

## **CHAPTER IV**

### **SHORT/NON-RECOVERY OF APPLICABLE LEVIES AND OTHER CHARGES**

This chapter presents cases where government revenue has been blocked or short/non-levied due to incorrect assessments, under valuation of imported goods and non-levy of applicable charges. The cases are found on test check of records (August 2015 to March 2017) and have a total revenue implication of ₹ 15.03 crore. Out of these, 9 cases are discussed in the following paragraphs and 13 cases which have been accepted by the department and recoveries have either been effected or initiated are shown in **Annexure 6**.

#### **4.1 Short levy of BCD on coal imports**

As per sub heading notes (2) of chapter 27 of Customs tariff Act, 1975, bituminous coal means coal having a volatile matter limit (on a dry, mineral, matter free basis) exceeding 14 percent and a calorific value limit (on a moist, mineral, matter free basis) equal to or greater than 5833 K cal/kg. Bituminous coal is classified under CTH 27011200 and leviable to BCD at five percent vide notification no.12/2012-cus (serial no.124) dated 17 March 2012. However, steam coal falling under CTH 27011920 has been exempted from five percent BCD but CVD at one percent is leviable as per serial no.123 of the said notification. No definition of steam coal has been prescribed in the Customs tariff Act.

**4.1.1** Audit scrutiny of assessment of files of Dhamra Customs Division, Dhamra revealed that eight consignments of coal imported by different importers were provisionally assessed levying BCD at nil rate and CVD at the rate of one percent considering those as steam coal (non coking) though the description in the BEs clearly indicated that imported coal had the characteristics of Bituminous coal. Further, test reports received in March 2013 from Customs laboratory also confirmed the characteristics of bituminous coal in the imported coal. Accordingly, as per the provisions of Customs manual, the final assessment should have been made for the additional duty demand at the rate of five percent within stipulated period of six months on receipt of the original documents of the said BEs as well as test reports which were received between January and April 2013. Provisional assessments exempting BCD instead of levying applicable rate of five percent resulted in short realization of revenue of ₹ 1.59 crore. Non-finalization of provisional assessments within the stipulated period after receipt of all test reports tantamounts to extension of undue benefit to the assesses.

On this being pointed out (March 2016), the department while admitting the observation stated (March 2017) that demand letters have been issued to the

eight assesses to pay the differential duty of ₹ 1.60 crore along with interest. Further progress is awaited (September 2017).

## 4.2 Imports cleared without levying applicable anti dumping duty

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 anti dumping duty (ADD). Accordingly, ADD was imposed from time to time on goods like 'Vitamin C', 'float glass of thickness 2 mm to 12 mm of clear as well as tinted variety (other than green glass)', and 'Morpholine' when these were imported from specified countries like China and Germany.

**4.2.1** Assessing officers cleared 66 consignments of 'Vitamin C', 'Sodium Ascorbate', 'float glass' and 'Morpholine' imported through JNCH, Nhava Sheva, Mumbai and Chennai (Sea) Customs by M/s Pfizer and 12 others from these specified countries without levying applicable ADD amounting to ₹ 3.02 crore.

The JNCH, Mumbai authorities in respect of import of 'float glass' and 'Morpholine' reported (July 2016/ May 2017) recovery of ₹ 22.47 lakh from two importers (M/s Sapphire Glass solutions and M/s Hindustan Specialty Chemicals) and issued (March 2017) a show cause notice (SCN) to M/s Bhanwarlal Jhanwar and Sons.

Deputy Commissioner of Customs (Chennai, Sea) in respect of import of Sodium Ascorbate stated (June 2017) that as per the notification ADD is leviable on Vitamin C and its synonyms under entry no.867 of Merck<sup>14</sup> Index, while Sodium Ascorbate imported has a specific entry at serial no.8525 of Merck Index therefore not leviable to ADD.

Reply of the department is not tenable because as per notification No. 38/2015-ADD, the ADD is applicable to all synonyms of Vitamin C **including** the most commonly used synonyms of Vitamin C as described under entry number 867 of Merck Index, meaning thereby, that ADD is leviable on import of all forms of Vitamin C and it is not restricted to those mentioned under entry no.867 of Merck Index.

Moreover, sodium ascorbate is one of the minerals salts of ascorbic acid (Vitamin C) and Department of Revenue in a similar case of AR No. 8 of 2015 (sub para 4.9) has admitted (December 2014) the audit observation and issued less charge cum demand SCN to the importer (M/s Bajaj Healthcare Ltd.).

<sup>14</sup> Merck Index is the internationally recognised encyclopedia of chemical substances

Reply in respect of imports made by remaining nine importers is awaited (September 2017).

### **4.3 Short levy of duty due to undervaluation**

As per Rule 12 of the Customs valuation (Determination of value of Imported Goods) Rules, 2007 read with clause (iii) of sub-section 1 of the section 14 of the Customs Act 1962, when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidences and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined and declared value could be rejected.

#### **4.3.1 Under-valuation of Polyester Chips and ‘Stainless steel melting scrap’ imports**

M/s Garden Silk Mills limited and M/s Viraj Profiles imported (May to August 2016) ‘Polyester Chips Super Bright’ and “Stainless steel melting scrap grade 211” respectively through JNCH, Nhava Sheva, Mumbai.

Audit observed that in May/ August 2016 imports of ‘Polyester Chips Super Bright’ and “Stainless steel melting scrap grade 211” were assessed at JNCH based on the contemporaneous imports relying on Rule 5 of the Customs Valuation Rules 2007 at re-determined value of USD 1050 and 631 PMT respectively.

The omission on the part of the department to adopt the same re-determined assessment value of the goods imported by the two importers mentioned above in May to August 2016 resulted in undervaluation of goods and consequent short levy of duty amounting to ₹ 77.04 lakh.

On this being pointed out (December 2016/January 2017), the department issued (January/March 2017) show cause notices to the importers. Further progress is awaited (September 2017).

#### **4.3.2 Under-valuation of goods imported by related party**

Special Valuation Branch, Mumbai (SVB) vide order no.313/AC/SVD/VMD 2015-16 dated 25 May 2015 in the case of DFS India Private Limited (importer) held that goods imported by them from M/s DFS Venture Singapore (Pte) Limited (Supplier) were covered under definition of related party transactions under Rule 2 (2) of the Customs Valuation Rules (CVR), 2007 and therefore the invoice value of goods imported after 1 August 2014 be accepted under section 14 (1) read with rule 3 (3) of the CVR 2007. SVB also ordered that in all imports prior

to 1 August 2014 and pending for final assessment the value shall be enhanced by six percent in addition to freight element reimbursed by the importer to the supplier from time to time.

Audit scrutiny revealed that six percent loading as directed by SVB was not done on the imports prior to 1 August 2014. Audit pointed out (October/November 2015) short levy of duty of ₹ 7.47 lakh on the details made available and requested department to work out the total duty on all applicable imports.

The importer on being directed by the department (November 2015) paid duty of ₹ 17.21 lakh in January 2016.

#### **4.4 Non-realization of cost recovery charges for officers posted to SEZ**

As per Government of India, 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 circular, Development Commissioner of concerned zone is responsible for effecting cost recovery charges on account of the pay and allowance expenses as per the procedure laid down

**4.4.1** Audit scrutiny of office of the Development Commissioner, VSEZ, Duvvada, Visakhapatnam revealed that an amount of ₹ 4.70 crore for the period April 2015 to March 2016 and previous years was pending realization towards cost recovery charges from 53 units.

On this being pointed out (March/June 2016), DGFT, New Delhi reported (September 2017) recovery of ₹ 4.18 crore by Visakhapatnam SEZ authorities (July 2016/January/September 2017) and stated that efforts are being made to realize the remaining dues from the unit.

Non-recovery of cost charges in a timely fashion resulted in undue financial accommodation to the Developer.