

CHAPTER III

PREVENTIVE FUNCTIONS OF CUSTOMS DEPARTMENT

Introduction

India has 14,880 kms of land border running through 92 districts in 17 States and a coastline of 5,422 kms touching 12 States and Union Territories (UTs). India also has a total of 1197 islands accounting for 2094 kms of additional coastline. In fact, barring Madhya Pradesh, Chhattisgarh, Jharkhand, Delhi and Haryana, all other States in the country have one or more international borders or a coastline and can be regarded as frontline States from the point of view of border management.

It, thus, became inevitable to bifurcate the Customs manpower machinery into two wings for the two main streams of activity. One wing has been entrusted the job of collection of revenue while the other has been assigned the task of enforcement of the statute related thereto. Thus the Preventive setup for Commissionerates, seaports, dry ports (ICD and CFS), Land Customs Stations and airports came into existence. Some specific Preventive Commissionerates and zones have been formed to combat the smuggling as well as misuse of different export promotion schemes and evasion of customs duty.

The Preventive Wing as the name would suggest, is involved in the prevention of smuggling activities by employing various deterrent methods, like maintaining intelligence network, cultivating informers, making searches leading to seizures, confiscation of contraband and arrest of offenders. Under the preventive wing function various intelligence units, which work in collaboration with each other for the single purpose of prevention of smuggling activities.

3.1 Organisation and Functions

The Preventive functions of the Customs Department are governed by the Customs Act, 1962 and Customs Preventive Manual. These functions are mainly carried out through Preventive Commissionerates which are exclusively meant for preventing the smuggling activities. In addition, the other Commissionerates which are mainly concerned with assessment and collection of duty on import and export of goods and trade facilitation also have their own intelligence units. Overall, there are 13 Preventive Commissionerates and 57 Customs Commissionerates Organisational Structure of Preventive Wing of Customs department is given in **Annexure 4**.

3.2 Audit objectives

The objective of the Audit of the preventive functions of the Customs Department was to evaluate whether:

- i. preventive units of Customs Department have adequate resources as per norms laid down for manpower, equipment etc. needed to prevent smuggling, commercial frauds and tax evasions.
- ii. the available resources are deployed as per norms and requirement.
- iii. intelligence gathering is used in assisting the preventive functions and whether investigation, seizure and adjudication are carried out in accordance with the provisions laid down.
- iv. monitoring coordination, communication network and mechanism is in place for Preventive functions of the customs department.

3.3 Scope and Coverage

For the purpose of subject specific compliance audit (SSCA), Audit has covered the period from FY 2013-14 to 2015-16. The selection criteria and coverage of Commissionerates is tabulated below.

Table-3.1: Scope of audit and coverage

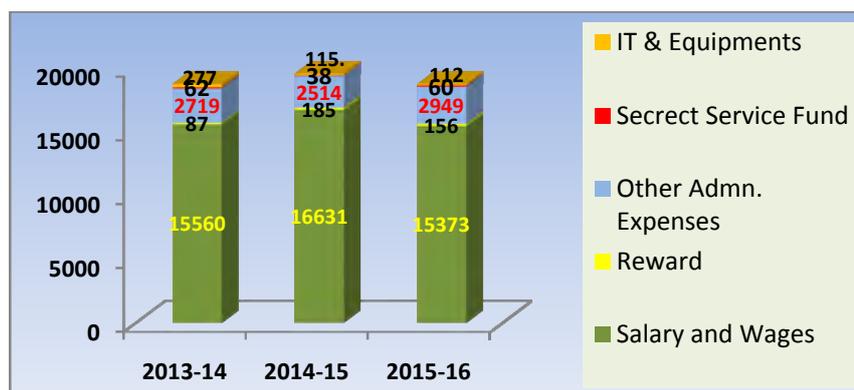
Total No. of Customs Commissioners	Preventive Commissionerate			Other than Preventive Commissionerate		
	No	Percentage of selection	Selected	No	Percentage of selection	Selected
70	13	100	13	57	50 (Minimum 2 and maximum 4)	25

The selection of Commissionerates comprised distinct strata i.e land, air and sea. In the selected Commissionerates 15 % of the cases subject to minimum 50 and maximum 100 have been audited.

3.4 Financial Arrangement

Based on the information received, the financial arrangement of 8* Preventive Commissionerates out of 13 Preventive Commissionerates is given below.

Graph 1: Actual Expenditure of Preventive Commissionerate (₹. in lakh)



* Bhubaneshwar and Jodhpur Commissionerates have not furnished the data and in Jamnagar, Shillong and Kolkata Commissionerates head wise data have not been made available.

- Out of total expenditure during 2013- 2016 the salary component was 84 percent, other administrative expenditure 14 percent, IT and equipments 0.9 percent, reward 0.75 percent and SSF was 0.28 percent.
- No expenditure has been incurred under head equipments during FY 2014-15 and 2015-16. Audit examined the records of the Customs Department to assess the performance of Preventive functions with set standards wherever norms have been prescribed.

Major findings are discussed in the succeeding paragraphs.

3.5 Audit findings

The preventive functions of the Customs Department broadly include sea patrolling, land patrolling, intelligence system, search, seizure, investigation and adjudication process and disposal of seized and confiscated goods.

3.6 Manpower

The position of sanctioned strength vis-à-vis men-in-position and vacancy as on 31st March, 2016 in respect of all Preventive Commissionerates and data received from 16 other Customs Commissionerates is tabulated below. It does not include position of marine staff.

Table 3.2: Manpower

Group	Sanctioned strength		Men in Position		Vacancy		Percentage of vacancy	
	Preventive Comm.(13)	Other Comm.(16)	Preventive Comm.	Other Comm.	Preventive Comm.	Other Comm.	Preventive Comm.	Other Comm.
Group A	200	216	124	138	76	78	38	36
Group B	3291	2767	1958	1585	1333	1182	41	43
Group C	2324	1584	1721	679	603	905	26	57

- In Preventive Commissionerate, Cochin under Group A category, the vacancy was 85 percent (SS-26, MIP-4) and under Group B category the vacancy was 77 percent (SS-407, MIP-92).
- In Bhubaneswar Commissionerate, under Group B category, the vacancy was 86 percent (SS-157, MIP-22) and in Under Group C category the vacancy was 72 percent
- Under Group C category in Preventive Commissionerate, New Delhi the vacancy was 76 percent while in Preventive Commissionerate, Lucknow excess strength of 62 percent was observed (SS-157, MIP-255)

3.6.1 Shortage of Marine Staff

The Directorate of Logistics vide letter F.no. 446/2/2008-MO dated 8 April, 2008 had specified the crew compliments (both technical and operating staff) for Category-I, II, III vessels as shown in **Annexure 5**.

The data received from the 9 Commissionerates revealed that as on 31st March 2016, against overall sanctioned strength of 520 of marine staff, 313 posts were vacant. The percentage of vacancies was in the range of 30 to 84 percent in Goa and Kolkata Commissionerate respectively. In Kandla Commissionerate, the patrolling boats (4 in numbers) available remained non-functional for want of skipper and skipper mate. In Mangalore, Calicut and Goa Commissionerate the vacancy for skipper/engineer was 100 percent and in Mumbai Commissionerate it was 93 percent. The Commissionerate wise details of vacancy position of Marine staff is given in **Annexure 6**.

3.6.2 Deployment of manpower

The policy for deployment of Human Resource (HR) needs to be coherent with the operational roles and pre-defined goals of the department. It must lead to development of core competence of the department. The preventive functions require highly skilled manpower.

However, audit noticed that the tenure of postings to preventive wing is only for six months/one year. The short period of posting tenure results in low level of accountability and low level of expertise.

Sea Patrolling

3.6.3 Weak/Poor patrolling performance

The Board vide its letter F.No.384/108/25-CUS (AS) dated 04.09.2006 has directed to ensure that Customs Marine Vessels are optimally used by conducting Sea Patrolling for 4 to 6 hours per vessel every day. The Vessels have to be so deployed at different times of the day so that there is always an element of surprise.

The Director of Logistics (DOL), New Delhi deployed 109 patrolling vessels at different Commissionerates across the country in 2008. The 109 vessels/boats procured by DOL in 2008 comprised of 24 Category-I, 22 Category-II and 63 Category-III vessels. The specifications of these vessels/boats are shown in **Annexure 7**.

Audit reviewed the patrolling records of 102³⁴ vessels under Mumbai, Goa, Mangalore, Chennai, Cochin, Trichy, Calicut, Kolkata, Shillong, Kandla,

³⁴ Out of total 109 vessels, 8 vessels are under Pune Commissionerate not in sample and CPC Jamuna as shown by Kolkata office procured in 1997 included in sample.

Jamnagar, Vizag, Bhubaneshwar and Patna Commissionerates for the period 2013-14 to 2015-16 and noticed that out of 102 vessels only 58 patrolling vessels were operational. On further examination of the patrolling performance of these vessels, audit observed that patrolling carried out was only 6 to 7 percent of the norms prescribed by the Board. The patrolling performance is depicted in the table given below:

Table 3.3: Sea Patrolling Performance

Year	No. Of operational patrolling boats	Minimum no.of hrs req.=(operational boats*4hrs*365 days)	Actual no. Of hrs patrolling	%of patrolling done	Outcome of Sea Patrolling			
					No. of boats checked	No. of person arrested	No. of seizures made	Values of goods seized (₹in lakh)
2013-14	58	84680	5988	7.1	1153	Nil	Nil	Nil
2014-15	58	84680	5116	6.00	605	Nil	Nil	Nil
2015-16	58	84680	4791	5.7	499	Nil	Nil	Nil

3.6.4 Improper upkeep and repair of vessels

Audit noticed that out of 102 vessels checked, 44 vessels were non-operational. In Chennai Commissionerate, 3 vessels remained non-operational since 17th April, 2009 and all the category-III vessels (13 in numbers) allocated to Patna Commissionerate and Preventive Commissionerate, West Bengal remained non-operational since 2009. The upkeep and repair in respect of 63 category-III vessels is illustrated in a case from Mumbai Commissionerate.

In Preventive Commissionerate, Mumbai patrolling vessel (Karanja) was one amongst the 63 Category III vessels procured as per contracts signed between Directorate of Logistics (DOL) and M/s Brunswick Asia Pacific Group (Mercury Marine Singapore Pte Ltd. Singapore) on 19.03.2007. M/s Mercury Marine, Singapore was to provide Annual Maintenance Contract as per the offer enclosed for five years excluding the first year of warranty period.

M/s Esmario Export Enterprises, Secunderabad was nominated by the Boat builder to carry out AMC routines of the vessels. The AMC for these categories of vessels was cancelled by DOL vide order F.No.446/23/2010-MO/394 dated 07.03.2011 due to lack of performance by the AMC provider with intimation to Commissionerate that no Category-IIIA and Category-IIIB boats should be handed over to M/s Esmario Exports Enterprises. The DOL vide their letter dated 04.05.2012 advised the Commissionerate to carry out the maintenance work of Cat-III vessels locally and from Commissionerate's own budgetary provision till a new AMC is finalized.

In October/November 2013, the Category-IIIB vessel Karanja developed some technical defects. Accordingly, tender calling quotation of service charges was called for on 22.11.2013. In response to the tender, only one sealed tender from M/s Esmario was received since M/s Esmario Export Enterprises Pvt. Ltd. was the only authorized dealer/servicing agent, for the engines fitted in the aforesaid vessels, in the country. Finally, the repair work was allotted to M/s Esmario Enterprises and the vessel Karanja could become operational in October 2015 after a period of two years.

This case clearly brings out the fact that since 2011, the DOL has not finalized any AMC for Category-III vessels.

3.6.5 Deployment of Vessels

As per Customs Preventive Manual, Commissioner of Customs (Preventive) is responsible for surveillance over sea. Section 104 of the Customs Act, 1962 empowers to arrest person in India or within Indian Customs waters and Section 106 of the Customs Act, 1962 specifies that Customs Officer has powers to stop and search any vessel in Indian Customs waters. As per section 2(28) of Customs Act, 'Indian Customs Waters' means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbor, creek or tidal river.

In view of this, Audit verified the deployment of vessels in Preventive Commissionerate, Mumbai and found that all the Category-I and II vessels (six in number) were deployed in Mumbai only. Outside Mumbai i.e. at Dahanu, Vasai, Mora, Revdanda and Srivardhan port Category-III vessels were deployed. DOL authority in Mumbai had noted that the Category-III boats were not suitable for operating in rough weather which means not fit for utilization beyond sea state one³⁵. Since these boats were not suitable for patrolling in rough weather conditions and no Category-I&II vessels were deployed in these areas, the entire jurisdiction of territorial waters was not being covered for effective patrolling.

In reply the department stated that Category-I and II cannot be operated in shallow waters and require proper berthing jetty for their operation. These facilities are available only in Mumbai port areas and hence only Cat III vessels were being operated outside Mumbai jurisdiction. The department had made correspondence with Maharashtra Maritime Board, for providing jetties at areas outside Mumbai harbor in order to have effective patrolling of all vessels.

³⁵ When sea is calm (rippled) and height of waves is between 0.0 to 0.1 metre

The reply of the department confirms the audit observation that no effective patrolling was done outside Mumbai.

3.6.6 Berthing space

The patrolling vessels are required to be stationed at a place where there is no restriction of movement and there is least response time on receipt of actionable input. The berthing space in respect of vessels is provided by Port authority.

Audit noticed that the department did not have any permanent place for berthing in respect of 43 vessels out of 102 vessels examined under Mumbai, Mangalore, Calicut, Kolkata and Patna Commissionerates restricting the free movement of the vessels and its proper maintenance. The illustration in respect of Mumbai Commissionerate is given below.

In Preventive Commissionerate, Mumbai the patrolling vessels were berthed at 6 Indra-Dock (6ID) which was inside the Lock and Storm gate which was closed and opened in case of movement of commercial vessels. Thus affecting sea patrolling which ought to be adjusted with the timing of the movement of the commercial vessels. Adjustments in timing restricted the free movement of vessels and defied the element of surprise. The Preventive Commissionerate, Mumbai had been pursuing the Port authority for providing the safe berthing place for vessels. The department intimated (Oct'16) that after lot of communication, ferry wharf No.4 was allotted to the Commissionerate for berthing the vessels in March 2015, which is outside the Indira Dock and provides easy access to open seas for patrolling. However, this place of berthing is also under observation from the suitability of operation keeping in view certain operational difficulty.

3.6.7 Land patrolling

As per Customs Preventive Manual, Commissioner of Customs (Preventive) is responsible for land surveillance which acts as a deterrent for prevention of smuggling, conservation of foreign exchange, protection of domestic industry, human, animal or plant life or health etc.

Audit noticed that in Preventive Commissionerate, Amritsar no land patrolling was conducted during the period covered in audit for the want of man power and vehicles even though Punjab state has sensitive border areas and vulnerable to smuggling activities as illustrated below.

As per authority KNo.441/8/DPO (AS)88 dated 31-08-1995 of Arms Policy of CBEC, a preventive patrol squad should consist of at least three armed men headed by an officer of the grade of a Superintendent or above.

The duty of Sepoys /Havaldars are to carry out patrolling, keeping watch over incoming and outgoing passengers, intelligence gathering etc. in the vulnerable towns as part of anti-smuggling exercises under the supervision of Customs Officers.

During test check of the records maintained in office of the Customs Preventive Divisions Amritsar, Pathankot and Jammu, it was noticed that there were 16 Customs Preventive Station (CPS) and 2 Trade Facilitation Centres (TFC) under the jurisdiction of Customs Preventive Commissionerate,

Amritsar. It was further observed that there was only one Superintendent posted in CPS Akhnour Rajauri, R.S.Pura, Sambha, Pathankot and Gurdaspur and no Hawaldar and Inspector were posted.

Further it was observed that only 6 Vehicles were provided to 10 CPSs but the drivers were not posted at these stations. In the absence of sufficient vehicles and man power i.e. Inspector and Hawaldar, no patrolling was conducted at any CPSs and hence no case was booked by CPSs for the last three years.

Board may consider fixing parameters for Land patrolling to strengthen preventive functions.

3.7 Non-operational/obsolete telecommunication equipment

- (i) Preventive Commissionerate, Mumbai was completely short of Telecommunication Equipments. All HF sets (8 in numbers) were non-operational and all VHF sets (113 in numbers) were 20-25 years old and were not reliable for satisfactory long range communication. Therefore, there was no effective communication between Patrolling Boat and Sub-stations at Divisions as well as with the Headquarters Control Room.
- (ii) Although correspondences were made with Directorate of Logistics from the year 2011 onwards, no equipment was received by the Commissionerate till the date of audit. Further, it was noticed from the records that the department was paying ₹ 2.30 lakh as spectrum fee to Wireless Planning & Coordination (WPC).
- (iii) In Mangalore Commissionerate out of 41 sets of telecommunication equipment 15 sets are defective and non-operational since 2006 onwards. Department reply is awaited.

3.8 Old and obsolete arms and ammunition

According to the information received from 14 Commissionerates audit observed that the Preventive wing was provided with 1702 Arms (Musket, Pistols, Revolvers and Rifles) and 40588 Ammunitions, out of which 454 Arms and 100 Ammunitions were non-operational. It was further observed that Preventive Commissionerate, Amritsar and Mangalore Commissionerate were provided with 103 SLR/LMG out of which 25 SLR/LMG were non-operational. Audit requested the department to provide the date of last service carried out of the Arms, however department did not furnish the data.

3.9 Inadequate anti-smuggling equipment to counter smuggling

As per Section 100 of Customs Act 1962, the proper officer has power to search to any suspected person who has landed from or is about to board. Further Section 103 of Customs Act 1962, gives power to the proper officer to screen or X-ray bodies of suspected persons for detecting secreted goods and as per CBEC's Circular 23/2006-Cus Dated 25th August 2006, 100 per cent

screening of import/export consignments (documents and all type of cargo) was required to done through X-ray machines or other Non intrusive investigation techniques (NII techniques).

Audit noticed inadequate/non-availability of anti-smuggling equipment in Chandigarh, Kolkata, Bengaluru and Lucknow Commissionerates. An illustration in case of Amritsar and Ludhiana Commissionerates is given below.

- (i) Audit noticed in Ludhiana Commissionerate that there were no X-ray machines installed at Import portion of Air Cargo Complex and Import & Export portion of Rail Cargo Ludhiana at Amritsar. From Rail Cargo Ludhiana at Amritsar the major imports/exports are made to Pakistan and Afghanistan. Manual checking of cargo though done in a discreet manner cannot achieve the desired level of scanning of the cargo. Department's reply awaited.
- ii) In Amritsar Commissionerate Audit noticed that during the period 2013-14 to 2015-16 there was movement of 2,19,527 number of trucks at the border however there was no installation of full body truck scanners at ICP Attari. In absence of full body truck scanner manual rummaging of trucks was being done by the staff and that too of the known cavities only.
As the number and the nature of the cavities in the truck are innumerable and the staff does not possess the technical knowhow regarding the structural and material design of the truck, the manual rummaging in a discreet manner cannot achieve the desired level of scanning of the Trucks. Inadequate rummaging and scanning arrangements at the ICP Attari could also be exploited by sinister elements for smuggling of contrabands, arms, ammunition, explosives Fake Indian Currency Notes (FICN) etc. Audit also noticed that Flexible Fibre Optic Scope, Video Scopes and ION scanner (for Narcotic Drugs Psychotropic Substances and explosives) are also not available at ICP Attari. Department's reply is awaited.
- iii) At ICP Attari, LCS Attari Rail and Shri Guru Ram Dass Ji International Air Port Amritsar (SGRDJI) under the Customs Preventive Commissionerate Amritsar, audit further noticed that only X-ray machines and metal door detector were installed at the stations and no machine/contraption was installed to detect Narcotics and Explosives. Department's reply is awaited.

3.10 Performance of Intelligence System

According to Customs Preventive Manual every Custom House has its own identity which may evolve its own intelligence culture and develop its formations depending upon the parameters like network of intelligence, market forces, financial aspects, culture of informers and their background, environmental forces etc. The broader aspects and basic necessities of the Intelligence System should be as follows:

- a) The cultivation of informers
- b) Collection of information
- c) Compilation of Intelligence Reports
- d) Conducting investigations, making direct enquiry
- e) Carrying out searches and seizures, rummaging of vessels/conveyance/aircraft, and various other duties connected with the intelligence work.

3.11 Intelligence/Information received and gathered

The details of intelligence received/gathered and selected for investigation during last three year as per data made available to audit from 30 Commissionerates are given below:

Table 3.4 Performance of the intelligence units and uniform batch

Year	No of intelligence received	No of cases selected for investigation	No of cases closed before investigation	No of cases closed after investigation	Value of goods confiscated (₹ in Cr.)	Revenue realised at the behest of preventive functions (₹ in Cr.)
2013-14	5127	4957	562	4673	563	101
2014-15	6175	5658	718	5533	1315	113
2015-16	7434	6638	920	6368	771	187

Audit noticed that:

- i. In Ahmedabad, Kandla, Jamnagar, Airport and Air Cargo Complex Bengaluru, Hyderabad, Bhubaneshwar, Kolkata Commissionerates that no intelligence input was received during the period covered in audit.
- ii. The Preventive Commissionerates/preventive wings of other Commissionerates of Customs department do not have their own DBMS. The intelligence units act upon the inputs received or on the basis of alerts received from other agencies like DRI, DGOV etc and the officials deployed in intelligence units are required to make their own efforts to develop their intelligence network, make analysis of the market trend.
- iii. There was no HR (Human Resources) management policy for recruitment, capacity building, skill upgradation of manpower required to strategically manage and monitor a critical intelligence system.
- iv. The cultivation of informers was totally absent.
- v. The documents made available to audit revealed that no case was initiated based on information received from other departments indicating that there was no sharing between departments such as Central Bureau of Narcotics (CBN), Enforcement Directorate (ED), Central Economic Intelligence Bureau (CEIB), about possibility of fraud in the area of foreign trade. Audit further noticed in Jamnagar, Kandla and Ahmedabad Commissionerates that there was no follow up action of the 845 alerts received during F.Y. 2013-14 to 2015-16 from CCO/DRI.

3.12 Show Cause Notice /Adjudication

After completion of search, seizure and investigation, Show Cause Notice (SCN) to be issued to the parties concerned and case is transferred to the adjudicating authority for adjudication.

3.12.1 Non issue of Show Cause Notice (SCN) in time

As per provisions of 110(2) of Customs Act, 1962, where any goods are seized and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.

Audit noticed in three Commissionerates, non issuance of SCNs beyond the prescribed time limit in 56 cases pertaining to preventive cases. One case of non-issuance of SCN within prescribed time limit resulted in loss of revenue of ₹49.26 lakh is illustrated below:

Audit noticed in the office of the Principal Commissioner of Customs, Preventive Delhi, in the case of Ms. Shiv Shakti Trading, due to delay in issuance of SCN, the seized goods were to be released unconditionally as per High Court order. SCN was not issued within six month from the date of seizure and no adjudication was passed for a period of one year after the seizure. Afterwards adjudication order was passed and as per the adjudication order, the value of the seized goods was ₹ 84.41 lakh and the total dues from the importer were ₹ 49.26 lakh. The dues were not recovered which resulted in an avoidable loss of ₹ 49.26 lakh.

3.12.2 Blockage of revenue due to pending adjudication

Section 28 (9) of Customs ACT, 1962 prescribes the time limit of 6 months for passing adjudication order for duty short levied or not levied and 12 months in case of short levy or non levy due to suppression of facts or collusion or willful misstatement . As per Boards circular no. 03/2007 dated 10.01.2007 (F.No.401/243/2006-Cus.III) the time period for adjudication of cases are as follows:

- (i) For cases to be adjudicated within the competence of Commissioner of Customs or an Addl/Joint Commissioner of Customs, one year from the date of service of the show cause notice;
- (ii) For cases to be adjudicated within the competence of Assistant Commissioner of Customs or Deputy Commissioner of Customs, six months from the date of service of the show cause notice;

In case the prescribed time period could not be observed in a particular case, the adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly.

Audit noticed in fourteen Commissionerates 964 cases³⁶ were pending for adjudication beyond the above prescribed time limit blocking revenue of

³⁶ Pending 1 case > 22 years, 2 cases > 9 years, 1 case > 2 years and 960 cases >1 year

₹ 1860.04 crore as on 31st March 2016. Out of 964 cases, 57 cases involving amount of ₹ 79.56 crore are pending in 4 Preventive Commissionerates. One case having pendency for 22 years is illustrated below:

Audit noticed in Commissioner of Customs Preventive, West Bengal that the case under File reference No. S12(IV/T)-565/76P (SCN issued on 11.02.1977) could not be adjudicated for 22 years as the file was lying unattended till 2013.

The department (August 2016) confirmed the oversight of the case and informed that steps have been initiated to finalise the case.

Further, in 54 cases of Calicut Commissionerates and Preventive Commissionerates of Jodhpur, Lucknow and Patna, audit noticed delay in adjudication ranging from 15 days to 30 months..

On this being pointed out (May-June 2016), Jodhpur Preventive Commissionerate replied (June 2016) that delay was due to unavoidable circumstances however, the department had not specified the unavoidable circumstances. Reply from Calicut Commissionerate and Lucknow Preventive Commissionerate is awaited.

The cases pending for adjudication beyond prescribed time limit could be reviewed by Board and adjudicated expeditiously to collect revenue involved.

3.13 Monitoring and Control Mechanism for Disposal of seized and confiscated goods

The Disposal Manual of the Department read with section 110 (1A) prescribes the procedure for disposal of seized and confiscated goods. The manual classified the seized and confiscated goods into four categories³⁷ (Category-I, II, III & IV).

The CBEC in their instructions (450/97/2010-Cus.IV, dated 22 July 2010) directed that each Customs formation will constitute a 'Task Force' for a one time comprehensive review for expeditious disposal of all un-cleared/unclaimed cargo and asked for progress made in disposal along with age-wise break up of pending cargo that was ripe for disposal as on 31st December 2010.

As per the instructions it was responsibility of the Commissioners to ensure the expeditious disposal of such cargo on regular basis. Despite the instructions of the CBEC, Audit noticed huge pendency of goods lying for disposal, theft of Red Sanders, loss of revenue due to non-disposal of seized and confiscated goods and blockage of revenue due to non-clearance of un-cleared/unclaimed/abandoned goods narrated below which indicated the absence of proper monitoring and control mechanism.

³⁷ Circular F No. 711/31/83-LC (AS) dated 22.05.1984

3.13.1 Pendency of seized and confiscated goods

As per data furnished by the department, the total value of undisposed goods (Category-I, II, III and IV) in 26 out of 38 Commissionerates audited was ₹ 2706.45 crore as on 31st March, 2016. The Commissionerates with high holdings were Chennai³⁸ ₹ 859.99 crore, Hyderabad³⁹ ₹ 423.35 crore, Mumbai⁴⁰ ₹ 353.16 crore and Shillong ₹ 308.33 crore.

Further, Audit observed that goods worth ₹ 305.96 crore were not disposed even after becoming ripe for disposal and in six Commissionerates, in 9 cases ₹ 11.87 crore worth goods could not be disposed in time as a result of which the goods lost their value because of passage of time. Two Cases are illustrated below.

Illustration 1: In Commissioner of Customs Preventive, West Bengal, audit noticed that one vehicle was seized in 1987 used as carrier for transportation of 1805 kgs of medicinal powder. The case was adjudicated in 1989. However, despite final adjudication order (in 1989) the department could dispose the vehicle in 2015. At the time of its valuation in 2014 after a lapse of 27 years, value of the vehicle was fixed at ₹25,000/- against seizure value of ₹12 lakh.

Non adherence to the instructions on prompt disposal of seized vehicle, resulted in loss of revenue to the tune of ₹11.75 lakh. In reply, the department stated (January, 2016) that the delay occurred due to non-availability of the order-in-original and other necessary orders.

Illustration 2:

In Preventive Commissionerate, Mumbai audit noticed that a Barge namely MV Shalimar-I concealing the smuggled Diesel oil (34.05 MT) was seized on 28 April 2011 in Revdanda Circle. The seized goods were valued at ₹ 14.50 lakh and the vessel was valued at ₹ 1.5 crore. Subsequently, the said seized Barge was confiscated and disposal order was issued on 31 July 2014. It was mentioned in the disposal order that due to corrosion and water currents the barge appeared to be damaged at two-three places and diesel had started leaking into the creek. After receiving the disposal order, Government valuer was arranged to conduct the valuation of HSD stock for e-auction. However, in the valuation certificate the valuer had shown the sale price as 'NIL' and stated that there was no HSD oil and that the storage compartments were filled with sea water. In March 2015, it was reported that during the period of 3 years the HSD oil had been drained off into the sea. This resulted in loss of revenue of ₹ 14.50 lakh.

Department's reply is awaited.

3.13.2 Discrepancy in stock

Audit noticed discrepancy in stock of seized and confiscated goods in 2 cases under two Commissionerates with revenue involving ₹126 lakh.

One case is illustrated below:

³⁸ Chennai-III, Sea Customs: ₹ 172.86 crore & Chennai-I, International Airport: ₹ 687.13 crore

³⁹ Preventive Commissionerate, Vijaywada: ₹ 423.35 crore

⁴⁰ Airport Commissionerate, Mumbai: ₹ 271.79 crore & Preventive Commissionerate, Mumbai: ₹ 81.37 crore

In Goa Commissionerate, as per MTR for the month of March, 2016 gold weighing 28.12 kg was lying for disposal as on 31st March, 2016 whereas as per handing over taking over report dated 11/05/2016. Gold weighing 23.9 kgs only was lying for disposal and there was no disposal from 1st April to 11 May, 2016. Thus there was a discrepancy of 4.19 kgs of gold valuing ₹126 lakh. Department's reply awaited.

3.13.3 Loss of revenue due to theft of Red Sanders

Audit noticed (August, 2016) that there was theft of 79645 kgs of Red Sanders valuing ₹ 13.53 crore from three⁴¹ CFSs at Jawaharlal Nehru Customs House (JNCH), Mumbai which were seized by striking units and kept with custodians. Out of this the department had recovered the market value of Red Sanders of ₹ 5.21 crore in one case from CFS M/s Punjab Conware Limited. However, the department had not taken any penal action against the CFS. Further, in remaining cases of theft from two CFSs, the department had not taken action till the date of audit (August, 2016) resulting into loss of revenue of ₹ 8.32 crores. Department's reply awaited.

Audit also noticed (March, 2014/September, 2015) theft of miscellaneous goods valuing ₹ 76.09 lakh at Patrapole Customs Circle, in Kolkata and department has not taken any action resulting into loss of ₹ 76.09 lakh. In reply (November, 2015), the department stated that the FIR has been lodged immediate after incidence, however till date (June, 2016) no recovery was made.

3.13.4 Blockage of revenue due to non-clearance of un-cleared / unclaimed / abandoned goods

As per provision of Section 48 of the Customs Act, 1962 un-cleared, unclaimed and abandoned goods can be disposed off after notice to the importer and with the permission of the proper officer. Audit noticed at JNCH, Mumbai that un-cleared/unclaimed goods with book value of ₹ 392.40 crore were lying in various CFSs for disposal as on 31st March, 2016. In reply (November 2016), the department stated that several measures have been taken which will result in expeditious disposal of goods under Section 48 of the Customs Act, 1962.

⁴¹ Punjab Conware Limited:30660 kgs, Market value: ₹ 5.21 crore, DBC Port Logistics Limited:36.29 MT, Market value: ₹ 6.17 crore & DRT Logistics: 12695 kgs, Market value: Rs 2.16 crore

3.13.5 Inventory Management

At JNCH, Mumbai audit noticed lack of inventory management as illustrated below.

At JNCH, Mumbai the role of the custodians lies with the CFS managed by private agencies and the disposal section function only after receiving the disposal order. The category wise report of seized and confiscated goods was not being generated and monitored. Even there was no report to show the total value of goods lying for disposal on a particular date as a result of which:

- i. The department was not able to ascertain the total book value of the goods lying for disposal as on 31st March, 2016. The department intimated that there was no centralised list containing the details of seized/confiscated goods lying in different CFSs available with Disposal section. Further, the department stated (Nov'2016) that recently a software named "Un-cleared Cargo (UCC)" has been launched which will be in operation very soon where by pendency of cargo ripe for disposal at any stage can be monitored through the software.
- ii. Loss of revenue due to non disposal of the perishable goods in time which could have been sold in auction and yielded revenue. The department intimated that there were consignments of perishable goods which could have been sold in auction but could not be sold as the seizing units did not send the disposal orders in time. In reply (Nov'2016), the department stated that in case of perishable items, Customs is not the only agency dealing with goods rather it requires various NOCs due to nature of goods like FSSAI/AQ/PQ/ADC.
- iii. Red Sanders seized in April 2005 and onwards valuing at ₹ 164.89 crore were lying at various CFS for disposal as on 31st March, 2016. In reply (Nov'2016), the department stated that listing of containers pertaining to seized/confiscated Red Sanders at JNPT has been completed and the department has received a letter from the Principal Chief Conservator of forest, Nagpur, Maharashtra for the disposal of Red Sanders which appears to be appropriate/competent authority to dispose of this wild life product. List of Red Sander containers has been sent to Forest authority for taking over the custody of goods.
- iv. Thefts of Red Sanders at three CFSs as discussed in para no. 3.13.3.
- v. Un-cleared/unclaimed goods worth ₹ 392.40 crore pending for disposal as on 31st March, 2016 as discussed in para 3.13.4.

The monitoring mechanism for the disposal of goods may be strengthened by generating category wise reports of seized and confiscated goods, reasons for non disposal of goods as per specified provisions and by fixing accountability.

3.14 Conclusion

The compliance audit of the preventive functions of the Customs department revealed weakness of the compliance mechanism and inadequacy of resources. Test check revealed that sea and land patrolling fell short of the targeted frequency of such patrols. Lack of adequate staff, lack of berthing space for the patrol vessels and no targets for land patrolling could be attributable reasons for shortfall in patrolling.

The preventive commissisonerate's intelligence functions suffered from many deficiencies like obsolete/ non-functional telecommunication equipment,

inadequate anti-smuggling equipment, old arms and ammunition, low proportion of trained staff for intelligence functions coupled with high turnover of staff, and poor coordination with other government agencies involved in anti-smuggling and inter-departmental intelligence operations.

Audit noticed that systems which were weak in compliance with the laid down procedures as seen from the assessment of the system of disposal of seized and confiscated goods by the department which was characterized by lack of proper maintenance of records. There were many cases of considerable delay in adjudication process resulting in blocking of government revenue. Delays in disposal of the goods due to procedural lapses resulted in blockage of storage space and loss to the public exchequer. Audit from test check of 38 commissionerates noticed issues worth ₹ 1.75 crore alongwith issues of systemic and internal control deficiencies involving ₹ 5133 crore.