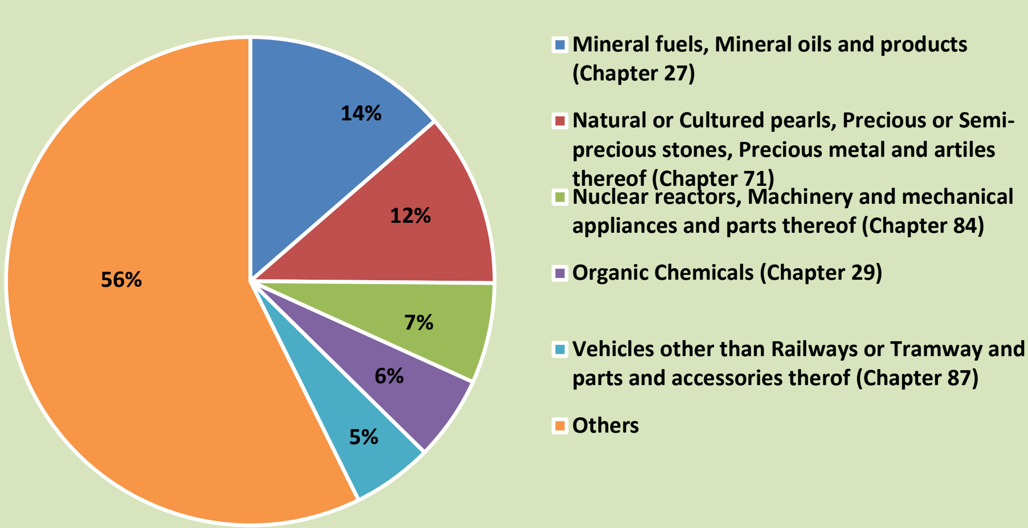
Sl.No.	**Export Commodity group**	**FY 16 (₹ in crore)**	**FY 17 (₹ in crore)**	**FY 18 (₹ in crore)**	**FY 19 (₹ in crore)**	**FY 20 (₹ in crore)**
1	Chapter 27	2,03,885	2,17,477	2,47,904	3,35,474	3,02,367
2	Chapter 71	2,59,183	2,92,314	2,69,116	2,82,794	2,55,441
3	Chapter 84	88,511	94,517	1,15,187	1,46,652	1,47,661
4	Chapter 29	75,295	78,386	95,381	1,27,567	1,23,867
5	Chapter 87	94,040	1,00,238	1,11,229	1,26,533	1,18,403
	Sub Total	7,18,688	7,82,932	8,38,817	10,19,020	9,47,739
	% share of top five commodity groups	42	42	43	44	44
	Others	9,95,470	10,66,502	11,17,698	12,88,706	12,72,115
	Total Exports	**17,16,384**	**18,49,434**	**19,56,515**	**23,07,726**	**22,19,854**

Source: EXIM Data, Ministry of Commerce & Industry

Growth of exports of Commodities in FY 20 over FY 16 was significant under Chapters 84, 29, 27 and 87 in that order, except commodities under Chapter 71, which have registered negative growth as compared to exports made in FY 16. **Chart 4** describes the growth of the top five commodity groups exported during FY 16 to FY 20.

The share of the top five commodity groups in exports during FY 20 was 44 *per cent* as depicted in **Chart 4.**

Chart 4: Top five commodity group exported during FY 20



1.9 Performance of Special Economic Zones

1.9.1 The SEZ Act, 2005, supported by SEZ Rules, came into effect on 10 February, 2006, providing for simplification of procedures and for single window clearance on matters relating to the Central as well as State Governments. The main objectives of the SEZ Act are:

- generation of additional economic activity
- promotion of exports of goods and services
- promotion of investment from domestic and foreign sources
- creation of employment opportunities
- development of infrastructure facilities

While 421 SEZs were formally approved, 354 were notified as on 1 April 2020, of which only 248 SEZs were operational **(Annexure 1).**

1.9.2 The three parameters of SEZ performance (i) Export performance, (ii) Investment and (iii) Employment for the period FY 16 to FY 20 are given in Table 1.8 below.

Table 1.8: Performance of SEZs

	FY 16	FY 17	FY 18	FY 19	FY 20
Export performance (₹ in crore)	4,67,337	5,23,637 (12%)*	5,81,033 (11%)*	7,01,179 (21%)*	7,96,669 (14%)
Investment (₹ in crore)	3,76,494	4,33,142 (15%)	4,92,312 (14%)	5,07,644 (3%)	5,71,735 (13%)
Employment (in persons)	15,91,381	17,78,851 (12%)	19,96,610 (12%)	20,61,055 (3%)	22,38,305 (8%)

Source: Ministry of Commerce & Industry , *Figures in bracket indicate YoY growth

Exports from SEZ, which stood at ₹7.96 lakh crore in FY 20, had overall growth of 70 *per cent* (₹3,29,332 Cr.) over exports made in FY 16. The YoY growth in exports had increased from one *per cent* in FY 16 to 14 *per cent* in FY 20 as compared to previous years (**Table 1.8 and Annexure 1**). The exports growth shrank to 14 *per cent* in FY 20 compared to FY 19 (21 per cent).

1.9.3 A total of ₹5.71 lakh crore has been invested in SEZs as of FY 20 which resulted in generation of employment for 22.38 lakh persons. The cumulative investment had registered a growth of 52 *per cent* in FY 20 over investment of ₹3.77 lakh crore as of FY 16. During the same period, employment generated had registered a growth of 41 *per cent* (**Table 1.8 and Annexure 1**).

1.10 Cost of Collection of Customs Receipts during FY 16 to FY 20

1.10.1 Cost of collection is the cost incurred on collection of Customs Duties and comprises of expenditure on Import/Export Trade control functions, preventive functions, transfers to reserve fund/deposit account and other expenditure.

1.10.2 The cost of collection of Customs Receipts for FY 20 was 4.24 *per cent* of Customs Receipts[4]. The cost of collection of Customs Receipts for the period from FY 16 to FY 20 is given in **Table 1.9.**

Table 1.9: Cost of Collection during FY 16 to FY 20

Year	Expenditure on Revenue-cum Import /export and trade control functions	Expenditure on preventive and other functions	Transfer to Res. Fund, Deposit A/c and other expenditure	Total Expenditure	Customs Receipts	Cost of collection as percentage of Customs Receipts
	₹ in Cr.	₹ in Cr.	₹ in Cr.	₹ in Cr.	₹ in Cr.	
1	2	3	4	5	6	7
FY 16	412	2,351	36	2,799	2,10,338	1.33
FY 17	544	2,771	7	3,322	2,25,370	1.47
FY18	640	3,262	39	3,941	1,29,030	3.05
FY 19	743	3,667	9	4,419	1,17,813	3.75
FY 20	753	3,871	0	4,634	1,09,283	4.24

Source: Finance Accounts of the Union Government for respective years

1.10.3 Expressed in terms of percentage of Customs Receipts, cost of collection ranged between 1.33 *per cent* (FY 16) to 3.75 *per cent* (FY 19). The cost of collection had increased to 4.24 *per cent* in FY 20 compared to FY 19 (3.75 per cent). On implementation of GST, IGST on import and

[4] Note: This does not include expenditure incurred in formulating, implementing and monitoring the FTP through DGFT, which falls under the Ministry of Commerce.

export is levied and collected by the Customs Department but the IGST receipts are booked under the GST Accounting Head.

1.11 Arrears of Customs Duties

1.11.1 Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of the recovery cell functioning within the Commissionerates. As per Ministry of Finance circular dated 15 December 1997, a "Recovery Cell (RC)" should be created in each Customs Commissionerate for making recovery of Government dues. Every year, recovery targets are fixed for each Commissionerate.

1.11.2 The arrears of Customs Duty are duties which have been raised by the Department but have not been recovered due to various reasons like pendency of adjudication, disputed claims, and provisional assessments. Customs arrears amounted to ₹45,052 crore as on 31 March 2020. Customs revenue arrears for FY 16 to FY 20 are depicted in **Table 1.10.**

Table 1.10: Arrears of Customs Duties

Year	Arrear of Customs Duties under dispute ₹ in Cr.	Arrear of undisputed Customs Duties ₹ in Cr.	Total ₹ in Cr.	Percentage of disputed arrears to total arrears	Percentage of undisputed arrears to total arrears
FY 16	12,300	12,322	24,622	49.95	50.04
FY 17	21,780	4,700	26,480	82.25	17.75
FY 18	18,836	5,849	24,685	76.31	23.69
FY 19	27,972	7,855	35,827	78.08	21.92
FY 20	36,951	8,101	45,052	82.02	17.98

Source: DG Performance management (TAR), Customs, Goods and Services Tax letter dated 10 February 2021

1.11.3 The arrears of Customs Duties have risen steadily during FY 16 to FY 20, except in FY 18. The total arrears of Customs revenue pending as on March 2020 (₹45,052 crore) had increased by 25.75 *per cent* in comparison to pendency as on March 2019 (₹35,827 crore). The overall arrears of Customs Duties have grown by 83 *per cent* in FY 20 (₹45,052 crore) compared to FY 16 (₹24,622).

1.11.4 Amount of arrears under dispute as a proportion to total arrears rose from 50 *per cent* in FY 16 to 82 *per cent* for the FY 20 and stood at ₹36,951 crore; correspondingly, the percentage of undisputed arrears have come down to 18 *per cent* of total arrears in FY 20 from 50 *per cent* in FY 16.

1.11.5 Details of targets fixed and achievement for recovery of Customs Duties arrears during FY 16 to FY 20 are depicted in **Table 1.11** overleaf.

Table 1.11: Target of Recovery of Customs Duties arrears fixed and achieved of during FY 16 to FY 20

Year	Arrear Target (₹ in Cr.)	Target Achieved (₹ in Cr.)	Target Shortfall (₹ in Cr.)	Target Excess achieved (₹ in Cr.)	Percentage of Shortfall	Percentage of Excess achieved
FY 16	2,500	825	(-)1,675	-	(-)66.99	-
FY 17	1,000	1,284	-	284	-	28.44
FY18	1,000	1,092	-	92	-	9.25
FY 19	4,315	2,159	(-)2,156	-	(-)49.97	-
FY 20	4,044	1,952	(-)2,092	-	(-)51.73	-

Source: DG Performance management (TAR), Customs, Goods and Services Tax letter dated 10 February 2021Note: Total/ Sub-total may slightly due to rounding off.

As can be seen above, the target for arrears recovery fluctuated during the period FY 16 to FY 20. Further, the targets fixed by CBIC were not being achieved by the Department. The shortfall in target achieved was (-) 51.73 *per cent* in FY 20. There was a continuous shortfall in achieving the targets fixed to recover Customs Duties arrears since the previous two years (FY 19 and FY 20) except in FY 18 and FY 17 when the achievement exceeded the targets fixed.

1.11.6 Out of total 20 Zones (11 Customs Commissionerates and 9 combined Commissionerates (Customs and GST), 10 zones accounted for 85.68 *per cent* (₹38,600 crore) of the total arrears pending (₹45,052 crore) during FY 20 as shown in **Table 1.12** given below.

Table 1.12: Zone wise arrears of Customs Revenue as on 31 March 2020

Sl. No.	CC Zones	Amount under Dispute	Amount Undisputed	Amount pending as on 31.03.20
		₹ in Cr	₹ in Cr	₹ in Cr
1	Mumbai - II CUS	11,371	663	12,034
2	Ahmedabad CUS	4,614	741	5,355
3	Bengaluru CUS	4,484	155	4,639
4	Delhi CUS	2,473	1,803	4,276
5	Mumbai - III CUS	2,266	267	2,533
6	Chennai CUS	1,825	464	2,289
7	Bhopal CE & GST	1,143	1,021	2,164
8	Mumbai - I CUS	1,629	301	1,930
9	Bhubaneshwar CE & GST	1,907	1	1,908
10	Kolkata CUS	1,145	329	1,474
	Sub-Total	**32,857**	**5,743**	**38,600**
11	**Others**	**4,094**	**2,357**	**6,451**
	Grand Total	**36,951**	**8,101**	**45,052**

Source: DG Performance management (TAR), Customs, Goods and Services Tax letter dated 10 February 2021

1.11.7 Age wise arrears of Customs revenue for FY 16 to FY 20 are depicted in **Table 1.13** below.

Table 1.13: Age wise pendency of arrears of Customs Revenue for FY 16 to FY 20

Year	Amount under dispute (₹ in Cr.)				Amount not under dispute (₹ in Cr.)				Grand total (col.5+9)
	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.2+3+4)	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.6+7+8)	
1	2	3	4	5	6	7	8	9	10
FY 16	8,681	2,494	1,125	**12,300**	5,162	4,714	2,446	**12,322**	**24,622**
FY 17	17,919	2,716	1,145	**21,780**	2,538	1,245	917	**4,700**	**26,480**
FY 18	15,554	2,279	1,005	**18,836**	3,931	980	938	**5,849**	**24,685**
FY 19	24,670	2,373	929	**27,972**	5,361	831	1,663	**7,855**	**35,827**
FY 20	29,226	6,128	1,597	**36,951**	6,243	864	994	**8,101**	**4,5052**

Source: DG Performance management (TAR), Customs, Central Excise & Services

Agewise analysis of undisputed arrears for FY 20 revealed that out of the total of ₹8,101 crore, ₹1,858 crore (23%) was lying unrecovered for more than five years, of which an amount of ₹994 crore was pending for recovery for more than ten years.

1.12 Internal Audit

1.12.1 The internal audit of CBIC and its field formations comprises of technical audits conducted by Directorate General of Audit {DG (Audit)} and audit of payments and accounts conducted by the Principal Chief Controller of Accounts (Pr. CCA) under the Controller General of Accounts. DG (Audit) has its Headquarters located in Delhi, with seven zonal units at Ahmedabad, Bangalore, Chennai, Delhi, Hyderabad, Kolkata and Mumbai each headed by Additional Director Generals under its ambit. Every zonal unit of DGA has area wise jurisdictional control over zonal units of Chief Commissioner and Commissionerates there under.

1.12.2 The details of technical internal audits planned and conducted by DG (Audit) for the year FY 20 were not provided by CBIC.

1.12.3 Pr. CCA conducts internal audit of payments and accounts of CBIC and its field formations. According to information given by the CBIC on the audit comments raised by Pr. CCA during 2019-20, 119 observations amounting to ₹18,067 crore[5] were pending as on 31 March 2020. These mainly consisted of the following irregularities:

[5] Pr. CCANo. IA /NZ/HQ/CAG/Information/2020-21/491 dated 25 February 2021

a) Non recovery of dues from Government Department/State Government bodies/Private parties/ Autonomous bodies: ₹7,605 crore;

b) Blocking of government money: ₹5,281 crore;

c) Other irregularities: ₹5,181 crore.

The amount involved (₹18,067 crore) in internal observations pending as on 31 March 2020 had shown an increasing trend over pendency as on 31 March 2019 (₹9,040 crore).

1.13 Tax Evasion and Seizures

1.13.1 According to information furnished by Directorate of Revenue Intelligence (DRI), the number of duty evasion cases moved up from 631 in FY 16 to 761 in FY 20 while the value decreased from ₹2,926 crore to ₹2,183 crore during the same period (**Annexure 2)**. However, details of recoveries made during FY 20 in cases detected were not provided.

1.13.2 According to the profile of seizures by value of specified major commodities during FY 20, as per DRI , New Delhi, the major commodities involved are narcotics, gold, foreign currency, vehicles/vessels and electronic items (including computer parts).

CHAPTER II

CAG's Audit mandate and extent of Audit

2.1 Authority of the CAG for audit of receipts

2.1.1 Section 16 of the CAG's DPC Act, 1971 authorizes CAG to audit all receipts (both revenue and capital) of the Government of India and of the Government of each State and of each Union Territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. Regulations on Audit & Accounts, 2007[6], lay down the principles for Receipt Audit.

2.1.2 Compliance audit of Customs revenue covers transactions involving levy and collection of Customs Duties, any other levies of Customs, transactions of imports and exports undertaken under various schemes implemented under the FTP and specific compliance areas reviewed by audit from time to time. The transactions covered in this report pertain to Financial Year (FY) 20, but in some cases, prior period transactions have also been reviewed for getting a holistic picture.

2.2 Scope of Audit

2.2.1 CAG examines the records, selected on a risk based sample by the Audit team (in the absence of holistic pan-India data), of the various functional wings of the Central Board of Indirect Taxes and Customs (CBIC), along with the sample of transactional records of Customs field formations relating to imports, exports and refunds. CAG also examines records relating to departmental functions like adjudication and recovery of arrears and preventive functions.

2.2.2 Further, records of the concerned Regional Authorities (RAs) of Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industries (MoCI) in respect of Customs exemption benefits availed by importers/exporters under FTP are examined. Similarly, CAG conducts audit of the Development Commissioners (DCs) of Special Economic Zones (SEZs)/Export Oriented Units (EOUs) and Software Technology Parks (STPs), including certification of accounts of Central government owned SEZs[7].

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[6] Regulations on Audit & Accounts, 2007 have been amended w.e.f. August 2020.

[7] Santacruz Electronics Export Processing Zone (*SEEPZ)*, Kandla SEZ, Madras SEZ, Cochin SEZ, Visakhapatnam SEZ, Noida SEZ and Falta SEZ

2.3 Audit Universe

2.3.1 Audit universe for Customs receipt audit includes CBIC, its Customs field formations and the ports (both Electronic Data Interchange (EDI) linked and non-EDI) and transactions executed there under i.e Bills of Entry (BsE) and Shipping Bills (SBs).

2.3.2 Customs field formations are divided into 11 Customs Zones and 09 Combined {Customs and Goods and Service Taxes (GST)} Zones with 70 Principal Commissioners / Commissioners in 20 Zones headed by one Chief Commissioner each. As on 1 April 2020, there were 44 Customs Executive Commissionerates, 13 Customs Preventive Commissionerates, nine Customs Appeal Commissionerates and four Customs Audit Commissionerates.

2.3.3 For the audit of Export Promotion schemes, the audit universe comprises of the DGFT, its RAs and DCs of SEZ/EOU/STP. DGFT is an attached office of the MoCI and is headed by the Director General of Foreign Trade. DGFT is responsible for formulating and implementing the FTP with the main objective of promoting India's exports. The DGFT issues scrips/ authorizations to exporters and monitors their corresponding obligations through a network of 24 regional offices.

2.3.4 The schemes which are implemented through SEZs and EOUs, are audited at the offices of the respective DCs of SEZs/EOUs. .

2.4 Access to Auditee data

Audit relies on Customs transaction data to draw assurance that laws have been applied correctly to prevent loss of revenue. Lack of full access to pan-India data limits the audit scrutiny to test check of transactions selected at the individual Customs field formations and a limited assurance in certifying revenue receipts.

Pan India import and export transactions data for the period FY 18 to FY 20 requisitioned (June 2019/July/September 2020) by audit in terms of a MoU signed in March 2015 was not received despite repeated requests. In the absence of pan-India transactional data, audit was conducted by physically visiting 41 out of 70 Commissionerates, and using the Customs Receipt Audit (CRA) Module and Import Customs Receipt Audit (ICRA) Module interface of Indian Customs EDI System (ICES), which had their limitations.

Audit has, to the extent possible based on the findings in test check, quantified the total number of transactions at risk, through the limited access provided in CRA Module and ICRA Module by the Department.

The instances mentioned in this Report are those which came to notice in the course of test audit conducted during the period FY 20 and in some cases earlier year also.

2.5 Audit sample

During FY 20, a test check of transactions was carried out in 41 out of 70 (59 *per cent*) Commissionerates. The audit of Commissionerates of Customs covered 29 out of 44 Executive Commissionerates, 11 out of 13 Preventive Commissionerates and one out of nine Appeal Commissionerates. In addition, Audit of licenses/authorisations under various schemes of FTP granted by the DGFT through its RAs was done in 21 out of 24[8] RAs **(Table 2.1).**

Table 2.1: Audit Universe and Sample

Ministry	Audited Entity	Audit Universe	Audit Sample
Department of Revenue (**Ministry of Finance**)	**Audited Entity**	**Total**	
	Chief Commissionerates Customs & Preventive	11[9]	8 (73 %)
	Principal Commissionerate/ Commissionerate	70	41(59 %)
	Executive Commissionerate	44	29 (66%)
	Exclusive Preventive Commissionerate	13	11 (85%)
	Appeal Commissionerate	9	1 (11%)
	Audit Commissionerate	4	0
Department of Commerce (**Ministry of Commerce**)	Regional Authority	24	21 (88%)
	Development Commissioner	8[10]	8 (100%)

2.6 Audit efforts

2.6.1 During FY 20, 299 Inspection Reports were issued to the respective Commissionerates/ RAs/DCs containing 2,266 observations and carrying a total revenue implication of ₹2,186 crore.

2.6.2 Significant and high value cases noticed during audit were issued to the Ministries (MoF/ MoCI) for comments before inclusion in the Audit Report. This report covers 137 audit observations involving revenue

[8] During FY 20, there were 38 RAs across India till October 2019, 14 RAs were merged in November 2019, and accordingly, 24 RAs remained in existence as on March 2020.

[9] Customs Zones-11 (Ahmedabad Cus, Bangaluru Cus., Chennai Cus., Trichi Prev., Delhi Customs, Delhi Prev., Kolkata Customs, Patna Prev., Mumbai-I, Mumbai-II, Mumbai-III).

[10] Santacruz Electronics Export Processing Zone (SEEPZ), Kandla SEZ, Madras SEZ, Cochin SEZ, Visakhapatnam SEZ, Noida SEZ, Falta SEZ and SEZ-Indore

implication of ₹143 crore noticed during FY 20. The audit observations were issued to the Ministry during December 2020 to July 2021.

2.6.3 The Ministries have responded in 74 out of 137 cases issued. Additionally, in 57 cases, responses were received from the local Customs Commissionerates/RAs. The Ministries/ Departments have accepted 130 paragraphs and taken rectificatory action involving money value of ₹127.38 crore in the form of issue of SCNs, adjudication of SCNs and have reported recovery of ₹39.68 crore in 93 cases of incorrect assessment of Customs Duties.

2.6.4 In Chapter III, Audit reported significant findings noticed during test check of Bills of Entry (BsE) and other records at selected Commissionerates with a revenue implication of ₹122.37 crore. The audit findings generally pertained to "Misclassification of imports (Paragraphs 3.7.1 to 3.7.11)", "Incorrect application of notifications (Paragraphs 3.8.1 to 3.8.8)" and "Other irregularities (Paragraph 3.9). Audit findings also flagged certain systemic issues and persistent irregularities.

(A) Systemic issues

Audit noticed systemic issues in a few import cases wherein the RMS allowed clearance even though the prescribed import conditions were not fulfilled. The RMS needs to address such issues so that the prescribed import conditions are complied with and applicable duties are automatically charged once the BE passes through the system.

A few cases are mentioned below and also discussed in Chapter III of the Report.

(i) Short levy of BCD on I phones (Smart phones) imports due to incorrect application of the notification (Para 3.8.5).

(ii) Incorrect application of IGST rate on 'Lithium Ion Cell' imports (Para 3.8.4).

(B) Persistent irregularities

Similar instances of non-realisation of cost recovery (establishment) charges from the units in the SEZ and misclassification of imports flagged to the Ministry in the previous Audit Reports continue to be reported in the Customs field formations, notwithstanding assurances of the CBIC that their field formations have been sensitised to check similar issues cautiously.

A few cases are mentioned below:

(i) Misclassification of Transmission network interface devices (Paras 3.7.3 and 3.7.4).

(ii) Misclassification of Automobile parts/ Shock absorbers /Gear boxes/ Gear shift assembly (Para 3.7.7).

(iii) Non-recovery of drawback in cases of un-realised export proceeds (Para 4.2.5).

(iv) Non-realisation of cost recovery charges from the developers (Para 4.2.6).

2.6.5 In Chapter IV, Audit reported irregularities with a revenue implication of ₹21 crore, particularly the issue of non-fulfilment of export obligation and other non-fulfilment of conditions by exporters/importers as per FTP.

2.7 Revenue Impact of Audit Reports

In the five reports pertaining to FY 16 to FY 20, Audit has covered 545 audit paragraphs (**Table 2.2**) involving ₹16,995 crore. Government has accepted observations in 507 audit paragraphs involving ₹990 crore and has recovered ₹164 crore in 352 paragraphs as on October 2021.

Table 2.2: Revenue Impact of Audit Reports

Year	Paragraphs included		Paragraphs accepted		Recoveries effected	
	No.	Amt. (₹ in Cr.)	No.	Amt. (₹ in Cr.)	No.	Amt. (₹ in Cr.)
FY 16	103	1,063	97	491	57	15
FY 17	99	85	91	78	63	37
FY 18	92	4,795	85	225	56	31
FY 19	114	10,909	104	69	83	41
FY 20	137	143	130	127	93	40
Total	**545**	**16,995**	**507**	**990**	**352**	**164**

(Source: Previous year's Audit Reports and ATNs)

CHAPTER III

Non-Compliance to provisions of Customs Act, Customs Tariff Act and Tariff Notification

3.1 Goods imported in a vessel/aircraft into India attract Customs Duty and unless these are not meant for customs clearance at the port/airport of arrival and are intended for transit to another customs station or to any place outside India, detailed customs clearance formalities of the landed goods have to be followed by the importers. The importer is required to file a Bill of Entry (BE) giving details of the cargo, imported tariff classification and applicable duty, and other required information. Under self-assessment, BE can be filed electronically through ICEGATE[11] into the Indian Customs Electronic Data Interchange (EDI) system, referred to as ICES[12]. In the non-EDI system, the BE is filed manually by the importer along with a prescribed set of documents.

3.2 The assessment function of the Customs authorities is to determine the duty liability, taking due note of any exemptions or benefits claimed under different export promotion schemes. They also have to check whether there are any restrictions or prohibitions on the goods imported and if they require any permission/license/permit etc., and if so, whether these requirements have been met. Assessment of duty essentially involves proper classification of the goods imported vis-a-vis the Customs tariff, having due regard to the rules of interpretations, Chapter and sections notes etc., and determining the duty liability. It also involves correct determination of value where the goods are assessable on ad valorem basis.

3.3 Bills of entry (BsE) filed electronically into ICES through a Customs House Service Centre or web based ICEGATE are transmitted by ICES to the RMS[13]. The RMS processes the data through a series of automated steps

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[11]ICEGATE stands for the Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway. ICEGATE is a web based portal through which the department offers a host of services, including electronic filing of the BE (import goods declaration), Shipping Bills (export goods declaration), e-payment, on-line registration and other data and links to various other important websites/information pertaining to the Customs business

[12]The Indian Customs EDI System (ICES)has two aspects: (i) Internal Automation of the Custom House for a comprehensive, paperless, fully automated customs clearance system (ii) Online, real-time electronic interface with the trade, transport, Banks and regulatory agencies concerned with customs clearance of import and export cargo through ICEGATE.

[13]Risk Management System is an IT driven system with the primary objective to strike an optimal balance between facilitation and enforcement and to promote a culture of self-compliance in customs clearances. It uses automated solution to identify the relevant criteria for assessing the risk associated with trade transactions and applies criteria in a systematic manner to determine the level of risk for each transaction and assigns the level of customs intervention according to the level of risk and available resources.

and results in an electronic assessment. This assessment determines whether the BE will be taken-up for action, i.e. manual appraisal by assessing officer or examination of goods, or both, or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. Where necessary, RMS will provide instructions for the Appraising Officer, Examining Officer or the Out-of-Charge Officer. Additionally, the Local Risk Management (LRM) committee may decide to put additional interventions in place at the local level for interdiction of imports. The system of clearances of imports through RMS based ICES and/ or assessment by Customs authorities should ensure that the conditions prescribed in the applicable notifications are fully met before exemptions could be granted.

3.4 Limited access to Customs data

The fully automated procedures of ICEGATE have facilitated comprehensive and paperless customs procedures. Pan-India transaction data generated at different Customs Commissionerates is available in electronic format in a centralised database maintained at the Directorate of Systems (DG/Systems) under CBIC.

Pan India data requisitioned (June 2019) by audit for import and export transactions for the FY 19, 20 and 21 was not received, despite repeated requests. In the absence of Pan India transactional data, audit was conducted through CRA and ICRA module interfaces of ICES, which had its limitations. The limitations in the CRA and ICRA modules were also communicated to the CBIC. Accordingly, the conclusions in this Chapter on compliance audit were based on limited audits carried out by physically visiting the 41 Commissionerates.

3.5 Audit Sample

During FY 20, a total of 1.21 crore BsE and 1.37 crore SBs were generated, out of which Jurisdictional Audit offices, based on local risks, selected a sample of 4.11 lakh BsE (3.39 *per cent*) and 8.12 lakh SBs (5.93 *per cent*) for physical audits. The samples were selected at the level of individual field formations through local audits in the absence of pan-India data, which is sub-optimal. Significant audit observations (102 cases) with revenue implication of ₹10 lakh or more noticed during test check of documents in the Customs Commissionerates are covered in this Chapter. Minor observations were issued to the respective Commissionerates through Inspection Reports for corrective action.

3.6 The cases of non-compliance noticed during audit could be broadly categorized as follows:

I. Misclassification of imports (Paragraphs 3.7.1 to 3.7.11).

II. Incorrect application of notifications (Paragraphs 3.8.1 to 3.8.8).

III. Other irregularities (Paragraph 3.9).

3.7 Misclassification of Imports

Classification of commodities imported is governed under the provisions of the Customs Tariff Act 1975. Levy of applicable duties is dependent on classification applied to the imported commodity.

During test check of records, Audit noticed short levy of duty due to misclassification in 8,631 BsE (67 cases). These 67 cases of misclassification, each involving revenue implication of ₹10 lakh or more, having total revenue implication of ₹107 crore, have been covered in this Chapter. Individual cases of misclassification of imports with money value less than ₹10 lakh have been reported to the local Commissionerates through field Inspection reports.

Out of the 67 cases of misclassification noticed in 16 Commissionerates, 26 cases involving total revenue implication of ₹98 crore are discussed in the following paragraphs and the remaining cases involving total revenue implication of ₹ 9 crore are listed in **Annexure 3**. The Department had accepted 67 cases involving revenue implication of ₹103 crore and reported recovery of ₹23 crore in 51 cases.

3.7.1 Battery cover decorative parts/back cover for mobile phones mis-classified as goods other than parts of mobile phones

Battery cover decorative parts/back cover for mobile phones is classifiable under CTH 39209999 and attracts IGST at the rate of 18 *per cent* (serial No. 106 of schedule III of IGST Notification 01 Integrated Tax (Rate) dated 28 June 2017).

For imports made under CTH 85177090 under 11,157 BsE valued at ₹8,113 crore during the period August to November 2019 through Commissionerate of Customs- Import, NCH, New Delhi, audit filtered all the BsE in the Commissionerate for import of "battery cover decorative parts/ back cover for manufacturing of Mobile Phone" and noticed short levy of duty of ₹71.05 crore in 2,202 BsE involving imports valued at ₹685 crore.

M/s A and M/s B Pvt. Ltd. imported (August to November 2019) "battery cover decorative parts/ back cover for manufacturing of Mobile Phone" valued at ₹685 crore under 2,202 BsE. The importers mis-classified the imported goods under CTH-85177090- as "All goods other than the parts of cellular mobile phones" and the same was accepted by the Department. The goods were cleared, after charging BCD at the rate of Nil/10 *per cent* and IGST at the rate of 12 *per cent* (Sl. No. 203 of Schedule II of Notification No.01 Integrated Tax (Rate) dated 28 June 2017).

Audit scrutiny revealed that:

i. In terms of serial no.10 of custom notification no.57/2017 dated 30 June 2017, the goods 'battery cover' (which is part/sub-part or accessories of cellular mobile phones) are covered under CTH 39209999.

ii. Further, in terms of Ministry of Electronics and Information Technology Notification F.No.33 (5)/2017-IPHW dated 1 August 2018, the item 'back/Front cover/Camera lens/ Main lens etc' are classified under CTH 39209999 as mechanics parts for manufacture of mobile phone.

Accordingly, the imported goods merit classification under CTH 39209999 and are leviable to IGST at the rate of 18 *per cent* (serial No. 106 of schedule III of aforesaid Notification). Thus, misclassification of the goods resulted in short levy of duty amounting to ₹71.05 crore which was required to be recovered.

On being pointed out (December 2019), the Principal Commissioner (ACC-Import), NCH-New Delhi while accepting the observation reportedly issued (September/December 2020), Demand cum Show Causes Notices to both the importers (M/s A Ltd ₹143.98 crore, M/s B Pvt Ltd- ₹86.60 crore), which included imports of other ineligible parts as well (e.g. Main lens/camera etc). Further progress was awaited (September 2021).

3.7.2 Trailers and semi-trailers not mechanically propelled misclassified as containers/other cast articles of iron or steel

As per Indian Customs Tariff Act, 1975, trailers and semi-trailers not mechanically propelled are classifiable under CTH 8716 and attracts IGST at the rate of 28 *per cent* up to 26 July 2018 {Notification 1/2017 – Integrated Tax (Rate), Schedule III, serial no.175 dated 28 June 2017 as amended}.

Imports under CTH 73102910/73102990/73259920 valued at ₹77.54 crore were made during the period July 2017 to November 2018 through ACC, NCH (Import Commissionerate), Delhi under 664 BsE for import of "Aircraft Engine Stand". Audit noticed misclassification of imports with resultant short levy of duty amounting to ₹3.22 crore in 104 BsE involving imports valued at ₹26.47 crore.

M/s C Ltd., M/s D Ltd., and M/s E Ltd. imported (July 2017 to May 2018) 104 consignments of "Aircraft engines stands" at a combined assessable value (AV) of ₹26.47 crore through NCH (Import Commissionerate), Delhi. The goods were mis-classified under CTH 73102910 /73102990 / 73259920 as containers/other cast articles of iron or steel and assessed to BCD at the rate of 10 *per cent* and IGST at the rate of 18 *per cent* (serial no.224 of Schedule III of aforesaid notification) in 82 consignments and at 12 *per cent* (serial no.180, Schedule II of aforesaid notification) in 22 consignments.

Audit scrutiny revealed that aircraft engine stand is a kind of trailer to pull the aircraft engine from the bay area of aircraft to the workshop and vice versa etc. and thus merits classification under CTH 87163900 and leviable to IGST at the rate of 28 *per cent* instead of 18 *per cent*/12 *per cent* levied. Moreover, the exporter had correctly classified the imported goods as "aircraft engine stand" under CTH 87163900 in its invoices. However, the importers while filing BsE had mis-classified the goods under CTH 73102910/73102990/73259920 which resulted in short levy of duty of ₹3.22 crore.

On this being pointed out (November 2018), the Principal Commissioner (ACC-Import), NCH-New Delhi confirmed the demand of ₹3.22 crore against all the importers and intimated recovery of ₹23.48 lakh along with interest of ₹6.29 lakh from M/s E Ltd. Further progress is awaited(September 2021).

3.7.3 Apparatus for transmission or reception of voice, images or other data mis-classified as parts for use in manufacture of mobile phones/'Parts for transmission or reception'

"Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as local or wide area network)" are classifiable under CTH 85176290 and attracts BCD at the rate of 10 *per cent* under Customs notification 57/2017 dated 30 June 2017.

As per the Harmonized System of Nomenclature (HSN) "Other communication apparatus" group includes Network interface cards, Modems, Routers, Multiplexers and related line equipment, data compressors/decompressors (codecs) etc. and are classifiable under CTH 85176290.

For import under CTH 8517 made under 2,19,379 BsE during the period July 2017 to July 2018 through ACC, NCH (Import Commissionerate) Delhi, Audit filtered 55,863 BsE for import of Switching cards -"100G/320G/60G/10G hybrid/pure matrix cards", "Small form factor pluggable (SFP)", "Thunder 6630", "Muxponder Cards"/Transponder cards", "Optical splitter card", "Optical Transceiver", 8/ 44 Channels Mux demux board card etc." and noticed short levy of duty of ₹6.37 crore in 187 BsE.

M/s F Ltd. and 27 others imported Control and processor cards/Switching cards etc namely "100G/320G/60G/10G hybrid/pure matrix cards", "Small form factor pluggable", "Thunder 6630", "Muxponder/ Transponder cards", etc. during July 2017 to August 2019 through ACC, NCH (Import Commissionerate) Delhi. The goods were mis-classified under CTH 85177090–parts for transmission or reception of voice, images or other data and assessed to BCD at nil rate.

Audit scrutiny revealed that the imported items are network interface cards, switches and electro optical converters like small form factor pluggable transceivers (SFP). Hence, these merit classification under CTH 85176290-other communication apparatus and leviable to BCD at the rate of 10 *per cent* instead of nil. Further, as per the explanatory notes to the Harmonized System issued by World Customs Organization, Network Interface Cards/transceivers are classifiable under CTH-851762. Thus, misclassification of imported goods resulted in short levy of duty amounting to ₹6.37 crore.

On this being pointed out (March 2018 to August 2019) the Principal Commissioner (ACC-Import), NCH-New Delhi accepted the misclassification involving revenue implication of ₹5.28 crore, of which demands of ₹4.90 crore have been confirmed and ₹1.25 crore were recovered. Further progress is awaited (September 2021).

3.7.4 "Smart watches" mis-classified as Measuring or checking instruments

All apparatus for transmission or reception of voice, images or other data in a wireless network commonly known as smart watches e.g. 'MI Bands – Model XMSH04HM & XMSH2HIM' merit classification under CTH 85176290 and attracts BCD at the rate of 20 *per cent*.

Against import of 'MI Bands – Model XMSH041HM & XMSH2HIM' valued at ₹20.71 crore made during 2017-18 through ICD, City Commissionerate, Bengaluru under 14 BsE, Audit noticed short levy amounting to ₹1.10 crore in three BsE involving imports valued at ₹6.79 crore.

M/s G Pvt. Ltd., Bengaluru imported (February 2018) MI Bands valued ₹6.79 crore through Inland Container Depot (ICD), Whitefield, Bengaluru. The goods were mis-classified and cleared under CTH 90318000 pertaining to "Other Measuring or checking instruments, appliances and machines not specified or included in the Chapter 90" and BCD levied at the rate of 7.5

per cent instead of the applicable 20 *per cent*. This resulted in short levy of duty amounting to ₹1.10 crore.

On this being pointed out (September 2019), the Ministry of Finance, Department of Revenue reported (June 2021) recovery of ₹1.38 crore which includes interest of ₹27.80 lakh.

3.7.5 Short levy of duty due to mis-classification of 'CXA steelhead appliance for Wide Area Network (WAN) server'

'CXA steelhead appliance for Wide Area Network (WAN) server' of different specifications merits classification under Customs Tariff Heading (CTH) 85176290 as "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as local or wide area network)" which is not eligible for exemption under notification no. 24/2005-Cus. dated 1 March 2005. Accordingly, the imported goods are leviable to Basic Customs Duty (BCD) at the rate of 10 *per cent*.

During the period 2017-18, a total no. of 40 BsE were filed for import of goods 'CXA steelhead with WAN server' valuing of ₹12.94 crore through Commissionerate of Customs (Airport & Air Cargo Complex), Bengaluru. Audit pointed out short levy of duty amounting to ₹59.53 lakh due to misclassification in six BsE involving imports of ₹4.90 crore.

M/s. H Pvt. Ltd, Bengaluru and M/s I Pvt. Ltd. imported 'CXA steelhead' of different specifications during October 2017 through Commissionerate of Customs (Airport & Air Cargo Complex), Bengaluru. The importer classified the imported goods under CTH 84715000- 'Processing units other than those of sub-headings- 847141 or 847149, whether or not contain in the same housing one or two of the following types of unit: storage units, input units, output unit' and cleared the goods claiming BCD exemption under the aforesaid notification.

Audit noticed that the imported goods being 'CXA steelhead appliance for improved performance & data transfer over WAN' merit classification under CTH 85176290 which is not exempted for BCD under notification no. 24/2005 dated 1 March 2005. Therefore, the imported goods were leviable to BCD at the rate of 10 *per cent*. The misclassification resulted in short levy of duty of ₹59.53 lakh which was required to be recovered from the importer along with applicable interest.

On this being pointed out (June/October 2019), the MoF, DoR intimated (June 2021) that a demand of ₹40.84 lakh has been confirmed against M/s. H Pvt. Ltd. The importer had filed an appeal against the O-I-O and also made payment of ₹40.84 lakh. In the case of another importer, M/s. I Pvt.

Ltd., a demand of ₹35.83 lakh has been confirmed which includes a demand of ₹18.68 lakh objected by Audit. Further progress is awaited (September 2021).

3.7.6 Misclassification of Navigational instruments/other apparatus for aeronautical use (CTH 85/90)

(A) Navigational instruments/apparatus for aeronautical use (CTH 85/90) misclassified as parts of helicopters/aircrafts (CTH 8803)

According to note 2 of Section XVII of the Customs Tariff Act, 1975 (Section XVII covers Chapters 86 to 89), the expression "parts" and "parts and accessories" (Whether or not they are identifiable as goods for this Section) do not apply inter alia, to articles of Chapter 82, Machines or apparatus of headings 8401 to 8479 or parts thereof, articles of heading 8481 or 8482 provided they constitute integral parts of engines or motors, articles of heading 8483, Electrical machinery or equipment (Chapter 85) and articles of Chapter 90 etc. Accordingly, such parts and accessories are not covered under Chapters 86 to 89 of the Customs Tariff.

As per HSN explanatory notes under CTH 9014, Aeronautical navigational instruments are classifiable under CTH 90142000 and attract BCD at the rate of 7.5 *per cent* and IGST at the rate of 18 *per cent* (Serial no. 411-I, 422, Schedule III of notification no. 1/2017- Integrated Tax (Rate) dated 28 June 2017).

Out of 274 BsE for imports (January 2017 to December 2018) under the CTH 88033000 having total Assessable Value (AV) of ₹64.31 crore, filed at Air cargo complex (ACC), Nedumbassery, Kerala, 45 BsE with AV of ₹35.26 crore were test checked. Mis-classification of imports was noticed in eight BsE with a total AV of ₹16.59 core.

M/s J, Cochin imported (November 2017 to October 2018) four consignments of 'Instruments/parts of instruments of navigation system of Aircraft/Helicopter', three consignments of Aviation goods, engine control systems and one consignment (September/October 2018) of 'Radar Apparatus' through Airport Nedumbassery, Kerala. Total AV of the imported goods was ₹16.59 crore.

Though the technical write up submitted by the importer along with BsE showed the specification of the imported goods as "Aviation grade electrical/electronic items", "Aviation grade structural items" etc., the goods were mis-classified under the CTH 8803 3000 as 'other parts of aeroplanes or helicopters' and assessed to IGST at the rate of 5 *per cent* (Schedule I, serial no.245 of notification no.1/2017-Integrated Tax (Rate) dated 28 June 2017 as amended).

Audit noticed that as per technical write up, the goods merited classification under CTH 9014 8090 – 'other navigational instruments and appliances – Other'/ 90149000 – 'parts of instrument for aeronautical or space navigation'/9032 9000 – 'parts and accessories of automatic regulating or controlling equipment'/8525 1000 – 'Radar Apparatus' and attracted IGST at the rate of 18 *per cent* under the aforesaid notification dated 28 June 2017. The mis-classification resulted in total short levy of duty amounting to ₹2.12 crore.

On this being pointed out (November 2018/March 2019), the Ministry of Finance, Department of Revenue intimated (February 2021) recovery of duty of ₹2.13 crore along with interest of ₹35.66 lakh.

(B) Mis-classification of "Attitude and Heading Reference Unit (AHRU)" as "Other parts of aircrafts"

For import under CTH 88033000 valued at ₹2,712.45 crore made during the period January 2018 to March 2019 through NCH (import Commissionerate), New Delhi under 4,677 BsE, audit filtered the whole data (4,677 BsE) for import of "Attitude and Heading Reference Unit (AHRU)[14]" and found that in 14 BsE involving imports valued ₹12.65 crore, there was short levy of duty amounting to ₹1.68 crore involving import worth ₹12.65 crore.

M/s K Ltd., (HAL), M/s L Ltd., M/s C Ltd., and M/s M Pvt. Ltd. imported (March 2018 to February 2019) AHRU at an AV of ₹12.65 crore under 14 BsE. The goods were mis-classified under CTH 88033000 – as other parts of Aircrafts and assessed to BCD at the rate of Nil/2.5 *per cent* and IGST at the rate of 5 *per cent* (serial no. 245 of schedule I of IGST notification 1/2017).

Audit scrutiny revealed that by virtue of the aforesaid note 2 of Section XVII, the imported goods are not covered under the Section XVII (Chapters 86 to 89). Accordingly, such parts and accessories are not covered under CTH 88033000 as was cleared by the department. The imported items are "Aeronautical Navigational Instruments" and correctly classifiable under CTH 90142000 and IGST is leviable at 18 *per cent* (serial no.411-I of schedule III of IGST notification 1/2017). Thus, mis-classification of imported goods resulted in short levy of duty by ₹1.68 crore.

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[14] AHRU is the major component of Altitude and Heading Reference System (AHRS) for Aeronautical Navigation.
AHRU is a box that contains the essential rate gyros, accelerometers, power supplies, and other tools that are used for measuring the acceleration forces, rate of change, aircraft's attitude, and the magnetic heading.

On this being pointed out (March 2019), the the Ministry of Finance, Department of Revenue reported (April 2021) recovery of ₹1.69 crore.

(C) Misclassification of "Gyroscopic Horizon /Directional Gyro / Accelerometer" (navigational instruments)

As per HSN explanatory notes under CTH 9014, Aeronautical Navigational Instruments are classifiable under CTH 90142000 and attracts IGST at the rate of 18 *per cent* (Serial no. 411-I, schedule III of notification no. 1/2017-Integrated Tax (Rate) dated 28 June 2017).

For import under CTH 8803 valued at ₹1,894.14 crore made during the period January to August 2019 through NCH (Import Commissionerate), Delhi under 1,849 BsE, audit filtered the whole data (1,849 BsE) for import of "Gyroscopic Horizon/Directional Gyro/Accelerometer" and found seven BsE involving imports valued at ₹3.96 crore where there was short levy of duty by ₹52.67 lakh.

M/s N Pvt. Ltd. and M/s O Ltd. imported (February to June 2019) seven consignments of "Gyroscopic Horizon/ Directional Gyro/ Accelerometer" at an AV of ₹3.96 crore through NCH (Import Commissionerate), Delhi. The goods were classified under CTH 88033000/88039000 as "Aircraft parts" and assessed to IGST at the rate of 5 *per cent* (serial no.245, schedule I of aforesaid IGST notification).

Audit scrutiny revealed that as per HSN note the imported items, being Aeronautical Navigational Instruments, merit classification under CTH 90142000 and attracts IGST at the rate of 18 *per cent* (Serial no.411-I of schedule III of aforesaid notification) and are not covered under CTH 8803 by virtue of aforesaid note 2 of Section XVII. Thus, mis-classification of imported goods resulted in short levy of duty by ₹52.67 lakh.

On this being pointed out (August 2019), the MoF, DoR intimated (July 2021) recovery of ₹61.06 lakh which included interest of ₹8.39 lakh.

(D) Ball bearings mis-classified as parts of helicopters and aeroplanes

Ball Bearings are classifiable under CTH 8482 and attract BCD at the rate of 7.5 per cent, Social welfare surcharge at the rate of 10 *per cent* of BCD and IGST at the rate of 18 *per cent* {IGST notification no.1/2017 –Integrated tax (Rate) dated 28 June 2017, schedule III serial no.369}.

For import under CTH 8803 valued at ₹2,282 crore made during the period January 2018 to February 2019 through NCH (import Commissionerate), Delhi under 4,828 BsE, Audit pointed out short levy of duty of ₹1.05 crore in respect of 16 BsE involving imports valued at ₹7.87 crore.

M/s P Imported (February to June 2018) 1,756 pieces of “Annular Ball Bearing/Ball Bearing” for Aircrafts at a combined AV of ₹7.87 crore. The goods were mis-classified under CTH 88033000 as parts of helicopters and aeroplanes and assessed to BCD at the rate of 2.5 *per cent* (after allowing benefit under serial no.545 of notification 50/2017-Customs), and IGST at the rate of 5 *per cent* (Serial No. 245 of Schedule I of IGST notification 1/2017).

Audit scrutiny revealed that the imported items are “Ball Bearing” and hence correctly classifiable under CTH 84829900-other “Ball Bearing” and leviable to BCD at the rate of 7.5 *per cent*, IGST at the rate of 18 *per cent* (serial no.369 of Schedule III of IGST Notification 1/2017). Thus, mis-classification of imported goods resulted in short levy of duty of ₹1.05 crore.

On this being pointed (February/May 2019), the Ministry of Finance, Department of Revenue intimated (March 2021) recovery of ₹1.28 crore which included interest of ₹23 lakh.

(E) ‘Cylinders for Aircrafts engines’ misclassified as propellers and rotors/ under-carriages and parts thereof

“Cylinders for Aircrafts” are classifiable under CTH 84091000 – Parts suitable for use solely or principally with aircraft engines and attract BCD at the rate of 15 *per cent* and IGST at the rate of 28 *per cent* (Schedule IV, serial no.116 of notification no.1/2017- Integrated Tax (Rate) dated 28 June 2017).

For import under CTH 8803 valued at ₹2,712.45 crore made during the period March 2018 to March 2019 through NCH (import Commissionerate) under 4,677 BsE, audit filtered the whole data for import of “Cylinders for Aircrafts” and noticed misclassification in three BsE involving imports valued ₹242.67 lakh. The misclassification resulted in short levy of duty of ₹56.48 lakh.

M/s K and M/s L Ltd. imported (March to October 2018) three consignments of “Cylinders for Aircrafts” through NCH, Delhi. The goods were mis-classified under CTH 88031000/88032000 as Propellers and rotors/under-carriages and parts thereof and assessed to BCD at the rate of Nil/2.5 *per cent* and IGST at the rate of 5 *per cent* (serial no.245 of schedule I of IGST notification 1/2017).

Audit scrutiny revealed that the above mentioned imported items, “Cylinders” were parts of aircraft engines and hence, as per explanatory notes to CTH 8409, such imported goods are correctly classifiable under CTH 84091000 and leviable to IGST at the rate of 28 *per cent* (serial no. 116

of schedule IV of aforesaid notification). Thus, mis-classification of imported goods resulted in short levy of duty of ₹56.48 lakh.

On this being pointed out (March 2019), the MoF, DoR reported (April 2021) total recovery of ₹56.57 lakh, which included interest, from the importers.

(F) Parts of Remotely piloted Aircraft (RPA)' mis-classified as transmission apparatus for radio-broadcasting or television

'Parts suitable for use solely or principally with apparatus of headings 8525 to 8528' are classifiable under CTH 8529 1019 and attracts BCD at the rate of 10 *per cent*.

Twenty three BsE with items classified under the CTH 4819, 103 BsE under the CTH 8443 and 58 BsE under the CTH 8525 having total AV of ₹19.46 crore were filed in Kochi Airport, Kerala during the period 1 January 2019 to 30 June 2019. All the BsE were checked and mis-classification in one BE with total AV of ₹10.81 crore was noticed.

M/s J imported one consignment of 'Parts required for repair of Remotely Piloted Air Craft (RPA)' namely Dual Multichannel Receiver Processor, TM/TV RF Head Assembly, FOTM Assembly and Box FA MCPA PPC Type 4 with total AV of ₹10.81 crore through Airport, Nedumbassery, Kerala (BE no.2110490 dated 19 February 2019). The imported goods were classified under CTH 8525 5090/8443 9990/8443 1910 and 4819 1010 and BCD of 7.5 *per cent* was levied. Total duty of ₹2.18 crore was collected. The imported goods were parts of transmission/reception apparatus used in the Remotely Piloted Air Craft (RPA) and hence classifiable under CTH 8529 1019 as 'Parts suitable for use solely or principally with apparatus of headings 8525 to 8528' which attracts duty at the rate of BCD of 10 *per cent*. Accordingly total duty of ₹3.35 crore was leviable. Mis-classification of goods resulted in short levy of duty amounting to ₹53.75 lakh.

On this being pointed out (September 2019), the MoF, DoR intimated (February 2021) recovery of short levied duty of ₹53.75 lakh with interest of ₹6.05 lakh.

(G) Global positioning system receivers misclassified as 'other parts of aero planes or helicopters'

"Global Positioning System (GPS) Receivers" are classifiable under CTH 85269190 and attract BCD at the rate of 7.5 *per cent* and IGST at the rate of 18 *per cent.*

Imports under CTH 8803 valued at ₹2,712 crore were made during March 2018 to March 2019 through NCH Import Commissionerate under

9,356 BsE. During test check, Audit found and pointed out short levy of duty by ₹50.29 lakh in six BsE involving imports of "GPS" worth ₹3.78 crore.

M/s K Ltd and M/s R Ltd imported "Global Positioning Systems (GPS)/Satellite Based Augmentation System (SBAS)/Beta - 3" at a combined AV of ₹3.78 crore. The goods were classified under CTH 88033000 'other parts of aero planes or helicopters' and assessed to concessional BCD at the rate of 2.5 *per cent* (after allowing benefit under serial no. 545 of Customs notification 50/2017) and IGST at the rate of 5 *per cent* (under serial No. 245 of Schedule I of IGST notification No.1/2017).

Audit scrutiny revealed that the imported items are "GPS Receivers" and as per HSN Explanatory notes to CTH 8526 and 9014, "GPS Receivers", are correctly classifiable under CTH 85269190 and accordingly leviable to IGST at the rate of 18 *per cent* (Serial no. 383A of Schedule III of IGST notification 1/2017) instead of at the rate of 5 *per cent*. Thus, misclassification of imported goods resulted in short levy of duty by ₹50.29 lakh.

On being pointed out (February 2019 /May 2019), the MoF, DoR intimated (August, 2021) recovery of ₹39.93 lakh from M/s K Ltd., and issued (December 2020) a Demand Cum show cause notice to M/s R Ltd. Further progress is awaited (September 2021).

3.7.7 Misclassification of motor vehicles 'Transmission shafts'/ 'Shock absorbers'/ 'Gear boxes'/ ' window Guide for window glass'

(A) 'Clutches' mis-classified as machinery parts of headings CTH 84.25 to 84.30 for Lifting, handling, loading, excavating or boring etc.

Parts of clutches are classifiable under CTH 84839000 and attracts BCD at the rate of 7.5 *per cent* and IGST at the rate of 28 *per cent* (Notification No. 1/2017/Integrated Tax (Rate), Schedule IV, Sl No. 135, dated 28 June 2017).

Imports under CTH 8431 valued at ₹113 crore were made during the period July 2017 to October 2018 through ICD Patpargaj, Delhi under 1060 BsE. Audit filtered all 1,060 BsE for import of "Clutch Housing-Parts of Clutch" and noticed short levy of duty of ₹1.60 crore in 21 BsE involving imports valued ₹7.80 crore.

M/s S Ltd. imported (July 2017 to October 2018) "Clutch Housing –part of clutch" under 21 BsE at an AV of ₹7.80 crore. The imported goods were mis-classified under CTH 84314930- "Parts of other excavating, levelling tamping & excavating machinery for earth mineral/ores" and cleared after levying BCD/IGST at the rate of "zero"/ 18 *per cent* under Customs notification 152/2009, dated 13 December 2009 and Sl. No. 328 of Schedule III of IGST notification 1/2017 respectively.

Audit scrutiny revealed that CTH 8431 is meant for parts suitable for use solely or principally with the machinery of headings Nos. 84.25 to 84.30 for lifting, handling, loading, excavating or boring. The imported goods are "parts of clutch" which are correctly classifiable under CTH 84839000 and BCD is leviable at the rate of 7.5 *per cent* instead of Zero *per cent* and IGST at the rate of 28 *per cent* instead of 18 *per cent*. Thus, misclassification of imported items and subsequent incorrect grant of notification benefit resulted in short levy of duty of ₹1.60 crore.

On being pointed (October 2018), the Commissioner of Customs, ICD-Patparganj intimated (October 2020) recovery of ₹1.60 crore in respect of 21 consignments after re-assessment of BsE.

(B) 'Shock absorbers' for motor vehicles mis-classified as 'Other articles of Iron and steel' / Other mountings/fittings for furniture, doors, windows

As per Harmonized System of Nomenclature (HSN), Parts and Accessories of motor vehicles of headings 8701 to 8705 are classifiable under heading 8708, if they are identifiable as being suitable for use solely and principally with the above mentioned vehicles and are not excluded by provisions of Notes to Section XVII of the Customs Tariff Act, 1975.

Government amended Notification No.50/2017-Cus. dated 30 June 2017 through notification no.6/2018-Cus. dated 2 February 2018, according to which the effective rate of BCD on all goods other than Parts and accessories of motor vehicles falling under heading 8702 to 8704 is 10 *per cent*. This means that any importation of "Parts and accessories" of motor vehicles falling under heading 8702 to 8704 and classifiable under heading 8708 would attract merit rate of 15 *per cent* as BCD. Further, "Parts and Accessories" of Motor Vehicles falling under heading 8702 to 8705 are liable to IGST at 28 *per cent* {Sl.No.170; Schedule IV of Notification No.01/2017-Integrated Tax (Rate) dated 28 June 2017 effective from 1 July 2017}.

Accordingly, the imported goods 'Shock absorbers', an automotive parts of motor vehicles, are rightly classifiable under CTH 87088000 and leviable to BCD at the rate of 10 *per cent* upto 01 February 2018 and 15 *per cent* w.e.f. 2 February 2018. The goods are also subject to IGST at 28 *per cent*.

During the period November 2017 to March 2019, a total no. of 2,812 BsE had been filed for import of goods 'shock absorber and others' valuing ₹356.70 crore under CTH 73269099/ 83023090 through ICD, Irungattukottai under Commissionerate of Customs (Chennai-II), Customs House, Chennai.

Audit test checked 412 BsE valuing ₹166.84 crore and pointed out short levy of duty of ₹1.32 crore in 161 BsE.

M/s T Pvt. Ltd. and M/s U Pvt. Ltd. imported 161 consignments of "shock absorber" during November 2017 to March 2019 through ICD, Irungattukottai under Commissionerate of Customs (Chennai-II), Customs House, Chennai. The importer declared the goods under CTH 73269099 (Other articles of iron and steel) /83023090 (Other mountings, fittings and similar articles for furniture/doors/windows). The Department accepted the declared goods description and cleared the goods under CTH 73269099 / CTH 83023090 and assessed them to BCD at the rate of 10 *per cent* under Sl.No.377 of notification no.50/2017-Cus. dated 30 June 2017 / merit rate of 10 *per cent* respectively. Further, IGST was paid at the rate of 18 *per cent* (Sl.No.238 and 303A of Schedule III of notification no.01/2017-Integrated Tax).

Audit scrutiny revealed that 'shock absorbers', being automotive parts, are specifically covered under CTH 87088000 and leviable to BCD at the rate of 10 *per cent* / 15 *per cent* (merit rate) and IGST at the rate of 28 *per cent*. The misclassification of imported goods had resulted in short levy of duty of ₹1.32 crore which was required to be recovered from the importer along with applicable interest.

On being pointed out (November 2019), the Ministry of Finance, Department of Revenue accepted the observation and intimated (March 2021) recovery of differential duty of ₹1.63 crore including applicable interest.

(C) Misclassification of Gear boxes resulted in short levy of duty

As per the Harmonized System of Nomenclature (HSN), the goods "Parts and Accessories of the Motor Vehicles- Gear boxes and parts thereof" are classifiable under CTH 8708 and are leviable to BCD at the rate of 10 *per cent* / 15 *per cent*. Accordingly, the imported goods "Gear assembly and LU Gear Shift" are leviable to BCD at the rate of 10 *per cent* / 15 *per cent*.

During the period November 2017 to December 2018, a total of 1,142 BsE had been filed for import of goods "Gear assembly and LU Gear Shift and others" valuing ₹ 55.45 crore under CTH 84834000/ 73182990/ 73182910 through Commissionerate of Customs (Chennai-II), Customs House, Chennai. Audit test checked 350 BsE valuing of ₹16.98 crore and pointed out short levy of duty of ₹97.61 lakh in 84 BsE involving imports valuing of ₹6.46 crore.

M/s T Pvt. Ltd. imported 84 consignments of "Gear assembly and LU Gear Shift" during November 2017 to December 2018 through Commissionerate of Customs (Chennai-II), Customs House, Chennai declaring the goods under CTH 84834000/73182990/73182910 ("Ball screws for use in the manufacture of CNC lathes"/ "Other Non –threaded articles of iron or steel" /"Circlips"). The Department accepted the declared goods description and cleared the goods, assessing BCD at the rate of 7.5 *per cent* for CTH 8483400 and 10 *per cent* for CTH 73182990/73182910 as per sl. no. 377 of the notification no. 50/2017-Cus dated 30.06.2017 as amended. Audit observed that the goods, being "Gear assembly and LU Gear Shift", are classifiable under CTH 8708-'Gear boxes and parts thereof' and not under CTH 84834000/73182990/73182910. Thus, the imported goods are leviable to BCD at the rate of 10 *per cent* / 15 *per cent*. The misclassification had resulted in short levy of duty of ₹97.61 lakh which was required to be recovered from the importer along with applicable interest.

On this being pointed out (November 2019), the Ministry of Finance (MoF), DoR accepted the observation (March 2021) and intimated recovery of ₹1.20 crore including interest of ₹22.86 lakh.

(D) Motor Cycle parts misclassified as parts of other vehicles

Parts and accessories of Motor Cycles falling under CTH 8711 are classifiable under CTH 871410 and attract BCD at the rate 15 *per cent* (w.e.f. 2 February 2018).

Import under CTH 8714 valued at ₹124.29 crore was made during the period January 2018 to February 2019 through ICD-TKD (import Commissionerate) and ACC, NCH (Import Commisisonerate), Delhi under 937 BsE and 113 BEs respectively. Audit test checked a total of 215 BsE involving imports valued at ₹ 20.68 crore and pointed out short levy of duty of ₹ 1.38 crore in 184 BsE (ICD-TKD-102 BsE, NCH Delhi- 82 BsE)- involving import worth ₹ 19.54 crore.

M/s V and 40 others imported (February 2018 to January 2019) "Motor Cycle Alloy Wheel and various motor cycle part" at a combined AV of ₹20.68 crore through ICD TKD (Import Commissionerate, New Delhi) and ACC, NCH (Import Commisisonerate), Delhi. The imported items were mis-classified under CTH-87142090-as parts and accessories of carriage of disabled persons) /87149100/ 87149290/87149400 /87149990-as part of other vehicles and levied to BCD at the rate of 10 *per cent* (under serial no.532 of notification no. 50/2017).

The imported goods are parts of motor cycles and hence merit classification under CTH 871410 and attract BCD at the rate 15 *per cent*. Thus, mis-classification of the imported goods resulted in short levy of duty by ₹67 lakh.

On this being pointed out (February/August 2018) the ICD-TKD (import Commissionerate), accepting the audit observation, intimated recovery of ₹31.91 lakh from 17 importers, confirmed demands of ₹26.13 lakh against 12 importers and issued notices to ten importers. ACC, NCH (Import Commissionerate), Delhi intimated recovery of ₹0.04 lakh from one importer (M/s W -one BE) and confirmed a demand of ₹2.04 lakh against another importer (M/s X Ltd), who paid ₹0.68 lakh against demand of ₹2.04 lakh. Further progress is awaited (September 2021).

(E) Short levy of Customs Duty due to mis-classification of "Window guide" – Motor vehicle parts

A 'Window Guide' is a part of a motor vehicle which helps to keep the window glass in the right place and creates a seal to keep the window closed and is located inside the doorframe. Harmonized System of Nomenclature (HSN) explanatory notes says that Parts and accessories of motor vehicles of heading 8701 to 8705 are classifiable under Customs Tariff Head (CTH) 8708. Accordingly, 'window guide' is classifiable under CTH 87089900 "Other parts and accessories of motor vehicles of CTH 8701 to 8705" leviable to BCD at 10 *per cent* / 15 *per cent* and Integrated tax (IGST) at 28 *per cent* in terms of serial no. 170 of Schedule IV of notification no.1/2017(Integrated Tax) dated 28 June 2017 as amended.

Out of 1,464 BsE filed with an AV of ₹36.12 crore in ICD, Irungattukottai, audit checked the data of all the Bills involving import of 'window guide'. It was found that 182 consignments of Window guide imported (November 2017 to January 2019) by M/s T Private Limited for an AV of ₹432.42 lakh were incorrectly classified under tariff item 83023090 of the Customs Tariff as 'Other mountings, fittings and similar articles suitable for motor vehicles' and assessed to BCD at 10 *per cent* and IGST at 18 *per cent* in terms of Sl. No. 303A of schedule III of notification no.1/2017(Integrated Tax).

Audit pointed out (November 2019) that the subject goods merit classification under CTH 87089900 as "Other parts and accessories of motor vehicles of heading 8701 to 8705", in view of the aforesaid HSN provisions cited in para 1, attracting levy of BCD of 10 / 15 *per cent* and IGST at 28 *per cent*. The incorrect classification of the imported goods had resulted in short levy of duty of ₹71.27 lakh.

On this being pointed out (November 2019), the MoF, DoR reported (August 2021) recovery of ₹86.57 lakh from the importer, which included interest.

3.7.8 Short levy of Customs Duty due to mis-classification of fabrics

'Woven fabrics of artificial filament yarn' are classifiable under CTH 5408. Under this sub-heading, 'Dyed fabrics of rayon-other' are classifiable under CTH 54082219 and 'printed fabric of rayon – other' is classifiable under CTH 54082490. The applicable BCD rate for CTH 54082219 is 25 *per cent* or ₹45 per sqm whichever is higher and for CTH 54082490, the BCD is 25 *per cent* or ₹87 per sqm whichever is higher.

For imports of Man-made textile fabrics valued at ₹43.11 crore made during July 2018 to September 2019 through Hyderabad Customs Commisisonerate under 103 BsE, Audit test checked 62 BsE involving imports valued at ₹35.06 crore and pointed out short levy of Customs Duty amounting to ₹1.21 crore in four BsE involving imports worth ₹2.50 crore.

M/s Y Pvt. Ltd. imported (December 2018 to September 2019) 'Viscose woven fabric (rayon) – plain and printed through Inland Container Depot (ICD), Sanathnagar, Hyderabad. The imported goods 'viscose woven fabric (rayon) – plain were mis-classified under CTH 55161200 as "Dyed woven fabrics of artificial staple fibres". Imported 'Viscose woven fabrics (rayon) printed' was mis-classified under (i) CTH 55161410 as "Spun rayon printed shantung" and (ii) CTH 55161490 as "Other woven fabrics of artificial staple fibres". However, as the imported goods were made up of artificial filament yarn, 'Viscose woven fabric (rayon) – plain and printed' merit classification under CTH 54082219 and 54082490 as these were woven fabric of rayon. Accordingly, BCD was leviable at 25 *per cent* or ₹45 per sqm whichever is higher for CTH 54082219 and for CTH 54082490, the BCD was leviable at 25 *per cent* or ₹87 per sqm whichever is higher. Thus, the mis-classification of goods resulted in short levy of Customs Duty amounting to ₹1.21 crore.

On this being pointed out (September 2019), the Ministry of Finance, Department of Revenue stated (March 2021) that a Show cause notice for an amount of ₹1.21 crore had been issued (October 2020) to the importer. Further progress is awaited (September 2021).

3.7.9 'Other articles of Copper' misclassified as Copper bars, rods

'Other articles of Copper' are classifiable under CTH 7419 and attract BCD at the rate of 10 per cent, and IGST at the rate of 28 *per cent* (upto 14 November 2017)/18 *per cent* (serial no.104/253 of schedule IV/III of notification no. 01 – Integrated Tax (Rate), dated 28 June 2017).

For import under CTH 74071090 valued at ₹11.08 crore made during the period July 2017 to November 2018 through ICD Tughlakabad (Import Commissionerate) under 14 BsE, Audit test checked the whole data (14 BsE) and noticed short levy of duty by ₹73.65 lakh in 11 BsE involving imports valued at ₹9.82 crore.

M/s Z Pvt. Ltd. imported (October 2017 to November 2018) 11 consignments of "Copper Anode Balls/Nuggets" at an assessed value of ₹9.82 crore. The imported items were mis-classified under CTH-74071090-other copper bars, rods and profiles and levied to BCD at the rate of 5 *per cent*, IGST at the rate of 18 *per cent* (serial no.245 of schedule III of aforesaid notification).

Audit scrutiny revealed that the Copper Anode Balls/Nuggets are correctly classifiable under CTH 74199990- other articles of copper and attract BCD at the rate of 10 *per cent* and IGST at the rate of 28 *per cent* (upto 14 November 2017) instead of 18 *per cent* . Thus, mis-classification of imported goods resulted in short levy of duty by ₹ 73.65 lakh.

On being pointed out (March 2019), the ICD, Tughlakabad authorities reported (January 2020) recovery of ₹73.65 lakh and interest of ₹9.56 lakh.

3.7.10 Power bank imports misclassified as 'Electrical accumulators – Lithium-ion'

A Power bank is a portable charger designed to recharge electronic gadgets such as cell phones, tablets, portable speakers, cameras and even laptops. Power Bank, being an Electrical Accumulator, is classifiable under CTH 85078000 – 'Other accumulators' and is leviable to IGST at 28 *per cent* vide Notification No. 01/2017-Integrated Tax dated 28 June 2017 (serial no.139/Schedule IV- Electrical accumulators, including separators therefor, whether or not rectangular (including square other than Lithium-ion battery and other Lithium-ion accumulators). Tax Research Unit, CBIC vide their circular dated April 2017 (File No. 354/29/2017- TRU dated 26 April 2017) had clarified that 'Power Bank' has to be classified under CTH 85078000.

Out of 100 BsE valued at ₹48.23 crore filed under CTH 85078000 during 2018-19, Audit pointed out short levy of IGST of ₹70.94 lakh due to misclassification of goods in 13 BsE.

M/s AA and five others imported 13 consignments of "Power Banks" during July 2018 to December 2018 through Commissionerate of Customs (Chennai-II), Customs House, Chennai. The importers cleared the imported goods by mis-classifying them under CTH 85076000 meant for 'Electrical accumulators –Lithium-ion'. The goods were assessed by the Department to IGST at the rate of 18 *per cent* under Schedule III, serial no. 376 AA (applicable to Lithium-ion batteries) of the aforesaid notification.

Audit noticed that the goods being 'Power Banks' are appropriately classifiable under CTH 85078000, and attracted IGST at the rate of 28 *per cent* (Notification no. 1/2017 dated 28 June 2017 Schedule IV-SI. No. 139). Thus, misclassification of Power bank had resulted in short levy of IGST amounting to ₹70.94 lakh. This was required to be recovered from the importers along with applicable interest.

On this being pointed out **(**September 2019), the Commissioner of Customs (Chennai-II) authorities intimated (March/September2020) recovery of ₹43.32 lakh including interest of ₹3.88 lakh in respect of three importers. Further progress was awaited (September 2021).

3.7.11 'Seaweeds extract flakes/liquid seaweed plant extract' mis-classified as 'Animal and vegetable fertilizers/other fertilizers/ organic chemicals'

Seaweeds are classifiable under CTH 12122910 and attract BCD at the rate of 30 *per cent* and Additional Customs Duty at the rate of 4 *per cent* upto 30 June 2017. After introduction of GST w.e.f. 1st July 2017, Seaweed attracts the IGST at the rate of 5 *per cent* (Notfn. 1/2017-Integrated Tax (Rate), Sch. I, Sl. No.74) instead of CVD and ACD.

As per HSN, Heading 1212 covers all seaweeds and algae, whether or not edible. These seaweeds may be fresh, chilled, frozen, dried or ground. Seaweeds and other algae are used for various purposes e.g. pharmaceuticals products, cosmetics, human consumption, animal feeding and fertilizers.

Imports under CTH 31010099 valued at ₹14.59 crore were made during the period March 2016 to July 2017 through ICD Tughlakabad (Import Commissionerate), Delhi under 46 BsE. Audit test checked all 46 BsE and noticed short levy of duty of ₹60.14 crore in eight BsE involving imports valued at ₹2.17 crore.

M/s AB Pvt. Ltd. and two others imported (March 2016 to July 2017) eight consignments of 'Seaweeds extract flakes/liquid seaweed plant extract' at a combined AV of ₹2.17 crore. The imported goods were mis-classified under CTH 31010099 as 'Animal and vegetable fertilizers/other fertilizers/organic chemicals' and assessed to BCD at the rate of 7.5 *per cent* apart from IGST w.e.f. 1 July 2017.

Audit noticed that imported items are correctly classifiable under CTH 12122910-seaweeds and leviable to BCD at the rate of 30 *per cent* instead of 7.5 *per cent* levied.

Thus, misclassification of the imported goods resulted in short levy of duty of ₹60.14 lakh.

On this being pointed out (January 2018), the Department confirmed demands (September 2019/ April/July 2021) of ₹60.14 lakh against three Importers (M/s AC Limited- four BsE; ₹28.43 lakh, M/s AD Pvt. Ltd. - One BE; ₹9.33 lakh and M/s AB Pvt. Ltd -Three BsE; ₹22.38 lakh). The ICD, Tughlakabad authorities further intimated (July 2021) that M/s AC Ltd had filed an appeal against Order-in Original. Further progress is awaited (September 2021).

3.8 Incorrect application of notifications

Test check revealed improper application of various notifications in 34 cases, each involving revenue of ₹10 lakh or more. The total revenue implication was ₹12.60 crore. Individual cases of improper application of notifications of value less than ₹10 lakh have been reported to the local Commissionerates through field inspection reports. The Department accepted 30 cases involving total revenue implication of ₹11.17 crore and intimated recovery of ₹7.76 crore in 15 cases which included interest. Eight cases involving revenue implication of ₹7.12 crore have been discussed in the succeeding paragraphs and the remaining 26 cases involving revenue implication of ₹5.48 crore are included in **Annexures 4 and 5.**

3.8.1 Short/ Non-levy under IGST notifications

Non-levy of IGST on re-imports

Notification no.45/2017-Cus dated 30 June 2017 and notification no.46/2017-Cus dated 30 June 2017 exempted the goods when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the first schedule of the Customs Tariff Act 1975, and the whole duty of the Additional Duty, integrated tax, compensation cess leviable thereon under sub-section (1), (3), (5), (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said table in the notification. Accordingly, notifications stipulated that if goods are exported under bond without payment of integrated tax/Central Excise duty then the amount of integrated tax/Central Excise duty not paid at the time of export are to be paid at the time of re-import.

Out of the total 24,618 BsE of value ₹27,818 crore filed during April 2016 to March 2018, Audit test checked and pointed out “irregular exemption of IGST/Central Excise” amounting to ₹66.75 lakh in nine BsE valued at ₹4.19 crore in respect of import of various items at Custom House, Pipavav (under Jamnagar Customs Commissionerate).

M/s AD Ltd., M/s AE, M/s AF Ltd, M/s AG Ltd and M/s AH re-imported (September 2017/March 2018) their goods exported under bond, through nine BsE (11 consignments). However, audit noticed that the applicable integrated tax/Central Excise duty required to be paid under the aforesaid notifications was not recovered by the Department. This resulted in non-levy of integrated tax/Central Excise duty of ₹66.75 lakh which was required to be recovered along with applicable interest.

On this being pointed out (August 2018), the Department accepted (May 2019) the observation and reported recovery of ₹77.76 lakh (including interest) from the importers.

3.8.2 Short levy of IGST on imports of 'Machinery and mechanical appliances having individual functions (CTH – 8479)

'Machinery and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84' are classifiable under CTH-8479 and attract IGST at the rate of 18 *per cent* {serial no.366 of schedule III of notification no.1 Integrated Tax (Rate) dated 28 June 2017}.

For import under CTH 8479 valued at ₹1,194 crore made during the period July 2017 to March 2019 through ICD Tughlakabad (Import Commissionerate) under 3,150 BsE, Audit filtered the whole data for import of "machines" other than Composting machines where IGST was levied at the rate of 12 *per cent* instead of 18 *per cent* and found 20 such BsE involving imports valued ₹7.51 crore where there was short levy of duty due to incorrect application of IGST by ₹48.49 lakh.

M/s AI Pvt. Ltd. and 13 others imported (July 2017 to February 2019) 30 consignments (20 BsE) of various machines valued at ₹7.51 crore under CTH 8479 through ICD, Tughlakabad, Delhi. The imported items were classified under CTH-84798999 /84799090 /84794000 / 84798100 and IGST at the rate of 12 *per cent* {serial no.201 of schedule II of notification no.1 Integrated Tax (Rate) dated 28 June 2017} was levied.

Audit scrutiny revealed that IGST at the rate of 12 *per cent* (under serial no.201 of schedule II) is leviable on composting machine. As the imported goods were other than composting machines, these attracts IGST at the rate of 18 *per cent*. Thus, incorrect application of IGST rates resulted in short levy of duty by ₹48.49 lakh.

On this being pointed out (March 2019), the ICD, Tughlakabad authorities intimated partial recovery of ₹14.21 lakh along with interest of ₹1.72 lakh from nine importers and confirmed demand of ₹0.74 lakh against one importer. Further progress is awaited (September 2021).

3.8.3 Short levy of IGST on 'Machines for reception, conversion and transmission or regeneration of voice, image or other data, (CTH - 851762)

'Machines for reception, conversion and transmission or regeneration of voice, image or other data, including switching and routing apparatus' are classifiable under CTH 851762 and attract IGST at the rate of 18 *per cent* (under serial no.379 of schedule III of notification no.01 Integrated Tax (Rate) dated 28 June2017).

For import under CTH 851762 valued at ₹10,687 crore made during the period July 2017 to July 2019 through NCH (import Commissionerate), Delhi under 1,33,737 BsE, audit filtered the whole data and noticed short levy of duty of ₹1.20 crore in 118 BsE involving imports valued at ₹17.03 crore.

M/s AJ Ltd. and 62 others imported (July 2017 to July 2019) "various machines for reception, conversion and transmission or regeneration of voice, image or other data used for other than mobile" at a combined AV of ₹17.03 crore. The imported items were correctly classified under CTH 851762 but IGST was levied at the rate of 12 *per cent* instead of 18 *per cent* applicable.

Audit scrutiny revealed that the imported goods being reception/conversion/transmission machines were leviable to IGST at the rate of 18 *per cent* (under serial no.379 of schedule III). Thus, incorrect application of IGST rate resulted in short levy of duty by ₹1.20 crore.

On this being pointed out (August 2019), the Principal Commissioner, ACC (Import), New Delhi has reported (April 2021) recovery of ₹2.54 lakh from eight importers, confirmation of demands amounting to ₹61.10 lakh in respect of seven importers and issuance of Show Cause Notices to 12 importers. Reply in respect of the remaining importers is awaited (September 2021).

Instances of misclassification of similar imports were also noticed (refer para 3.7.3) which resulted in incorrect assessment of BCD apart from incorrect IGST. CBIC may address whether these instances are due to mapping issues of CTH 851762 with the Tariff Master table updates in ICES.

3.8.4 Incorrect application of IGST rate on 'Lithium Ion Cell' imports

'Lithium Ion Cell for use in manufacturing of Lithium Ion Accumulators' are classifiable under CTH- 85076000 and attract IGST at the rate of 28 *per cent* as per Sl. No.139 of Sch. IV of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017) up to 26 July 2018 and thereafter at the rate of 18 *per cent* as Sl. No.376AA of Sch. III).

During the period July 2017 to August 2019, a total of 11,739 BsE had been filed for import of goods valuing ₹5,730.03 crore under CTH 85076000 through Commissionerate of Customs (Import)-ACC, NCH, New Delhi, Audit filtered the data for import of "Lithium Ion Cell" and found 17 BsE involving imports of "Lithium Ion Cell" valued at ₹3.93 crore where there was short levy of duty of ₹62.84 lakh.

M/s AK and six others imported (July 2017 to January 2018) 17 consignments of 'Lithium Ion Cell for use in manufacturing of Lithium Ion Accumulators (batteries of mobile phone)' at an AV of ₹3.93 crore under CTH 85076000 through Commissionerate of Customs (Import)-ACC, NCH, New Delhi. The imported goods were correctly classified under CTH-85076000 and levied to IGST at the rate of 12 *per cent* as per Sl. No.203 of Sch.-II of aforesaid Notification.

Audit scrutiny revealed that the imported goods are 'Lithium Ion Cell' for use in manufacturing of Lithium Ion Accumulators (batteries of mobile phone)'. Therefore, IGST should have been levied at the rate of 28 *per cent* as per Sl. No. 139 of Sch.-IV. Thus, incorrect application of IGST rate resulted in short levy of duty amounting to ₹62.84 lakh which was required to be recovered from the importers alongwith applicable interests.

On this being pointed out (August 2019/February 2020), the Department intimated (March 2020) recovery of ₹0.79 lakh (along with interest) from three importers and two cases were adjudicated and Pre Notice Consultation (PNC) to one importer. Further progress was awaited (September 2021).

3.8.5 Short levy of BCD because of incorrect grant of notification benefit on 'I Phone (Mobile Phones)' imports

As per section 15 of the Customs Act 1962, the rate of duty and tariff valuation applicable to any imported goods, shall be the rate and valuation in force, in the case of goods entered for home consumption under section 46 on the date on which a BE in respect of such goods is presented under section 46. Provided that if a BE has been presented before the date of entry inwards of the vessel, the BE shall be deemed to have been presented on the date of such entry inwards as the case may be.

Further, as per notification No. 91/2017-Customs (BCD) dated 14 December 2017, the rate of duty applicable to goods falling under CTH 85171290 was 15 *per cent*. Accordingly, BCD is leviable on the imported goods 'I Phone (Mobile Phones)' at the rate of 15 *per cent* under sl. no. (a) (ii) of the aforesaid notification w.e.f. 14 December 2017.

During the period 2017-18, a total of six BsE were filed for import of goods 'I Phone (Mobile Phones)' valuing ₹19.92 crore under CTH 85171290 through Commissionerate of Customs (ACC & Airport), Bengaluru. Audit test checked all the BsE and pointed out short levy of BCD of ₹1.12 crore in all the six BsE.

M/s AL Pvt Ltd. imported (December 2017) six consignments of goods 'I Phone (Mobile Phones)' through Commissionerate of Customs (ACC & Airport), Bengaluru under CTH 85171290. Audit scrutiny revealed that the BsE were filed on 12 December 2017 and 13 December 2017 and the entry inwards date of all these consignments of goods were 14 December 2017 and 15 December 2017. Therefore, as per the proviso to Section 15 of the Customs Act, 1962, in these cases, the duty should be determined on the date of entry inwards. Thus, the BCD should be levied as per notification 91/2017-Cus (BCD) dated 14 December 2017 at the rate of 15 *per cent*. However, the Department assessed the goods adopting lower rate of BCD i.e. 10 *per cent* instead of 15 *per cent*. This resulted in short levy of duty of ₹1.12 crore which was required to be recovered from the importers along with applicable interest.

On this being pointed out (April 2019), the MoF, DoR accepted the observation and intimated (March 2021) recovery of differential duty of ₹1.38 crore which included interest of ₹0.26 crore.

3.8.6 Incorrect grant of notification benefit to Populated, loaded or stuffed Printed Circuit Boards (PCBs) of mobile phones

Populated, loaded or stuffed printed circuit boards (PCBs) of mobile phones are classifiable under CTH 85177010 and attract BCD at the rate of 10 *per cent* w.e.f. 2 April 2018 (Customs Notification No. 36/2018-Cus dated 2 April 2018).

For import under CTH 85177010 valued at ₹427 crore made during April 2018 through ACC, NCH (Import Commissionerate), Delhi under 782 BsE, audit filtered the whole data for import of "PCB Assembly for manufacturing of mobile phone" and noticed short levy of duty of ₹1.30 crore in 22 BsE involving imports valued at ₹11.64crore.

M/s AM Pvt. Ltd. and eight others imported 22 consignments of PCB Assembly for manufacturing of mobile phone on 2 April 2018 at a combined

AV of ₹11.64 crore through ACC, NCH, Delhi. The goods were correctly classified under CTH 85177010-PCB but assessed to BCD at the rate of nil (Sl. No. 13S of Customs Notification No. 24/2005/Sl. No. 6 (a) (i) of Customs Notification No. 57/2017).

Audit scrutiny revealed that the goods were correctly classified but the benefit of Sl. No. 13S of Customs Notification No. 24/2005 was not extendable to the PCB Assembly for manufacturing of mobile phone. Further, benefit of Sl. No. 6 (a) (i) of Customs Notification No. 57/2017 was withdrawn with effect from 2 April 2018 (Customs Notification Nos. 37 and 38/2018 dated 2 April 2018. Accordingly, the imported goods were leviable to BCD at the rate of 10 *per cent* instead of nil. Thus, incorrect grant of notification benefit to imported goods resulted in short levy of duty by ₹1.30 crore.

On being pointed (September 2018), the NCH authorities reported (March 2020) recovery of ₹ 1.09 crore (including interest) from five importers[15] and confirmed demand of ₹45.03 lakh in respect of remaining four importers.

3.8.7 Short levy of duty due to incorrect grant of exemption

As per notification no.57/2017-Cus dated 30 June 2017 as amended vide notification no.75/2018-cus dated 11 October 2018 'All goods other than goods namely: (a) Wrist wearable devices (commonly known as smart watches) (b) Optical transport equipment (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS) (d) Optical Transport Network (OTN) products (e) IP Radios falling under CTH 8517 6290 attract concessional BCD of 10 *per cent* while goods other than exempted are leviable to BCD of 20 *per cent*.

Out of total 102 BsE with AV of ₹17.19 crore filed in ACC- Nedumbassery, Kerala under CTH 85176290, Audit test checked 45 BsE with AV of ₹9.92 crore and noticed short levy of duty of ₹58.96 lakh in three BsE with AV of ₹4.40 crore.

M/s AQ Ltd had imported (January 2019) three consignments of goods, namely Cabinets, Boards, Telephones, Key Boards, Transceivers, Routing Software, etc. with total AV of ₹4.40 crore through ACC Nedumbassery, Kerala. The goods were classified under CTH 8517 6290 and assessed to BCD at 10 *per cent* after allowing benefit of exemption under the customs notification No.57/2017 dated 30 June 2017 (serial no.20). Total duty collected was ₹1.34 crore. Audit noticed that the imported goods were POTP or POTS/OTN products, namely machines for reception, conversion

[15] 1. M/s AN Pvt.Ltd, 2.M/s AO, 3. M/s AP Pvt. Ltd, 4. M/s A Pvt. Ltd, 5. M/s AM Pvt. Ltd.

and transmission or regeneration of voice, images or other data, including switching and routing apparatus, etc., and hence, were not eligible for exemption under aforesaid notification 57/2017 (serial no.20). The incorrect grant of exemption resulted in short levy of duty amounting to ₹58.96 lakh.

On this being pointed out (May 2020/January 2021), MoF, DoR stated (February 2021) that SCN has been issued to the importer. Further progress is awaited (September 2021).

3.8.8 Imports cleared without levying applicable Anti-Dumping Duty (ADD)

As per Section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an ADD. Accordingly, ADD was imposed on commodities like Dichloromethane (Methylene Chloride), Chlorinated Polyvinyl Chloride resin (CPVC), Homo polymer of Vinyl chloride monomer, Ceramic tableware and kitchenware, Ofloxacin acid and Clear float glass (thickness ranging from 4 mm to 12 mm.

Test check revealed non-levy of ADD in six cases of imports through four Commissionerates[16] involving revenue implication of ₹2.06 crore. The Department accepted three cases (₹1.64 crore) and reported recovery of ₹1.30 crore in two cases. Reply in respect of the remaining three cases is awaited (September 2021).

Out of these cases, one case is discussed in the following paragraph. The remaining five cases involving revenue implication of ₹93.46 lakh are mentioned in **Annexure 5.**

A. Non levy of anti-dumping duty on Dichloromethane (Methylene Chloride) imports

Import of Dichloromethane (Methylene Chloride) classifiable under CTH 29031200 from Korea attracts ADD at the rate of USD 0.21 per kg (Notification No.24/2014-ADD dated 21 May 2014).

Out of total 11 BsE of imports falling under CTH 29031200 (AV ₹9.05 crore) imported (July to September 2018) through Customs House, Kandla under Commissionerate of Customs, Kutch, audit test checked seven BsE (AV ₹4.33 crore) and pointed out in one BE short levy of ADD (amounting to

[16] (i) Commissionerate of Customs, Kutch, (ii) JNCH, Mumbai, (iii) ICD, Tughlakabad , (iv) Kolkata Customs (Port)

₹17.17 lakh) plus resultant short debit of duty foregone of ₹95.40 lakh in Advance Authorization.

M/s AR Limited had imported (September 2018) 639.589 MTs of "Dichloromethane (Methylene Chloride)" under one BE using Advance Authorization. The goods attracted ADD at the rate of USD 0.21 per Kg; accordingly, amount of applicable ADD was required to be debited in the Advance Authorization and the same was required to be taken into consideration for calculation of payable IGST amount. However, audit noticed that the licence holder had neither debited the applicable ADD amount in its Advance Authorization nor considered it for calculation of IGST payable. This had resulted in short levy of IGST of ₹17.17 lakh and additionally short debit of duty foregone of ₹95.40 lakh in Advance Authorization.

On this being pointed out (December 2018), the Department stated (February 2019) that the license holder had paid (December 2018) a total amount of ₹17.38 lakh which included interest and duty amounting to ₹95.40 lakh had been debited from the licence in the system also.

3.9 Other irregularities

Non-payment of duty on goods destroyed in fire

Under Regulation 5 (6) of Handling of Cargo in Custom Area Regulation 2009, the Custodian undertakes to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling.

Audit checked documents related to a fire accident that took place in Container Freight Station (CFS), Adalaj under Ahmedabad Customs Commissionerate and pointed out an irregularity on non-payment of duty of ₹2.77 crore by its Custodian, M/s AS.

Due to a fire accident (June 2016), CFS Adalaj lost its stored goods involving total duty value of ₹2.77 crore. Accordingly, duty on lost goods, required to be paid by the Custodian, was not paid by the CWC.

On this being pointed out (August 2017) the Custodian paid (June 2018 and July 2019) the objected duty amount of ₹2.77 crore. However, Principal Commissioner, Customs, Ahmedabad subsequently stated (October 2019) that the CWC had wrongly paid Customs Duty. The Department stated that (i) Section 23 of Customs Act 1962, permitted remission of duty on imported goods lost at any time before clearance for home consumption;

and (ii) case law CESTAT judgements 2006(201) ELT 18 (Tri. Bang.) and 2009 (247) ELT 567 (Tri. Ahmd), similar fire incident cases in favor of importers M/s Jindal Vijaynagar Steel Ltd., and M/s Aditya Industries respectively regarding remission of duty under section 23 of the Customs Act 1962.

The contention of the Department was not acceptable because the provision of section 23 of the Act and aforesaid CESTAT judgment actually allowed duty remission to importers of goods and not to the Custodian in view of the fact that the responsibility of goods before clearance (for home consumption) rests with the Custodian. Audit contention was supported by the fact that notification 96/2010-cus(NT) dated 12 November 2010 inserted specific conditions 5(1)(ii) and 5(6) in 'Handling of Cargo in Customs Areas Regulations, 2009' by which Customs Cargo Service Provider (CCSP) i.e., the Custodian was held responsible for 'safe, secure and spacious premises for loading, unloading, handling and storing of the cargo' and 'undertake to indemnify Customs from any liability arising on account of damages of imported or exported goods during their receipt, storage, delivery, dispatch or otherwise handling' of goods. Serial numbers 4 and 9 of the Customs circular 04/2011 dated 10 January 2011 stipulated that the above conditions were incorporated in the Regulations on recommendations of the Parliamentary Committee on Subordinate legislation and Commissioners of Customs were required to ensure fulfillment of these requirements without fail.

Ministry of Finance, DoR, not accepting the observation, stated (March 2021) that the Commissionerate has already recovered ₹2.77 crore from the Custodian – M/s AS and also issued a SCN (September 2018) for demand of interest of ₹87.31 lakh, which is under adjudication. Further progress is awaited (September 2021).

The fact remained that recoveries were made after pointed by Audit. Neither was any request made by the Custodian for remission of duty on goods destroyed in fire nor had the Customs Department issued any orders for remission of duty. Additionally, claim was made and payment received by the Custodian from the Insurance Company for the Customs Duty as well. Ministry may re-consider their viewpoint.

3.10 Conclusion

This Chapter highlights 102 cases of non-compliance to the extant notifications, applicable Customs Tariff Duties and Levies, noticed by Audit in the assessments of imports. The revenue of ₹122 crore was at risk due to either non/short levy of duty due to misclassification of imported items, incorrect application of exemption notifications or incorrect levy of other charges.

The Ministry/Department has accepted 98 cases and has effected recovery of ₹33 crore at the time of finalisation of this report. Ministry’s/Department’s response was awaited in four cases at the time of finalisation of the Report.

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that these are only a few illustrative cases. There is every possibility that such error of omission and commission, whether in RMS based assessments or manual assessments, may exist in many more cases.

It is pertinent to note that a large number of BsE examined by audit in test check had been assessed through the RMS, which indicated that the assessment rules mapped into the RMS to facilitate system-based assessments were inadequate. The process of mapping and updating of risk parameters in the RMS needs to be reviewed.

CHAPTER IV

Non-Compliance to provisions of various Export Promotion Schemes of Foreign Trade Policy

4.1 Introduction

The Foreign Trade Policy (FTP) provides a framework for increasing exports of goods and services with a focus on improving trade facilitation and ease of doing business. The FTP 2015-2020 has been notified by the Central Government in exercise of powers conferred under Section 5 of the Foreign Trade (Development and Regulation) {FTDR} Act 1992, as amended. Directorate General of Foreign Trade (DGFT), under Ministry of Commerce and Industry (MoCI) is responsible for formulating the FTP which is implemented jointly by DGFT and Department of Revenue.

The Export Promotion Schemes under FTP can be categorised as:

(i) Export from India Schemes: These aim to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved in exports of goods and to provide exporters a level playing field. The two main schemes under this category are Merchandise Exports from India Scheme[17] (MEIS) and Service Exports from India Scheme (SEIS).

(ii) Duty Exemption and Remission Schemes: These enable duty free imports or imports at concessional rates, of capital goods and other inputs for export production or duty remission to provide relief of taxes and duties suffered by the exporters in course of producing exported goods. Advance Authorisation, Duty Free Import Authorisation and Duty Drawback are important schemes under this category. The Export Promotion Capital Goods (EPCG) scheme facilitates import of capital goods under zero/ concessional rates for producing export goods and services at competitive prices.

DGFT issues scrips/licences to exporters under various export promotion schemes and monitors their corresponding obligations through a network of 24 Regional Authorities (RAs). All 24 RAs are computerised and connected to the DGFT Central server. To regulate imports under scrips issued by DGFT, Customs notifications are issued by Central Board of Indirect Taxes and Customs (CBIC) and these scrips have to be registered by the importer/exporter concerned in the Customs house under the Commissionerates. Import of inputs and capital goods under export promotion schemes are exempt, wholly or partly from Customs Duties.

[17] MEIS was withdrawn with effect from 1 January 2021.

Importers of such exempted goods undertake to fulfil prescribed Export obligation (EO) as well as to comply with other specified conditions, failing which the duty exempted becomes recoverable by the Customs Department under the Act. In addition to action by the Customs Department, the licencee is liable to penal action by DGFT under the FTDR Act 1992, for not fulfilling the conditions of the licence issued.

In respect of certain other schemes, under Chapter 3 of FTP there is a provision for providing incentives as a certain percentage of Free on Board (FOB) value of exports as a reward to offset infrastructural inefficiencies and associated costs.

4.2 Non-compliance to provisions of Export Promotion Schemes

Out of the universe of 68,682 records of licence / Cost recovery charges/Drawback cases/ Export Oriented Units (EOUs)/ Domestic Tariff Area (DTA) clearances, Audit selected a sample of 8,488 cases and noticed significant irregularities in 745 records during test check which are covered in this Chapter. Irregularities noticed covered “Non-fulfillment of EO against Advance Authorization”, “Irregular clubbing and discharge of EPCG Authorization (EO period 6/8 years)”, “Non-payment of duty on sale of rejects in DTA”, “Short levy of duty on de-bonding by an EOU”, “Short levy of duty on excess sale in DTA”, “Grant of excess duty credit under MEIS”, “Non-recovery of drawback in cases of un-realised foreign exchange” and “Non-realisation of cost recovery charges for officers posted to SEZ”, etc.

Relatively minor observations noticed were issued to the respective RAs/ DCs/ Commissionerates through Inspection Reports for corrective action.

Total revenue implication involved in the 35 high value cases featured in this Chapter was ₹21.09 crore where duty exemptions were availed of without fulfilling the provisions of FTP and Hand Book of Procedures (HBP). The Department accepted 32 cases involving ₹10.49 crore and reported recovery of ₹6.31 crore. Out of these, 10 cases are discussed in the following paragraphs. The remaining 25 cases involving total revenue implication of ₹4.84 crore which have been accepted by the Department and recoveries made/recovery proceedings initiated are summarized in **Annexure 6.**

4.2.1 Advance Authorization Scheme

(a) Non fulfillment of export obligation against Advance Authorization

As per paragraph 4.03 of the FTP read with paragraph 4.22 of Handbook of Procedures, Vol-I, an Advance Authorization (AA) is issued for import of duty free inputs against which the prescribed Export obligation (EO) was to be fulfilled within a period of 18 months from the date of issue of the authorization. Paragraph 4.44 of HBP, Vol-I stipulates that the authorization holder shall submit evidence of export within two months from the date of expiry EO period. In the event of failure to fulfill the prescribed EO, the authorization holder is liable to pay Customs Duty foregone on the unutilized value of the imported material along with interest.

Out of 645 Advance Authorization (AA) licenses with CIF value of ₹17,592.43 crore matured during 2018-19, Audit test checked 126 license files at Regional Authority (RA), Bengaluru with CIF value of ₹2,031.63 crore and observed[18] that M/s AT Pvt. Ltd., Bengaluru failed to fulfil export obligation in respect of one AA licence (no. 0710111072 dated 3 February 2017) with duty foregone amount of ₹66.48 lakh.

The RA, Bengaluru issued an AA (No. 0710111072 dated 3 February 2017) to M/s AT Pvt. Ltd, Bengaluru for import of "Wire Cloth Mesh and others" with CIF value of ₹3.19 crore with a stipulation to fulfil export obligation for ₹5.56 crore within 18 months (August 2018) from the date of issue of license.

Audit noticed (March 2019) that the licensee imported goods (EDI Bond No.2001184888/ 10 February 2017) through Air Cargo complex (ACC), Bengaluru and duty of ₹66.48 lakh foregone was debited. However, the authorization holder failed to fulfil the export obligation by submitting the required documents even after lapse of prescribed validity period. Thus, the licensee was liable to pay Customs Duty of ₹66.48 lakh along with interest of ₹29.56 lakh (up to April 2020). However, the department had not initiated any action to recover the duty foregone and interest.

On this being pointed out (March 2019), the department issued an SCN (April 2019). Meanwhile, the authorization holder's request (July 2019/May 2020) to regularize the entire imports in terms of paragraph 4.49 of HBP 2015-20 has been rejected by the Norms Committee. Accordingly, RA,

[18] Additionally, 67 relative minor observations noticed were also issued to RA, Bengaluru through the number of Inspection Reports for corrective action.

Bengaluru directed the authorization holder to regularize the entire imports and pay the duties.

Ministry of the Commerce and Industry, DGFT, New Delhi further stated (March 2021) that the Norms Committee on subsequent request of the authorization holder approved the norms (October 2020). Consequently, the authorization holder paid ₹10.32 lakh on excess unutilized imports and once again approached the Norms Committee for further review of norms for import items. Further progress is awaited (September 2021).

4.2.2 Export Promotion Capital Goods Scheme

(a) Irregular clubbing and discharge of EPCG Authorization

Paragraph 5.18 of the Handbook of procedures (HBP), 2009-14 read with paragraphs 5.18.3 and 5.18.5 stipulates that clubbing of two or more EPCG Authorization holder would be permitted. However, no clubbing would be permitted after expiry of export obligation (EO) period. The EO period for clubbed authorizations shall be reckoned from the first authorization issue date.

Out of 933 licenses, valuing ₹369.60 crore, issued under the EPCG Scheme by Zonal DGFT, Kolkata, (Regional Authority-RA) during the period from 1 September 2016 to 31 August 2017, Audit test-checked 182 licenses and observed non-realisation of Customs Duty and interest, due to irregular discharge of EPCG Authorizations, in six cases.

M/s AU Ltd (IEC No. 0288017889) had been issued (19 February 2009) an EPCG authorization for a duty saved amount of ₹8.98 crore. The firm submitted (10 April 2015) a letter for regularization and redemption of the authorization, along with another five licenses dated between 12 February 2008 and 31 March 2009. The licence holder in its application dated 10 April 2015 further intimated that essential statements duly certified by a Chartered Accountant, along with the copies of respective shipping documents and foreign exchange realization certificates would be submitted. Subsequently, the licence holder applied (27 June 2017) for clubbing of the six licenses and submitted documents for their discharge. RA, Kolkata confirmed the clubbing and issued the Export Obligation Discharge Certificate (EODC) on 20 July 2017.

Audit scrutiny revealed that the oldest of the six authorizations(No.0230002994), was issued on 12 February 2008. Accordingly, the valid EO period for clubbing them was till 11 February 2016. Thus, considering clubbing after 11 February 2016 was not permissible as per the aforesaid HBP provisions, thereby rendering the EODC issued on 20 July 2017 as irregular.

Further examination revealed that there was shortfall in fulfilment of EO in three out of six licences. The duty saved amount in respect of the same amounted to ₹4.29 crore, which was recoverable, along with applicable interest.

On this being pointed out (March 2018), the Department accepting the observation, stated (August 2019) that the issue had been noted for reference and that such requests would not be considered in future. The Department further intimated that the firm had withdrawn its application for discharge, vide its letter dated 30 May 2016, and resubmitted on the same day for clubbing**.** Not only was no evidence of re-submission furnished to Audit but also the fact remained that the valid EO period of clubbing i.e. 11 February 2016 was over.

The department subsequently intimated (September 2020) that the initial application for clubbing was submitted within the validity of the EO period along with Aayaat Niryaat[19] Form (ANF) 5C; accordingly, the initial date of submission had been taken into consideration.

The department reply is not tenable as the initial application, dated 10 April 2015 was incomplete as declared by the unit itself. The subsequent request made in June 2017 was beyond the EO period of the oldest licence i.e. February 2016; hence clubbing of licences was irregular.

(b) Non-fulfilment of export obligation against EPCG licence

As per paragraph 5.1 of FTP, the EPCG scheme allows import of capital goods at Zero Customs Duty, subject to EO equivalent to six times the duty saved on capital goods imported under the scheme, to be fulfilled within six years reckoned from the Authorization issue-date. In case of non-fulfilment of EO within the prescribed time limit, the importer would pay the Customs Duty along with applicable interest.

Out of 479 EPCG licenses files with duty saved amount of ₹734.73 crore matured for EO during 2017-18 at Addl. DGFT, (RA) Bengaluru, Audit test checked 159 license files with duty saved amount of ₹119.73 crore and pointed out non-fulfilment of EO with duty saved amount of ₹66.02 lakh in respect of one EPCG license.

M/s AV, Bengaluru imported (June 2011) capital goods 'Milling System and others' using an EPCG License dated 11 May 2011 through ICD Whitefield under Commissioner of Customs (City), Bengaluru. The importer was liable to fulfil EO equivalent to six times (₹3.96 crore) of duty saved (₹66.02 lakh) on capital goods imported under EPCG scheme upto May 2017.

[19] Form for EO re-fixation under EPCG scheme.

Audit scrutiny of records revealed that the importer had failed to make any exports and submit documents towards fulfilment of EO even after 36 months from the expiry of the stipulated EO period i.e. May 2017. Due to non-fulfilment of EO, the duty saved amount of ₹66.02 lakh was required to be recovered from the importer along with applicable interest.

On this being pointed out (April 2019), the department intimated (April 2020) recovery of ₹15.75 lakh by enforcing the Bank Guarantee. Recovery of balance amount was awaited (September 2021).

4.2.3 Export Oriented Units (EOUs)

(a) Non-payment of duty on sale of rejects in Domestic Tariff Area (DTA)

Foreign Trade Policy (FTP)[20] 2015-2020 stipulates that Export Oriented Units (EOUs) shall be permitted to sell rejects in the DTA within an overall prescribed limit of 50 *per cent* DTA sale under prior intimation to the Customs Authorities on payment of concessional duties as applicable to normal DTA sales.

Out of 149 EOUs under SEEPZ, Mumbai, having DTA sale of ₹3,463 crore, audit test checked 20 EOUs in 2018-19 with DTA sale of ₹544 crore and observed short levy of Customs Duty amounting to ₹1.66 crore in one case.

Audit scrutiny of the Annual Performance Report (APRs) of M/s AW Pvt. Ltd for the years 2015-16 & 2016-17 revealed that the unit had cleared sales of rejects in DTA[21] amounting to ₹7.71 crore and ₹2.21 crore during the year 2015-16 and 2016-17 respectively. The unit had not paid any duty on such DTA sales of rejects and stated that the transactions reported in both APRs was nothing but purchase return of goods and not DTA sales of rejects. The details of DTA sales of rejects and purchase return were not made available to Audit. In a manufacturing unit, purchase returns would always be raw material, whereas rejects arise in the course of manufacturing activities and appear in APR under DTA sales. Sale of rejects in DTA without payment of duty by the unit contravened the aforesaid provisions of FTP and resulted into non-levy of duty of ₹1.66 crore.

On being pointed (November 2018), the Department accepted (November 2019) the audit observation and initiated action for recovery of the same. Further progress is awaited (September 2021).

[20] Para 6.08(d) of FTP 2015-2020

[21] Serial No-35(b) of APR

(b) Short levy of duty on excess sale in Domestic Tariff Area (DTA)

Paragraph 6.8 (a) of FTP 2015-20 inter alia provides that EOU/EHTP/STP/EHTP units may sell goods upto 50 *per cent* of FOB value of exports on payment of concessional duties. However, units manufacturing and exporting more than one product can sell any of these products into DTA, upto 90 *per cent* of the FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50 *per cent* of FOB value of exports for the unit. Further, as per serial no.2 of the table annexed to notification no.23/2003-CE dated 31 March 2003 read with its condition 2, goods cleared in DTA in accordance with sub paragraphs (a), (d), (e) and (g) of paragraph 6.8 of the FTP will be liable to pay excise duty equivalent to the concessional rate of Customs Duty.

M/s AX Pvt. Ltd., an EOU under GST & CE Range V, Division II (Padra), Vadodara I Commisisonerate, had cleared 43 types of items in DTA during the period 2014-15 to 2016-17. Audit co-related DTA clearance and exports of all these items (involving total value of ₹33.57 crore) and pointed out an objection of ₹58.20 lakh in respect of DTA clearance of one item (Azathioprine). Audit noticed that the assessee had cleared "Azathioprine" valued ₹19.34 crore in DTA at a concessional rate of duty during 2014-15 to 2016-17 although during the previous year (2014-15) no exports of Azathioprine were made and exports valued ₹2.71 lakh and ₹2.85 lakh only were made during 2015 -16 and 2016-17 respectively. Accordingly, against DTA sales entitlement of Azathioprine valued ₹2.44 lakh (90 *per cent* of 2.71 lakh), goods valued ₹19.34 crore were cleared in DTA. This resulted in excess clearance of goods valued at ₹19.32 crore on concessional rate of duty. Thus, short levy of duty of ₹58.20 lakh was recoverable along with applicable interest on excess clearance in DTA.

On this being pointed out (November 2017), the Additional Commissioner, CGST & CE-I, Vadodara-I confirmed (May 2019) demand of ₹78.63 lakh for the period January 2014 to June 2017 along with interest and penalty. However, Ministry of Commerce and Industry, Department of Commerce stated (February 2021) that Commissioner, CGST & CE, Appeals Vadodara in an appeal dated 30 July 2020 had set aside the impugned order and remanded the case back to the adjudicating authority for fresh adjudication. Further progress is awaited (September 2021).

(c) Short levy of duty on de-bonding due to non-achievement of positive net foreign exchange (NFE) by an EOU

As per notification no.52/2003- Cus dated 31 March 2003, in respect of Hundred Percent Export Oriented Unit (100% EOU) "clearance or de-bonding of capital goods may be allowed on payment of duty on the depreciated value thereof and at the rate in force on the date of de-bonding or clearance, as the case may be, if the unit has fulfilled the positive net foreign exchange (NFE) criteria taking into consideration the depreciation allowable on the capital goods at the time of clearance or de-bonding". In case of failure to achieve the said positive NFE, depreciation shall be allowed on the value of capital goods in the proportion of NFE achieved.

M/s K Ltd., (Composite manufacturing Division – 100 *per cent* EOU), Bengaluru de-bonded (February 2016) their imported capital goods (Hot Air Autoclave with Standard Accessories) at a depreciated value of ₹6.79 crore by paying duty of ₹1.18 crore. The depreciation of ₹4.53 crore for the block period of five years was allowed, although it has been subject to achievement of positive NFE.

Audit noticed that the unit has achieved 19.58 *per cent* NFE and was eligible for proportionate depreciation of ₹88.60 lakh only as against ₹4.53 crore allowed. This resulted in short levy of duty of ₹63.29 lakh which was recoverable with interest.

On this being pointed out (March/October 2019), the Deputy DGFT, Bangalore reported recovery of ₹63.29 lakh along with interest of ₹48.25 lakh.

4.2.4 Merchandise Exports from India Scheme (MEIS)

(a) Grant of excess duty credit due to misclassification

Merchandise Exports from India Scheme (MEIS), an export promotion scheme under Chapter 3 of the FTP, 2015-20 provides for duty credit at the rates prescribed in Appendix 3B Handbook of Procedures (HBP), Volume-I. The calculation of reward would be on realized Free on Board (FOB) value of exports in free foreign exchange or on FOB value of exports as given in the shipping bills whichever is less, unless otherwise specified. Export of 'Made up articles' and 'Other bed linen, table linen, toilet linen, kitchen linen of cotton, other than handloom' are eligible for duty credit of two *per cent* under serial no.2762/2781 (HSN 6302/6304) of Appendix 3B of HBP/MEIS schedule respectively. Harmonized System of Nomenclature

(HSN) for heading 6307 covers "Made up articles of any textile material' which are not included more specifically in another heading of section XI or elsewhere in the Nomenclature.

During the period April 2016 to March 2017, against a total of 2,507 MEIS scrips issued for a value of ₹176.31 crore by Joint Director General of Foreign Trade (JDGFT), Madurai, Audit test checked 234 MEIS scrips valuing of ₹18.68 crore and pointed out excess grant of duty credit of ₹94.62 lakh in 70 licences.

M/s AY and five others exported oven holders, cotton aprons, cotton pot holders, cotton dust sheet, cotton pouch, cotton pillow covers etc. under ITC (HS) 63079020 and 63079090 in 70 licences. The JDGFT had incorrectly granted duty credit of five *per cent* for exports of goods under serial no.2780/2825/2826 of Appendix 3B of HBP.

Audit observed that the exported items i.e., 'Kitchen Linens' are 'Made up Articles' and since there is a specific ITC HS code for kitchen linen under 63029190 with serial no.2762 of Appendix 3 B, the goods are appropriately classifiable under this ITC HS code and eligible for duty credit of 2 *per cent* instead of 5 *per cent* under serial no.2825 of the Appendix. Likewise, the exported goods viz. 'Pillow case and pillow slips are classifiable under ITC HS code 63049239 because they are not handloom products but power loom products and accordingly eligible for duty credit of 2 *per cent* under serial no.2781 of the Appendix instead of 5 *per cent* allowed under serial no.2780 of the Appendix. Therefore, the exported goods are eligible for duty credit of 2 *per cent* only under serial no.2762/2781 of Appendix 3B. This incorrect classification had resulted in excess grant of duty credit of ₹94.62 lakh.

On this being pointed out (July/August/September 2019), the JDGFT, Madurai reported (March 2021) recovery of ₹69.31 lakh including interest (M/s AZ & Sons ₹0.32 lakh, M/s AY ₹63.06 lakh, M/s AAA-₹5.50 lakh and M/s AAB-₹0.43 lakh). Further progress is awaited (September 2021).

4.2.5 Duty Drawback Scheme

(a) Non-recovery of drawback in cases of un-realised export proceeds

In terms of provisions of section 75 (I) of the Customs Act, 1962 read with sub-rule 18 (2) of the Customs, Central Excise duties and Service Tax Drawback Rules 2017, where an amount of drawback has been paid to an exporter but the sale proceeds in respect of such exports are not received in the prescribed period, the drawback paid shall be recoverable from the exporter. The exporter is required to produce evidence of realisation of export proceeds within the prescribed or extended period as per Foreign Exchange Management Act (FEMA), 1999. As per section 9 of Foreign Exchange Management (Export of goods & Services) Regulation, 2015, export value of goods shall be realised and repatriated to India within nine months from the date of export.

Out of 50,285 Shipping Bills (SBs) wherein goods of FOB value ₹2,467.59 crore were exported (April 2018 to March 2019) through ICD, Sanathnagar, Hyderabad, Audit test checked 1,245 SBs for goods exported worth ₹823.53 crore and pointed out non-realisation of foreign exchange in 16 SBs of exported goods valued at ₹36.38 crore involving sanctioned drawback amounting to ₹72.77 lakh.

Analysis of the customs export data for the period 2018-19 revealed that an amount of ₹72.77 lakh was paid to the seven exporters as drawback in respect of 16 SBs. However, on cross verification of these SBs and realisation of export proceeds on the DGFT website, Audit noticed that sale proceeds in respect of the said exporters were not realised even after a period of gap ranging from 10 to 20 months. Accordingly, for non-realisation of export proceeds, the duty drawback amount of ₹72.77 lakh was recoverable from the exporters.

On this being pointed out (January 2020), the Principal Commissioner of Customs, Hyderabad stated (March 2021) that out of 16 SBs, the exporters had paid the differential drawback amount along with interest in respect of 15 SBs. However, actual drawback amount recovered has not been furnished. In respect of the remaining SB, SCN was issued (March 2020) and was under adjudication. Further progress is awaited (September 2021).

4.2.6 Special Economic Zones

(a) Non-realisation of cost recovery charges for Customs officers posted to SEZ/ ICD/CFS

Special Economic Zones (SEZs) scheme was introduced (April 2000) to provide an internationally competitive environment for exports.

As per Government of India (GOI), Department of Commerce (SEZ Division) circular F.No.A-1/3/2008-SEZ dated 16 September 2010, all expenses towards pay and allowances like including Leave Salary Contribution and Pension contribution (in case of employees covered under new pension scheme) of officers posted to SEZs shall be borne by the developers as per actuals in the applicable pay band and the grade pay. According to the GOI circular, Development Commissioner (DC) of the concerned zone is responsible for effecting cost recovery charges on account of the pay and allowance expenses as per the procedure laid down.

For each half year thereafter of the financial year, demands shall be made by the fifteenth day of the last month of the financial year and payment is to be made before the commencement of the half year for which demand is issued. Delay in payment may entail a penal interest of 12 *per cent*.

Similarly, as per Central Board of Indirect Taxes and Customs (Board)'s letter No. 11018/9/91-Ad. IV, dated 1 April 1991, Custodians [22](ICD/CFS) are required to pay Cost Recovery Charges (CRCs) at a uniform rate of 1.85 times of average cost of the post, plus DA, CCA, HRA etc. in respect of customs staff posted at cost recovery basis. Further, as per Circular No. 52/97-Cus dated 17 October 1997, No. 80/98-Cus dated 26 October 1998, Commissioner of Customs would accept the deposit of advance cost recovery charges for three months for the number of staff posted in an ICD/CFS.

Audit scrutiny of the records of the office of the DC, SEEPZ, SEZ, Mumbai, and Custom House, Dahej under Commissionerate of Customs, Ahmedabad revealed that against total demand of ₹9.30 crore towards CRC from 18 units for the period March 2013 to December 2019, ₹6.09 crore was outstanding. Further, it was also noticed that 12 units[23] out of 13 units under DC, SEEPZ had not paid CRC since inception and an amount of ₹5.53 crore was not recovered even after the lapse of three to seven years. The demands were raised only after completion of the posting period, instead of raising the demand in advance as per the aforesaid provisions. Five units under Custom House Dahej had made short payment of cost recovery charges of ₹56.08 lakh.

Thus, failure in raising timely demand in advance by the department in contravention of the prescribed provisions resulted in accumulation of outstanding CRC to the tune of ₹6.09 crore.

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[22] Custodian- In regard to all imported goods unloaded in a Customs area, the Commissioner of Customs is required to appoint a custodian under whose custody the imported goods shall remain till these are cleared for home consumption, or are warehoused or transhipped as provided in the law.

[23] All MIDCs (Pune, Aurangabad, Latur, Phaltan SEZ, Kesurdi and Nanded), M/s AAC International Ltd., M/s AAD SEZ (Aurangabad), M/s AAE Power Co. Ltd., M/s AAF Infrastructure Pvt. Ltd., M/s AAG Gems Ltd. and M/s AAH Ltd.

On this being pointed out (July/August 2018/ March 2020), the Principal Commissioner of Customs, Ahmedabad accepted the audit observation and intimated (December 2019) that the objected amount of ₹56.08 lakh had been recovered from five units. Reply from DC, SEEPZ is awaited (September 2021).

New Delhi
Dated: 06 December 2021

(Kartikaye Mathur)
Principal Director (Customs)

Countersigned

New Delhi
Dated: 10 December 2021

(Girish Chandra Murmu)
Comptroller and Auditor General of India

Annexure

ANNEXURE: 1

Fact Sheet on Special Economic Zones
As on 1 April 2020

(Refer paragraph 1.9)

Number of Formal approvals	**421**		
Number of notified SEZs	354 plus 7 Central Govt. plus 12 State/Pvt. SEZs		
Operational SEZs	248		
Units approved in SEZs	5,524		
Investment	**Investment (As on February 2006)**	**Incremental Investment**	**Total Investment (As on 1 April 2020)**
Central Government SEZs	₹2,279 Cr.	₹ 18,278 Cr.	₹ 20,557 Cr.
State/Pvt. SEZs set up before 2006	₹1,756 Cr.	₹ 11,777 Cr.	₹ 13,534 Cr.
SEZs notified under the Act	-	₹ 5,37,644 Cr.	₹ 4,75,693 Cr.
Total	**₹4,035 Cr.**	**₹ 5,67,699 Cr.**	**₹ 5,71,735 Cr.**
Employment	**Employment (As on February 2006)**	**Incremental Employment**	**Total Employment (As on 1 April 2020)**
Central Government SEZs	1,22,236 persons	75,541 persons	1,97,777 persons
State/Pvt. SEZs set up before 2006	12,468 persons	96,656 persons	1,09,124 persons
SEZs notified under the Act	0	19,31,404 persons	19,31,404 persons
Total	**1,34,704 persons**	**21,03,601 persons**	**22,38,305 persons**

Export performance		
Year	**Exports**	**Year on year growth percentage**
FY 16	4,67,337	1
FY 17	5,23,637	12
FY 18	5,81,033	11
FY 19	7,01,179	21
FY 20	7,96,669	14

Total Investment	**2015-16 ₹in crore**	**2016-17 ₹in crore**	**2017-18 ₹in crore**	**2018-19 ₹in crore**	**2019-20 ₹in crore**
Central Government SEZs	15,178	15,974	19,381	18,677	20,557
State/Pvt. SEZs set up before 2006	10,169	11,478	12,952	13,274	13,534
SEZs notified under the Act	3,51,147	4,05,690	4,59,979	4,75,693	5,37,644
Total	**3,76,494**	**4,33,142**	**4,92,312**	**5,07,644**	5,71,735
Employment (in person)	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**
Central Government SEZs	2,38,382	2,34,861	2,39,870	2,28,037	1,97,777
State/Pvt. SEZs set up before 2006	84,004	95,970	1,00,669	1,03,052	1,09,124
SEZs notified under the Act	12,68,995	14,48,020	16,56,071	17,29,966	19,31,404
Total	**15,91,381**	**17,78,851**	**19,96,610**	**20,61,055**	22,38,305

Source: www.sezindia.nic.in

ANNEXURE: 2

Duty evasion cases detected by DRI (Scheme-wise)

(Refer Paragraph 1.13.1)

Sl. No	Scheme	FY 16	FY 17	FY 18	FY 19	FY 20
		No. of cases	No. of cases	No. of cases	No. of cases	No. of cases
		Duty (₹ in Cr.)	Duty (₹ in Cr.)	Duty (₹ in Cr.)	Duty (₹ in Cr.)	Duty (₹ in Cr.)
1	Misuse of End-Use & Other Notification conditions.	69	29	48	60	17
		770.48	15.91	117.50	539.47	117.90
2	Misuse of EPCG	64	53	37	32	77
		454.92	311.96	237.47	72.90	389.42
3	Undervaluation	92	154	346	80	45
		254.37	184.89	1825.42	301.01	106.85
4	Mis-declaration	112	167	163	211	179
		1,187.61	309.09	184.72	791.89	349.45
5	Misuse of Drawback Scheme	94	58	146	21	83
		1,150.46	99.70	40.22	6.87	257.71
6	Misuse of EOU/EPZ/SEZ	18	6	3	3	2
		9.54	37.34	1.05	4.95	1.57
7	Misuse of DEEC/ Advance licence	12	55	79	178	70
		15.21	265.21	293.54	3,433.40	335.73
8	Others	170	145	118	167	288
		2,780.73	198.08	364.74	1,077.70	624.80
	Total	**631**	**667**	**940**	**752**	**761**
		6,623.32	**1,422.18**	**3,064.65**	**6,228.19**	**2,183.43**
	Comodities involved					**Readymade garments, CRGO coils, Phthalic anhydride, Nutritional supplements, Ceramic Roller, IT and IT enabled services, Chilled Shrimps & Prawns, Natural Rubber etc.**

Source: DRI New Delhi letter dated 3 March 2021

ANNEXURE: 3

Misclassification of imports

(Refer paragraph 3.7)

S.No.	DAP No.	Subject	Amount Objected	Amount Accepted	Amount Recovered	Commissionerate	Commodity
			(₹ In lakh)	(₹ In lakh)	(₹ In lakh)		
1	6	Short levy of IGST due to misclassification	14.38	14.38	17.82	ICD, Irungattukottai	Door glass
2	8	Short levy of duty due to misclassification	44.54	44.54	55.73	ICD, Irungattukotai	Stearing columns and Air bags
3	14	Short levy of duty due to misclassification	14.29	14.29	17.58	Comm. of Customs (Chennai-II)	Bracket cam shaft
4	23	Short levy of duty due to misclassification	25.02	207.00		Comm. of Customs (Chennai-II)	Palmester
5	28	Short levy of duty due to misclassification	12.61	12.61		Custom House, Mundra	Re-melted zinc
6	30	Short levy of duty due to misclassification	11.12	11.12	14.53	ACC, Bengaluru	Control unit
7	33	Short levy of duty due to misclassification	9.93	9.93	12.85	ACC, Bengaluru	Thermal Engine Theon Sensor SA
8	37	Short levy of duty due to misclassification	8.25	8.25	10.75	ACC, Bengaluru	Size pick up measuring device
9	38	Short levy of duty due to misclassification	11.31	11.15	11.15	Tughlakabad, Delhi	Nylon Tufted Machine Made carpet
10	39	Short levy of duty due to misclassification	27.90	27.90	33.68	NCH, Import, Delhi	Hydraulic Pumps
11	41	Short levy of Customs Duty due to misclassification	43.13	14.75	15.91	Comm. Customs, Hyderabad	Sweaters and new cotton jackets
12	54	Short levy due to misclassification	23.91	23.91	24.31	Chennai (Sea)	Rail-cum-road vehicle
13	62	Short levy of duty due to misclassification	19.44	19.50	19.50	NCH, Import, Delhi	Eye Bolts/contact Bolts
14	63	Short levy of duty due to misclassification	10.57	11.76	11.76	NCH, Import ,Delhi	Taxial / Pick up Accelerometers
15	65	Short levy of duty due to misclassification	27.08	27.08	31.42	NCH, Import, Delhi	Pick up Gyproscopes
16	66	Short levy of duty due to misclassification of goods	25.36	25.36	0.35	Comm-Customs, Hyderabad	Infrared / flow microscope
17	70	Short levy of duty due to misclassification	15.56	15.56	21.02	Tughlakabad, Delhi	Pulser coil/plate
18	71	Short levy of duty due to misclassification	18.86	18.86		NCH, Import, Delhi	Outdoor Quad/Dual/Penta Band
19	72	Short levy of duty due to misclassification	12.77	2.93	2.93	NCH, Mumbai	Sunglasses/ Goggles
20	74	Short levy of duty due to misclassification	12.87	12.87	16.50	NCH (Import) Delhi	Receiver Transmitter
21	75	Short levy of duty due to misclassification	12.86	12.86	14.08	NCH (Import) Delhi	Cockpit Voice Recorders
22	77	Short levy of duty due	9.92	9.92	11.22	ICD, Tughlakabad,	Poly coated paper

S.No.	DAP No.	Subject	Amount Objected	Amount Accepted	Amount Recovered	Commissionerate	Commodity
			(₹ In lakh)	(₹ In lakh)	(₹ In lakh)		
		to misclassification				Delhi	
23	78	Short levy of duty due to misclassification	46.47	4.34	4.34	ICD, Tughlakabad, Delhi	Conical springs
24	79	Short levy of duty (IGST) due to misclassification	10.01	10.01	17.03	JNCH, Mumbai	Argon oil wax, green apples was, gold wax, pearl wax
25	83	Short levy of IGST and interest due to misclassification of coated fabric	11.94	11.94	12.40	Customs (Port), Kolkata	Coated fabric
26	84	Short levy of Customs Duty due to misclassification of imported goods	11.44	11.44		Assistant Commissioner of Customs, Petrapole	Iron and steel shafts
27	87	Short levy of duty due to misclassification	38.39	7.50	3.84	ICD, Tughlakabad, Delhi	Ribbon /weave tape/webbing made of polyester
28	88	Short levy of duty due to misclassification	23.42	23.42		NCH (Import) Delhi	Fuel meter for Aircraft
29	89	Short levy of duty due to misclassification	13.56	13.56	14.59	ICD, Patparganj, Delhi	Latch buckle, plate and lock bar
30	90	Short levy of duty due to incorrect grant of notification benefit	11.62	11.62		NCH (Import) Delhi	PCB and Display PCB of Air conditioner
31	96	Short levy of duty due to misclassification	20.75	20.75	12.91	NCH (Import) Delhi	Motor Cycle/two wheeler parts
32	97	Short levy of duty due to misclassification	32.60	32.60		NCH, Mumbai	Water filter parts
33	111	Short levy of duty due to misclassification	43.79	43.79		ICD, Tughlakabad, Delhi	Discharge valves
34	113	Short levy of duty due to misclassification	36.17	36.17	36.17	NCH (Import) Delhi	ODU Controller unit for Air conditioners
35	114	Short levy of duty due to misclassification	44.95	44.95		NCH (Import) Delhi	Bluetooth Module
36	117	Short levy of duty due to misclassification	27.64	27.64	35.96	NCH (Import) Delhi	Mobile Phone
37	119	Short levy of duty due to misclassification	9.78	10.64	5.13	NCH (Import) Delhi	Feet Altimeter/ encoding Altimeter
38	121	Short levy of duty due to misclassification	15.58	12.04	0.11	ICD, Tughlakabad, Delhi	Solder Mask for PCB
39	125	Short levy of duty due to misclassification and inadmissible exemption allowed on smuggled goods	21.72	21.72		Customs, Shillong	Micro SD memory cards
40	129	Short levy of duty due to misclassification	42.38	42.38	64.00	CSEZ, Kakkanad, Kochi	Cable Assembly
41	137	Short levy of duty due to misclassification	41.35	41.35	51.08	NCH (Import) Delhi	Heat Exchangers
		Total	**915.24**	**984.39**	**600.65**		

ANNEXURE: 4

Incorrect application of Exemption notification

(Refer Paragraph 3.8)

S.No.	DAP No.	Subject	Amount Objected	Amount Accepted	Amount Recovered	Commissionerate	Commodity
			(₹ In lakh)	(₹ In lakh)	(₹ In lakh)		
1	2	Short levy of duty due to incorrect adoption of IGST rate	12.36	11.28	11.28	Chennai (Sea)	Gym Equipment
2	3	Short levy of duty due to incorrect adoption of rate of Basic Customs Duty	10.71	10.71	11.84	Chennai (Sea)	Gents Shoes
3	4	Short levy of incorrect adoption of rate of BCD	17.29	17.29		ICD, Chennai	Components/parts of agricultural machinery
4	5	Short levy of duty due to incorrect extension of notification benefit	10.64	10.64	12.99	Chennai (Air)	Prawn feed/shrimp feed
5	9	Short levy due to incorrect adoption of IGST rate	38.67	38.67	50.41	Customs (Chennai-II)	Pumps assembly engine oil
6	11	Non payment of IGST	32.70	32.70		Customs (Port), Kolkata	Standard newsprint
7	25	Short levy of duty due to grant of incorrect exemption	22.27	22.27		Customs (Preventive), Cochin	IP Surveillance and access control system
8	34	Short levy of Basic Customs Duty and Integrated tax due to short fixation of tariff value	44.99	44.99	46.31	ACC, Ahmedabad	Thermal Engine Theon Sensor SA
9	55	Short levy of integrated tax (IGST) due to incorrect categorization of goods under IGST schedule	10.70	10.70	13.80	Custom House, Mundra	Bitumen 60/70 grade and carbon black
10	57	Short levy of integrated tax (IGST) due to incorrect categorization of goods under IGST schedule	11.27	11.27	13.32	ACC, Ahmedabad	Pump Assembly Full Boost
11	59	Short levy of IGST	16.81	16.81	12.73	ACC, Shamshabad	plastic parts for electric accumulators
12	61	Non levy of safeguard duty on solar cells	21.98	21.98	23.47	Customs House (Chennai-II),	Solar cells
13	93	Non levy of IGST	9.10	9.10	10.51	Pune	NVH Test Bench-Used Power train Acoustic
14	95	Short levy of duty due to incorrect grant of notification benefit	11.63	11.63	12.01	Customs (Import), ICD Tughlakabad New Delhi	Parts of E-Rickshaw/automobiles

S.No.	DAP No.	Subject	Amount Objected	Amount Accepted	Amount Recovered	Commissionerate	Commodity
			(₹ In lakh)	(₹ In lakh)	(₹ In lakh)		
15	109	Short levy of duty due to incorrect IGST rate	11.10	8.52	8.52	ICD, Tughlakabad, Delhi	Water pump
16	110	Loss of revenue due to non levy of social welfare surcharge	10.02			Customs (Airport), Kolkata	Baggage
17	116	Short levy of duty due to grant of notification benefit incorrectly	20.20	20.20		ACC, NCH (Import) Commissionerate, Delhi	Zeiss surgical operating microscope
18	126	short levy of IGST	31.96	31.96	0.15	Customs (NS-5), JNCH	Computer Monitors
19	130	Short levy of duty due to misclassification	33.04	33.04	14.36	NCH, Delhi	Various machines/parts
20	135	Short levy of duty due to incorrect application of IGST rate	28.60	6.49	6.49	NCH (Import) Delhi	Parts of water pump
21	140	Short levy of duty due to incorrect availment of notification benefit	48.87	48.87		Customs (Import)-NS-1, JNCH, Mumbai	Oils for Cosmetic and Industrial use only
		Total	**454.91**	**419.12**	**248.19**		

ANNEXURE: 5
Incorrect application of Exemption notification

(Refer Paragraph 3.8.8)

S.No.	DAP No.	Subject	Amount Objected	Amount Accepted	Amount Recovered	Commissionerate	Commodity
			(₹ In lakh)	(₹ In lakh)	(₹ In lakh)		
1	91	Non levy of anti dumping duty	14.35	14.35	17.58	JNCH, Mumbai	Chlorinated Polyvinyl chloride Resin (CPVC)
2	92	Short levy of anti dumping duty	36.86	36.86		ICD, Tughlakabad	PVC Resin SG5 (Homo polymer of vinyl chloride monomer)
3	102	Non levy of anti dumping duty	18.89			JNCH, Mumbai	Ceramic tableware and kitchenware
4	107	Non levy of anti dumping duty	10.82			JNCH, Mumbai	O-Acid or Ofloxacin acid
5	136	Non levy of anti dumping duty	12.54			Kolkata (Port)	Clear Float Glass
		Total	**93.46**	**51.21**	**17.58**		

Annexure:6

Non-compliance to provisions of Export Promotion Schemes

(Refer paragraph 4.2)

S.No.	DAP No.	Subject	Amount Objected	Amount Accepted	Amount Recovered	Commissionerate	Commodity
			(₹ In lakh)	(₹ In lakh)	(₹ In lakh)		
1	12	Non realization of proportionate Customs Duty under the EPCG scheme	26.37	26.37		ADGFT, Kolkata	Iron ore pellets
2	13	Ineligible grant of credit under MEIS	11.80	11.80	16.30	JDGFT, Cochin	Frozen lobster
3	16	Non-fulfilment of export obligation in foreign currency under the EPCG scheme	14.80	14.80		ZDGFT, Kolkata	
4	19	Irregular grant of MEIS licence	17.74	17.74	23.32	JDGFT, Cochin	Potatoes
5	20	Incorrect grant of duty credit under MEIS	13.55	3.14	3.14	JDGFT, Madurai	Frozen Octopus
6	24	Incorrect grant of reward under IEIS	29.09	29.09	43.26	JDGFT, Madurai	Cotton Yarn
7	31	Excess payment of duty drawback for export of printed circuit board for cellular phones	34.93	34.93	38.37	Commissionerate of Customs- ACC NCH,Chennai-VII),	Cellular mobile phone
8	32	Non levy of integrated tax (IGST)	10.18	10.18	11.41	Deputy Comm. of Customs, Custom House, Mundra	Raw Sesame Seeds
9	36	Incorrect grant of duty credit under MEIS	11.79			JDGFT, Madurai	Other frozen lobsters
10	44	Short payment of Customs Duty and surcharge on DTA sale	12.44	12.44	13.67	SEEPZ-SEZ Mumbai	High pressure gate valves
11	45	Short payment of duty on DTA sales	21.01	21.01	27.89	SEEPZ-SEZ Mumbai	Food grade antioxidants
12	46	Excess grant of Terminal excise duty refund	15.51	15.51		DGFT, Mumbai	
13	49	Non-fulfilment of export obligation in EPCG scheme	32.21	32.21	5.35	Commissionerate Customs (Airport & ACC), Bangaluru	Double cream filling and packing Machine
14	50	Non-fulfilment of export obligation in EPCG scheme	11.05	11.05	1.86	ICD Whitefield under Comm. of Customs (City), Bengaluru	Capital goods
15	51	Non-fulfilment of export obligation in EPCG scheme	10.76	10.76	17.22	Addl. DGFT, Bangaluru /ICD Whitefield, Bengaluru	Automatic Silk Reeling Machine with standard Accessories
16	53	Non-payment of BCD (reversal of exemption) on DTA sale	33.82	33.82	33.82	SPEEZ SEZ, Mumbai	Ceramic pigments/colours and nickel derivatives

S.No.	DAP No.	Subject	Amount Objected	Amount Accepted	Amount Recovered	Commissionerate	Commodity
			(₹ In lakh)	(₹ In lakh)	(₹ In lakh)		
17	58	Grant of excess duty credit under MEIS	10.78	10.78	10.78	JDGFT, Madurai	Cotton oven holders, aprons, cotton pot holders
18	67	Non/Short levy of late cut on CST refunds	29.46	29.46	29.46	Development Commissioner (KASEZ), Gandhidham	
19	80	Non- fixation of adhoc norms	25.97	25.84	25.84	SEEPZ-SEZ Mumbai	Shroud plates
20	81	Short payment of BCD on DTA clearances	12.25	12.25	12.94	SEEPZ-SEZ Mumbai	Perfumes, deodorants
21	103	Incorrect grant of SEIS duty credit for ineligible services	16.17	16.17	15.36	Zonal Additional DGFT, Chennai	
22	108	Short payment on DTA clearance of scrap in excess of SION norms	14.21	14.21	14.32	Development Commissioner, SEEPZ, Mumbai	Manufacturing scrap
23	127	Excess refund of Terminal excise duty on deemed exports	21.59	21.59		DGFT, Mumbai	Capital goods
24	134	Non revision of cost recovery charges	23.66	23.66	23.66	Commissioner of Customs, Nagpur	
25	142	Incorrect grant of CST reimbursement on imported goods	22.49	22.49	22.49	Development Commissioner (KASEZ) Gandhidham	
		Total	**483.63**	**461.30**	**390.46**		

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