

Chapter IV

Scrutiny of Central Excise returns

4.1 Introduction

CBEC introduced self-assessment in respect of Central Excise in 1996. With the introduction of self-assessment, the department also provided for a strong compliance verification mechanism with Scrutiny of Returns. As assessment is now the responsibility of the assessee, the main function of the department is to scrutinize the tax return submitted by assessee to ensure the correctness of duty assessed in terms of the effective rate of duty claimed, the taxable value declared, and the Cenvat credit availed. E-filing of returns through ACES was made mandatory with effect from October 2011. As per the manual for the scrutiny of Central Excise returns, 2008, a monthly report is to be submitted by the Range Officer to the jurisdictional Assistant/Deputy Commissioner of the Division regarding the number of returns received and scrutinised. Scrutiny is done in two stages i.e. preliminary scrutiny by ACES and detailed scrutiny, which is carried out manually on the returns marked by ACES or otherwise.

4.2 Audit objectives

The objective of the audit examination is to assess if the department is carrying out scrutiny of assessment in an efficient and effective manner.

4.3 Audit coverage

To assess the effectiveness of the scrutiny of returns, carried out by the department, Audit selected 127 Ranges under 30 different Commissionerates for examination. Audit test checked the scrutiny of returns carried out in FY 13. Wherever required, depending upon the issues involved, we also incorporated data for the period FY 11 and FY 12.

4.4 Audit findings

Scrutiny of assessee records in the audited units revealed certain compliance related as well as other issues involving revenue of ₹ 11.18 crore. The Ministry/Department accepted (December 2014) the audit observations involving revenue of ₹ 4.15 crore and recovered ₹ 3.81 crore. The major findings are illustrated:

A. Preliminary scrutiny

As per the provisions under Rule 12 of the Central Excise Rules 2002, every person liable to pay Central Excise Duty has to submit monthly/quarterly returns, as the case may be, by 10th day of the following month/quarter to which it relates. Filing of returns by the assessee as well as preliminary scrutiny of returns by Range Officers is carried out online through ACES.

As per the provisions under Para 2.1 of the Manual for Scrutiny of Central Excise Returns, 2008 preliminary scrutiny of all the returns is to be conducted within three months from the date of receiving the returns.

We discuss below our audit findings relating to preliminary scrutiny as seen during the course of examination in selected ranges.

4.4.1 Submission of returns

We observed that out of 82,204 returns receivable during 2012-13 only 73,487 (89 per cent) returns were received in the selected Commissionerates. Out of the total returns received, 1,835 (two per cent) returns were received belatedly and 8,717 (11 per cent) returns were not received at all. Identification of non-filers/stop-filers has also been listed as one of the purposes of Preliminary scrutiny in Para 1.1.1 of the Manual for Scrutiny of Central Excise Returns, 2008. However, the department did not identify non-filers/stop-filers. We also observed that no action was taken by the department in cases of delayed filing of return.

When we pointed this out (September 2013), the Ministry intimated (December 2014) that action has been initiated against the stop-filers/non-filers.

4.4.2 Review and correction

Under ACES, preliminary scrutiny of returns is carried out by the system and returns with discrepancies are identified by the system for review and correction. The returns marked for review are to be validated in consultation with the assessee and re-entered into the system.

We observed that out of 32,706 returns marked for Review and Correction by the ACES, the department could correct only 20,622 (63 per cent) returns within the stipulated three months. Some of the cases are illustrated:

i) In Chennai-III, Puducherry and Salem Commissionerates, the department completed 198 cases marked for review and correction well after three months with delays ranging from 5 to 325 days. Out of above 198 cases, in 103 cases (52 per cent) the review and correction was pending for more than 100 days.

When we pointed this out (August 2014), the Ministry intimated that delay was due to technical problem in ACES.

ii) As per the provisions under Para 2.1 of the Manual for Scrutiny of Central Excise Returns, 2008 preliminary scrutiny of all the returns is to be conducted within three months from the date of receiving the returns. In Range II B under Puducherry II Division of Puducherry Commissionerate, check of returns pending for Review and Correction revealed that the department could have possibly demanded an additional revenue of ₹ 70.25 lakh had the returns been scrutinised in time.

When we pointed this out (August 2014), the Ministry intimated (December 2014) recovery of ₹ 1.90 crore and issued SCN for ₹ 3.70 crore. It further stated that Review and Correction has no relevance to safeguard the revenue once the preliminary scrutiny is completed.

Reply of the Ministry regarding Review and Correction having no relevance to safeguard the revenue is not acceptable as Review and Correction in ACES is one of the prerequisite for scrutiny of subsequent returns.

iii) In Range II under Trivandrum Division of Trivandrum Commissionerate, the Range Officer did not identify that M/s. AERO Rubber Corporation (ECC No. ACZPR6487MXM002) had paid ₹ 3.11 lakh against the incorrect ECC No. ACZPR6487MXM001 not belonging to the assessee.

When we pointed this out (August 2014), the Ministry intimated (December 2014) that the assessee paid the amount afresh in correct ECC number.

iv) In Range II under Trivandrum Division of Trivandrum Commissionerate M/s. Ammini Energy System had remitted the duty under wrong head of accounts and the department did not take any action to rectify the mismatch pointed out by ACES.

When we pointed this out (August 2014), the Ministry intimated (December 2014) that the assessee regularised the payment by paying difference in respective heads with applicable interest.

4.4.3 Conduct of scrutiny

We observed that out of 73,487 returns received, 57,348 (78 per cent) of returns received in selected ranges were scrutinised within three months, 8,345 (11 per cent) of returns were scrutinised belatedly and 7,794 (11 per cent) returns were yet to be scrutinised.

When we pointed this out (August 2014), the Ministry intimated (December 2014) that Range Officers are taking necessary action to reduce the pendency and the pendency had been cleared in most of the Commissionerates. It

further stated that the returns could not be scrutinised in time due to technical problems in ACES.

4.4.4 Non-payment of interest

Where any duty of excise has not been levied or paid or short levied or short paid or erroneously refunded, the person liable to pay duty as determined under section 11A of Central Excise Act, 1944, is in addition to the duty, liable to pay interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may fix by notification from time to time.

We noted several instances in the units under selected Commissionerates where action was yet to be taken in respect of the returns filed belatedly. Interest due in 22 such instances worked out to ₹ 1.12 crore.

When we pointed this out (September 2013), the Commissionerates intimated recovery of ₹ 4.77 lakh in 13 cases and stated that some ranges had initiated action to recover interest. One of the cases is illustrated.

M/s Jindal Steel & Power in Bhubaneswar II Commissionerate, cleared goods in 2010-11 to its sister units at a lower price and paid the differential duty of ₹ 408.46 lakh in 2011-12 by issuing supplementary invoices. However, interest amounting to ₹ 106.36 lakh on the differential duty was not paid. We pointed this out in August 2014. Reply from the Ministry was awaited (December 2014).

4.4.5 Non-conversion of temporary registration to permanent registration

The CBEC vide its letter F.No.201/06/2013-CX.6 (Pt) dated 01.07.2013 proposed periodical review of the pendency of temporary registration and fixed dead line (01 September 2013) for NIL balance of temporary registration converting them to permanent registration.

Audit observed in Salem I Division under the Salem Commissionerate that out of 605 assesseees (CX) holding temporary registration, only one was converted into permanent registration (September 2013).

When we pointed this out (September 2013), the Ministry intimated (December 2014) that most of the textile manufacturers who got registered with the department failed to apply for cancellation of the registration after being exempted from Central Excise. As a result of the efforts made in this regard, one Registration Certificate was converted into a permanent one and 97 assesseees surrendered the Registration Certificate. Reply of the Ministry in remaining 507 cases is still awaited (December 2014).

B. Detailed scrutiny of assessment:

The purpose of the detailed scrutiny is to ascertain the correct reason for abnormal trends exhibited for the risk parameters identified in the Board's guidelines. Besides establishing the validity of the information furnished in the tax return, the other major purpose of detailed scrutiny is to establish the correctness of self-assessment by ensuring correctness of valuation, dutiability in respect of products which may have escaped assessment, correctness of Cenvat availment etc.

The Board's guidelines provide for the selection of a small portion (normally not more than 5 per cent) of ER1 and ER3 returns for detailed scrutiny.

Both the preliminary and detailed scrutiny must be completed within three months from the date of receipt of the return. Every six months the Deputy/Assistant commissioner will scrutinise the returns of the units paying duties from PLA between ₹ one to five crore and Addl./Joint Commissioner will scrutinize the returns of the units paying duties from PLA more than ₹ five crore with reference to the relevant documents.

4.4.6 Non-conducting of detailed scrutiny

We observed that the Deputy/Assistant and Addl./Joint Commissioners in the selected Commissionerates did not conduct any detailed scrutiny though there were returns of assessees who had paid duty of ₹ 1 crore or more during 2012-13. It was further observed that

- a) ACES did not list out returns for detailed scrutiny.
- b) Out of 73,487 returns received in 2012-13 only 320 returns were scrutinised by the selected Commissionerates which is only 0.44 per cent of the total returns received.

We pointed this out in August 2014. Ministry's reply is still awaited (December 2014).

4.5 Non-compliance by assessees

We attempted scrutiny of a few returns where the department had conducted the detailed scrutiny and also where the department had not conducted the detailed scrutiny to assess the efficiency of the scrutiny process and to curtail revenue leakage.

We observed that in several instances, there were lapses in self-assessment by assessees involving revenue implication. The non-compliance by assessee was not detected until CERA pointed out the same. A few of these lapses that escaped the compliance verification mechanism of the department, but

observed during our examination of the assessee returns and other records, are illustrated:

4.5.1 Incorrect valuation of goods cleared

Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of excisable Goods) Rules, 2000, stipulates that where excisable goods are not sold by the assessee but are consumed by the assessee or on behalf of the assessee by a related person for manufacture of other articles, the assessable value of such goods shall be 110 per cent of the cost of production or manufacture of such goods. Further, the Board had clarified that the value of goods consumed captively should be determined in accordance with the Cost Accounting Standards (CAS-4) method only. Further, section 11AB of Central Excise Act 1944, requires payment of interest on delayed payment of duty.

M/s S K Steel Tech Unit II in Bengaluru-III Commissionerate removed the finished goods to his own factory for captive consumption on stock transfer. Hence, the assessee was liable to pay duty on 110 per cent of the cost of production, determined as per CAS-4, which was not done in this case. This resulted in short payment of duty of ₹ 35.02 lakh.

When we pointed this out (August 2013), the Commissionerate reported recovery of ₹ 35.02 lakh.

4.5.2 Incorrect availing of abatement

As per section 4A of the Central Excise Act, 1944, the Central Government may, by notification in the Official Gazette, specify any excisable goods, chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4 of the Act *ibid*, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price.

As per notification dated 17 March 2012, 35 per cent of abatement from retail sale price was given in respect of all footwear.

M/s Blak The Shoe Store, in Bengaluru-III Commissionerate, had manufactured various types of leather footwear which were valued at MRP and availed abatement of 40 per cent of value. The abatement available for all footwear was 35 per cent for the FY 2012-13. Hence, availing of excess abatement of 5 per cent resulted in undervaluation of the goods to the tune of ₹ 75.82 lakh and consequent short levy of duty of ₹ 9.37 lakh, including cess.

When we pointed this out (September 2013), the Ministry intimated (December 2014) that the assessee had paid an amount of ₹ 9.37 lakh and ₹ 2.03 lakh as interest.

4.5.3 Incorrect availing of exemption

Notification dated 1 March 2003 provided small scale industry (SSI) exemption to a manufacturer, on the clearance of goods for home consumption upto the aggregate value of ₹ 1.5 crore during the current financial year subject to the condition that aggregate value of all excisable goods for home consumption not exceed ₹ four crore in the preceding financial year provided Cenvat credit is not availed.

i) M/s Arihant Industries. Ltd. in Shillong Commissionerate availed the benefit of exemption from payment of Excise Duty up to the clearance value of ₹ 1.50 crore during 2012-13. However, it had also availed the CENVAT credit on inputs in violation of condition cited above. This resulted in availing of exemption irregularly and non-payment of duty of ₹ 18.54 lakh.

When we pointed this out (September 2013), the Ministry intimated (December 2014) that the action had been initiated for recovery of duty alongwith interest.

ii) Total sales of M/s Super Meter Manufacturing Company in Pune III Commissionerate was ₹ 7.40 crore during 2010-11. The assessee was, therefore, not entitled for SSI exemption for the year 2011-12. However, the assessee had availed SSI exemption and cleared goods of ₹ 1.50 crore without payment of duty during the year 2011-12, resulting in short payment of duty of ₹ 15.45 lakh.

When we pointed this out (September 2013), the Ministry (December 2014) informed that SCN to the assessee was under process.

4.5.4 Non-payment/short-payment of duty

We observed non-payment/short-payment of duty of ₹ 34.20 lakh in 18 cases. The department accepted the audit observations in twelve cases and recovered ₹ 25.89 lakh. One case is illustrated:

M/s Indo-Furnace Pvt. Ltd. in Rohtak Commissionerate did not pay duty amounting to ₹ 12.49 lakh for the goods cleared during March 2013.

When we pointed this out (September 2013), the Ministry while admitting the observation intimated (December 2014) that the assessee had paid ₹ 12.45 lakh alongwith interest of ₹ 1.19 lakh.

4.5.5 Other cases

Besides the instance discussed above, we also noticed 98 other cases of involving short payment of duty, irregular availing/utilisation of Cenvat credit of ₹ 7.01 crore. Ministry/Department accepted the observations in 55 cases and intimated recovery of ₹ 1.14 crore.

Though CBEC's expectation was that with the introduction of online automated scrutiny of returns, efficiency would increase and manpower would be released for detailed scrutiny which would become the core function of the ranges, the actual situation in field leaves much to be desired. A lot more needs to be done before scrutiny of assessments can claim its place as the core function of the Ranges.