

## CHAPTER IV DUTY EXEMPTION/REMISSION SCHEMES

The Government may exempt wholly or part of customs duties for import of inputs and capital goods under an export promotion scheme through a notification. Importers of such exempted goods undertake to fulfill prescribed export obligations (EO) as well as comply with specified conditions, failing which the full rate of duty becomes leviable. During test check of records (April 2014 to March 2016), 35 cases have been noticed involving total revenue implication of ₹ 461.66 crore where duty exemptions were availed of without fulfilling EOs/conditions. Out of these, thirteen cases are discussed in the following paragraphs and 22 cases which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in **Annexure 8**.

### 4.1 Reward/Incentive schemes under chapter 3 of Foreign Trade Policy

#### **Excess utilization of Duty credit Scrips**

**As per Section 28AAA of the Customs Act, 1962, where an instrument issued to a person was obtained by collusion or wilful mis-statement or suppression of facts for the purpose of the Act or the Foreign Trade (Development and Regulation) Act, 1992 by any person and such instrument is utilised under the provisions of Act, rules or notification issued there under, by a person other than to whom the instrument was issued, the duty attributable to such utilisation of instrument shall deemed never to have been exempted or debited and the duty should be recovered from the person to whom the said instrument was issued. This recovery action on the persons to whom the instrument was issued is without prejudice to the action taken on the actual importer under Section 28 of the Act.**

The Director General of Foreign Trade (DGFT) issues Duty Credit Scrips or Licenses, under Chapter 3 of Foreign Trade Policy (FTP) 2009-2014, as incentive to exporters under various Export Promotional Schemes such as Vishesh Krishi and Gram Udyog Yojana (VKGUY), Focus Market Scheme (FMS), Focus Product Scheme (FPS), Status Holders Incentives Scheme (SFIS) through various Joint Director General of Foreign Trade offices (JDGFTs). These scrips are freely transferable and can be utilized for importing goods without payment of duty to the extent credit is available. The export benefits are determined as a percentage of Free on Board (FOB) value of shipping bills based on the type of Scheme.

For utilising the credit available, the duty credit scrip (issued in the form of a certificate by JDGFT office) is registered by the exporter concerned manually in the customs house for which it is issued.

During such manual registration of scrips with the custom house, the following mandatory details viz., Scrip number, Date of scrip, Port of Registration, Importer Exporter Code (IEC), FOB value, value of credit allowed are entered in the Licence Registration Module of Indian Customs EDI System (ICES). On successful validation, a unique Registration number is generated and assigned by the system to each individual scrip. This Registration number is quoted by the exporters for all subsequent imports made in any port against the scrip.

Audit carried out an analysis of DGFT data (as on 31st March 2015) and the licence debit details maintained by Customs Department (ICES) (as on 31st March 2015) which revealed excess utilization of duty credit in respect of instruments issued under Chapter 3 of Foreign Trade Policy through manipulation of registration of scrip/use of scrip by deploying following methods :

- (a) Re-registering and utilising an already utilized scrip by changing the scrip date,
- (b) Re-registering and utilising an already utilized scrip by changing the port of registration,
- (c) Multiple re-registration of duty credit scrips not issued to the scrip holder,
- (d) Registration of duty credit scrips for a value higher than the eligible credit,
- (e) Duty credit fully utilized both at the original port of registration and at other ports after issuance of Telegraphic Release Advice (TRA).

The cases are discussed below:

#### **4.1.1 Utilisation of duty credit by re-registering the scrips (licences) with different dates**

Through analysis of DGFT data/licence debit details audit found cases of duty credit scrips which were already registered and utilised at one port were re-registered with different dates and utilised again for payment of customs duty on importation of goods through various ports across the country. Audit verified from the department that the re-registration was not on account of any Telegraphic Release Advice (TRA) issued against those scrips for importation of goods through ports other than the Port of Registration.

Audit initially pointed out (November 2015) 135 such cases of re-registered scrips to Chennai (Sea) Customs Commissionerate. The Chennai (Sea) Customs Commissionerate stated (January 2016) that the original licences were inadvertently registered with changed numerals and there was no excess utilization of duty credit beyond the prescribed limit due to duplication.

Two<sup>42</sup> scrips involving actual duty credit aggregating to ₹ 56.30 lakh originally registered at Chennai Sea and Tuticorin Customs were re-registered at ICD, Tughlakabad for aggregate sum of ₹ 530.44 lakh with different scrip dates for the same/ different amount and utilized to the extent of ₹ 527.67 lakh. Such excess utilisation was confirmed (January 2016) by ICD, Tughlakabad and it was also stated that the matter pertaining to misuse of licences issued under Chapter 3 of the FTP for the period 2009 onwards was already under investigation by Special Investigation and Intelligence Branch(SIIB) of ICD, Tughlakabad.

Audit subsequently noticed 29 similar cases of excess utilization of duty credit in 7 Ports involving ₹ 3.59 Crore which was communicated to the commissionerates. Thus in 31 cases excess utilisation of duty credit amounting to ₹ 8.87 crore was noticed.

#### **4.1.2 Utilisation of duty credit by re-registering scrips with different Port codes**

In 46 cases involving 22 Ports, it was observed that the licenses were re-registered for the second time by changing the Port codes and utilised for making imports involving excess duty credit to the tune of ₹ 17.73 crore.

Audit communicated (Nov 2015 and Feb 2016), the details of cases to the concerned Commissionerates for confirmation.

After verification, Tuticorin Commissionerate had stated (March/October 2016) that two<sup>43</sup> scrips with total money value of ₹ 1.57 crore which were utilized at Tuticorin Commissionerate appear to have been irregularly re-registered at ICD, Tughlakabad and duty evaded is required to be recovered. The matter has since been referred (March 2016) to Tughlakabad Commissionerate for further action.

Reply in respect of the remaining 44 cases involving 21 Ports is awaited.

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<sup>42</sup> Scrip No.3510028447 dated 7.12.2009 issued by JDGFT, Madurai for duty credit of ₹ 4.79 lakh re-registered for duty credit of ₹478.93 lakh by changing the scrip date to 7.12.2011.

Scrip No.410138357 dated 25.5.2012 issued by JDGFT, Chennai for duty credit of ₹ 51.51 lakh re-registered for duty credit of ₹51.51 lakh by changing the scrip date to 25.07.2012

<sup>43</sup> Scrip No.3510039803 dated 12.11.2012 issued by JDGFT, Madurai for duty credit of ₹ 11.10 lakh and registered at ICD, Tuticorin was re-registered for duty credit of ₹111 lakh by changing the port code to ICD, Tughlakabad.

Scrip No.3510039804 dated 11.12.2012 issued by JDGFT, Madurai for duty credit of ₹4.58 lakh and registered at ICD, Tuticorin was re-registered for duty credit of ₹ 45.81 lakh by changing the port code to ICD, Tughlakabad.

#### **4.1.3 Multiple re-registration of duty credit scrips not issued to the scrip holder**

In 47 cases, the scrip holders after registering the original scrip at ICD, Tuglakabad and utilizing the available credit, registered the scrips more than once at the same port (ICD, Tuglakabad). Such scrips were registered by changing the last few numerals of the original scrip number issued to them, with same or different duty credit and utilised for imports to the extent of ₹16.26 crore. Commissionerate reply is awaited (December 2016).

#### **4.1.4 Registration of duty credit scrips for a value higher than the eligible credit**

In 6 cases, the scrips were registered at ICD, Tuglakabad for a higher value than the admissible credit and utilized for making imports. Such excess utilization of duty credit worked out to ₹2.29 crore.

Out of 6 cases, in 5 cases, the scrips were registered again at ICD, Tuglakabad by changing the last numerals of the original scrip number issued to them, with original or different duty credit and utilized the credit to an extent of ₹2.33 crore.

In response to aforesaid cases Ministry of Finance, Department of Revenue (MoF,DoR) partially agreeing with Audit findings stated (December 2016) that the cases pointed out were on account of forgery of the scrips and not due to system failure or lack of validations in system.

Ministry's reply is not acceptable since it is the lack of appropriate validation controls in the system which made the system prone to misuse. Audit found that in the DGFT's system the Licence number issued is a unique 10 digit number. Whereas, in the ICES 1.5 application there is no input control mechanism to ensure that only 10 digit numbers are allowed to be registered as valid licence numbers. The system permits numbers greater than / less than 10 digits, alpha numeric characters, special characters to be registered as valid licence numbers. Due to these lacunae, the system allows to re-register an already registered license number by changing the original license date or the port of registration with any amount of duty credit during second or subsequent registration. The above lacunae present in the system were exploited and mis-utilisation of duty credit scrips of large magnitude has been committed in many ports, more predominantly at ICD, Tughlakabad.

Ministry response attributing the misuse of the scheme to 'forgery' committed by the importer instead of system validation has left the system vulnerable to continued misuse.

It has been verified by Audit at Chennai (Sea) Commissionerate that even now (January 2017) the system allows re-registration of an already registered

license, thereby giving ample scope for mis-utilisation of licences issued under Chapter 3 of FTP endangering the revenue of Government of India.

Ministry further stated that in 15 out of 31 cases pointed out in audit regarding utilisation of duty credit by re-registering the licences with different dates there is no excess utilization in these cases. According to the Ministry, the Addl.DGFT, Ludhiana had inadvertently issued the licenses manually against unblocked license numbers. This resulted in these licence numbers being simultaneously issued for applications submitted online by other exporters leading to a situation where same license number appears in the name of two exporters.

The reply furnished by the Ministry about the 'inadvertent' issue of licence number manually only reinforces the Audit observation that the system is vulnerable to misuse.

#### **4.1.5 Mis-utilisation of scrips in the original port of registration after issuance of Telegraphic Release Advice (TRA)**

A TRA is issued for transferring the amount of credit available in a scrip from one customs port to another port, where the scrip holder intends to utilise the balance credit for making import through another port. In the TRA receiving port, the exporters need to re-register the scrip and utilise the scrip to the extent to which credit is available as per the TRA. In the originating port of registration, the transferred duty credit amount will not be available since the entire credit or part of it had already been transferred to the new port.

Examination of DGFT/Customs data and License Management Module of ICES 1.5 disclosed that in 12 licences wherein TRA was issued, the credit was mis-utilised to an extent of ₹4.22 crore by the importers in the original port of registration. In all these 12 licenses, the entire duty credit which was already transferred in the re-registered port was utilized.

For instance, the Scrip No. 3010066055 dated 23.3.2010 with a duty credit of ₹ 62.71 lakh was initially registered at Ludhiana Port (INLDH6) (Registration No. /3010066055/dated 23-3-10). The Scrip holder got TRA (TRA No. 7098/19-4-10) for the entire duty credit of ₹62.71 lakh to Chennai Port (INMAA1) and re-registered the Scrip (Registration No.46012/21-4-10) at Chennai and utilised the credit by imports for ₹ 62.71 lakh. As the entire credit was already transferred to Chennai Port, no credit should be available at Ludhiana Port. However, the scrip holder was able to import and utilise ₹ 62.71 lakh at Ludhiana Port as well due to inadequate validation control in the system.

Thus, lack of input validation controls in the departments' ICES and DGFT systems and ineffective monitoring of registration / debiting of duty scrips by the department officers resulted in excess/ irregular utilisation of duty credit to the tune of ₹ 51.70 crore.

Ministry of Finance, Department of Revenue stated (December 2016), that DRI was asked to conduct one time exercise of matching all the EDI registrations (including in history of earlier version ICES 1.0) with a suitable data dump obtained centrally from the DGFT. The exercise is to cover manual locations also by seeking details from such ports. DRI has accordingly taken up matter with DGFT for providing data dump of all scrips issued under Ch-3 of FTP which is awaited.

It was further stated that DG-Vigilance has also initiated vigilance investigation in the matter to identify involvement of officers in the matter.

Further progress is awaited (January 2017).

## **4.2 Export promotion capital goods scheme (EPCG)**

### **Non fulfillment of export obligation**

Paragraph 5.1/5.2 of FTP, 2004-09 allows import of capital goods at concessional rate of customs duty subject to export obligation equivalent to eight times of duty saved on capital goods imported under EPCG scheme to be fulfilled over a period of eight years from the date of issue of licence. Paragraph 5.8.3 of Handbook of Procedure (HBP) Vol-I 2004-09 stipulates that the export obligation is required be fulfilled block wise and if export obligation of any particular block year is not fulfilled in terms of prescribed proportions, the licence holder shall, within three months from the block years, pay duties of customs on the non fulfilled portion of the export obligation along with interest.

**4.2.1** M/s Bharat Heavy Electricals Limited (BHEL), Bengaluru was issued an EPCG Licence (no.0730004439 dated 11 August 2006 by Regional Licensing Authority (RLA), Bengaluru to import capital goods for manufacture and export of products worth ₹ 5.79 crore to be fulfilled within eight years from the date of issue of licence. Against the import of capital goods (August to October 2006) through Airport & Air Cargo Complex (ACC), Bengaluru (Bond no.200223582 dated 25 August 2006) duty of ₹ 86.46 lakh was saved by the licensee. However, the licensee failed to make any export even after expiry of export obligation period (August 2014). Accordingly, the duty of ₹ 86.46 lakh saved was recoverable along with interest (₹ 1.32 crore).

On this being pointed out (October 2015) the custom department (Airport and Air Cargo Commissionerate) and the Regional Licensing Authority (RLA), Bengaluru issued show cause notices (February/April 2016 respectively) to the importer. Department of Revenue stated (November 2016) that SCN issued to the licence has been fixed for personal hearing for adjudication. Further progress is awaited (December 2016)).

**4.2.2** For Small scale industry (SSI) units, import of capital goods at 3 per cent customs duty shall be allowed subject to fulfillment of an export obligation (EO) equivalent to 6 times the duty saved (on capital goods imported under the scheme) over a period of 8 years from the date of issue of licence provided the landed c.i.f. value of such imported capital goods under the scheme does not exceed ₹ 50 lakh and the total investment in plant and machinery after such imports does not exceed the SSI limit.

Further, as per paragraph 5.9 of FTP, to incentivize fast track companies with a view to accelerate exports, if 75 per cent of specific EO has been fulfilled in half or less than half the EO period (i.e. 4 years) the remaining EO should be condoned and the authorization be redeemed.

Regional Licensing Authority (RLA), Surat issued (April/May 2011, August 2013) 'Export obligation discharge certificate (EODC)' to M/s Rachit Creation, M/s Shiv creation and M/s Meenaxi Textile for their four EPCG Authorizations involving duty saved amount of ₹ 10.06 lakh (₹ 4.12 lakh+ ₹ 5.94 lakh), ₹ 17.03 lakh and ₹ 8.01 lakh respectively for which specific export obligations were fixed at ₹ 60.40 lakh, ₹ 102.23 lakh and ₹ 48.09 lakh respectively i.e. at 6 times of the duty saved amount.

However, audit noticed that these exporters were also issued other EPCG licences thereby exceeding total c.i.f. value of imported capital goods by ₹ 50 lakh under the EPCG scheme. Accordingly, the EO should have been fixed at the rate of 8 items of the duty saved amount instead of 6 times as fixed by the RLA. Therefore, considering the 75 per cent of the EO fulfilled in respect of three authorization (paragraph 5.9 of FTP) upto four years of EO period and also EO fulfilled in respect of one authorization upto validity period ( 8 years) there was a total short fulfillment of export obligation of ₹ 53.86 lakh due incorrect fixation of export obligation.

On this being pointed out (April/May/November 2014), the RLA, Surat stated (May 2014) that action is being taken for shortfall to meet 100 per cent export obligation and final report would be submitted. However despite reminders issued in October 2015 and January 2016 for furnishing the status of these cases, RLA had not responded (December 2016).

Ministry response is awaited (December 2016).

#### **Non recovery of duty due to irregular redemption**

**4.2.3** According to paragraph 5.7.1 of the HBP, Vol-I, 2004-09, shipping bills proposed to be presented towards discharge of export obligation (EO) against a licence issued under EPCG Scheme shall bear the endorsement of the EPCG authorization number and date at the time of export. However, in terms of DGFT policy circular no.7/2002 dated 11 July 2002, such procedural lapse may

be condoned, in case of direct exports, subject to submission/verification of (i) An affidavit/undertaking, duly certified by an independent CA, declaring that the exports accounted for fulfillment of EO against the particular EPCG licence have not been/shall not be taken into account for fulfillment of EO against any other EPCG licence (ii) List of EPCG licences obtained by the licence holder and (iii) the product exported under the shipping bill was manufactured by using the imported machinery under EPCG.

M/s Vedanta Aluminium Limited availed duty exemption of ₹ 243.03 lakh on their capital goods imported (May 2005) through Kolkata (Port) Commissionerate against their EPCG licence no.0530138258 dated 16 March 2005 issued by Zonal JDGFT, New Delhi for export of “Calcined Alumina”. At the time of redemption of the EPCG licence, the licensee furnished an affidavit, in line with DGFT policy circular no.7/2002 dated 11 July 2002, for discharge of its EO but without the list of EPCG licences issued to them. Accordingly, the EPCG licence was redeemed by the office of the Zone JDGFT, New Delhi by considering the exports under the Shipping bill (SB) for discharge of its EO. On the basis of the Export Obligation Discharge Certificate (EODC) letter issued by the Zonal JDGFT, New Delhi, the Kolkata Customs Authority cancelled (September 2013) the bond and the Bank Guarantee (BG) executed by the licensee.

However, audit scrutiny of the shipping bill revealed that its entire quantity of exports of Calcined Alumina (26250 MT) had been utilized for discharge of EO against three other EPCG licences issued during January 2005 by Zonal JDGFT, New Delhi. Thus, there was no balance quantity of exports left in the said SB which could be utilized for discharge of EO against the objected EPCG licence issued in March 2015. Therefore, redemption of EPCG licence and cancellation of Bond/BG on the basis of the SB presented by the licensee was irregular resulting in non-recovery of duty saved amount of ₹ 2.43 crore along with interest of ₹ 3.45 crore.

The Zonal JDGFT, New Delhi authority stated (July 2016) that a letter has been sent to the licensee to pay duty of ₹ 2.43 crore. Further progress is awaited. Reply from customs commissionerate is awaited (December 2016).

Ministry reply has not been received (December 2016).

### **4.3 Special Economic Zones (SEZs)/Export Oriented Units (EOUs)**

As per notification no.45/2005-cus dated 16 May 2005, all goods produced or manufactured in a Special Economic Zone (SEZ) and brought to any other place in India in accordance with the provisions of FTP 2004-09 is exempt from whole of the additional duty of customs (SAD), leviable under section 3 (5) of the Customs Tariff Act, 1975, provided such goods are not exempted by the

State Government from payment of sales tax or value added tax. CBEC vide circular no.44/2013-cus dated 30 December 2013 classified that SAD is payable on stock transfer of goods from SEZ unit to their DTA unit, as no ST/VAT was leviable on such transfer of goods.

Further, as per proviso (1) of section 5A of Central Excise Act, 1944, the benefits of duty exemption notifications issued under section 5A shall not be applicable to goods produced or manufactured in a SEZ and brought to any other place in India, unless the said exemption notification specifically provides for extension of the benefit of exemption to such goods manufactured in SEZ units.

#### **4.3.1 Incorrect grant of duty exemption on Domestic Tariff Area (DTA) sale**

Audit scrutiny of DTA sales bills of entry at the customs wing of Falta SEZ revealed that M/s Linc Pen & Plastic Limited and two other SEZ units cleared (January 2013 to December 2014) their goods from Falta SEZ into their own units in DTA without payment of SAD by availing duty exemption under notification no.45/2005-cus dated 16 May 2005. However, scrutiny of the sale invoice revealed that although the SEZ units made a provision for levy of VAT on the sale invoice but it was evident that no VAT was collected on such sale as the VAT numbers quoted on sale invoice were that of the buyers (i.e. their DTA units). This indicated that the transactions were in the nature of stock transfer which were exempted from payment of ST/VAT for which the said SEZ unit were required to pay SAD of ₹ 1.61 crore, as per the provisions of aforesaid notification/CBEC circular.

Further, test check of DTA sale bills of entry revealed that the aforesaid units also did not pay CVD at the rate of 12 per cent ad valorem by availing CVD exemption (serial no.325 (ii) of Central Excise notification no.12/2012-CE dated 17 March 2012). However, as this notification was issued under section 5A of Central Excise Act which did not extend the duty exemption on goods manufactured in the SEZ unit and cleared in DTA, the grant of CVD exemption of ₹ 5.10 crore on the aforementioned DTA sale was also incorrect in terms of provision (1) of section 5A of Central Excise Act. Thus, short levy of customs duty on these accounts aggregate to ₹ 6.71 crore

On this being pointed out (February 2015), Falta SEZ authorities accepting the observations in respect of SAD exemption stated (March 2015/April 2016) that Demand cum Show cause notices are being processed by the competent authority for issue.

However for incorrect exemption of CVD, Ministry of Finance, DoR stated (December 2016) that duty has been charged as per Section 30 of SEZ Act, read with Rule 47(1) and 47(4) of SEZ Rules, 2006 which provides that

assessment of the goods cleared into DTA shall be made in accordance with Customs Act and Rules and it could not be different than the import duty charged in the normal course of imports.

The reply is not acceptable because levy or exemption from CVD is granted under Central Excise notifications issued under Section 5A of Central Excise Act. In the instant case notification No. 12/2012-CE has not exempted goods produced or manufactured in the SEZ and cleared in DTA from levy of CVD.

#### **4.3.2 DTA sale allowed despite negative net foreign exchange (NFE) earning**

As per paragraph 6.8 (a) of FTP (2009-14), Vol-I, the Export Oriented Units (EOU) units, other than Gems and Jewellery units, may sell goods up to 50 per cent of FOB value of the exports in domestic tariff area (DTA) on payment of concessional duties subject to fulfillment of positive net foreign exchange (NFE). However, as per paragraph I (h) of Appendix 14-I-H HBP, the DTA sale entitlement would accrue only if the unit has achieved positive NFE on cumulative basis.

M/s Smitabh Intercon Pvt. Limited an EOU, under the jurisdiction of Development Commissioner, Falta SEZ and Kolkata-III Central Excise, Commissionerate, got their Letter of Permission (LOP) renewed for five years from 1 September 2011. Scrutiny of statistical data provided in the Annual Performance Reports (APRs) of the EOU for the year 2012-13 to 2014-15 and import/export data provided by the unit for the financial years 2011-12 (w.e.f. 1 September 2011) revealed that the cumulative NFE of the units was negative in all these years but the EOU was incorrectly allowed to avail duty concession of ₹ 77.42 lakh on their DTA sale under paragraph 6.8 (a) of FTP.

On this being pointed out (December 2015), the Assistant Development Commissioner, Falta SEZ and Central Excise authority furnished (May 2016) import/export data of the EOU and informed that based on these data the NFE of the EOU on completion of five years period of export obligation was positive and hence DTA sale by the unit was correct.

Both the departments were informed (May 2016) that their reply was not tenable because as per the provisions of paragraph I (h) of Appendix-14-I-H, DTA sale entitlement to EOU units is decided on yearly basis on achievement of positive cumulative NFE, whereas on the basis of the statistical data furnished by the departments, the cumulative NFE of the EOU for the FY 2011-12 to 2013-14 was negative. Accordingly, the EOU was not eligible for DTA sales during this period FY 2011-12 to 2013-14 for which the duty concession of ₹ 77.42 lakh availed on DTA sale was recoverable. Further response of the

Development Commissioner, Falta SEZ and Kolkata-III Central Excise, Commissionerate is awaited (December 2016).

Ministry reply has not been received (December 2016).

#### **4.3.3 Incorrect reimbursement of CST**

Paragraph 6.11 (c) (i) of FTP 2009-14, read with paragraph 2 of the Appendix 14-I-I HBP provides that EOUs shall be entitled to reimbursement of CST on goods manufactured in India and the EOUs would be entitled to full reimbursement of CST paid by them on purchases made from DTA for production of goods and services as per EOU scheme.

Deputy Commissioner (DC), Cochin Special Economic Zone (CSEZ), Cochin vide circular no.1/2014 dated 25 April 2014 had informed all EOUs in Karnataka and Kerala that no claim for reimbursement of CST for purchases made from EOU/SEZ/STP/EHTP unit shall be preferred while submitting application for reimbursement of CST.

On scrutiny of the records of M/s Bloom Energy India (Pvt.) Limited an EHTP unit, it was observed that the CST claims (April 2010 to June 2012) to the extent of ₹ 75.47 lakh were wrongly reimbursed because procurements were made not from a DTA unit but from SEZ unit M/s Avalon Technologies Pvt. Limited in Madras Export Processing Zone (MEPZ). This has resulted in inadmissible reimbursement of CST of ₹ 75.47 lakh.

On this being pointed out (March 2016), the Software Technology Parks of India (STPI), Bengaluru authorities reported (July 2016) recovery of ₹ 18.42 lakh. Further progress is awaited (December 2016).

Ministry reply has not been received (December 2016).

#### **4.4 Advance Authorization Scheme**

As per conditions attached to the customs notifications issued to implement Advance Authorization (AA) Scheme and Duty Free Import Authorization (DFIA) Scheme of the FTP 2004-09 and 2009-14, the importer, at the time of clearance of imported material under the Scheme, execute a bond with such surety or security as specified by the Assistant/Deputy Commissioner of Customs, binding himself to pay on demand, an amount equal to the duty together in the interest, but for the exemption on the imported material, in respect of which the conditions specified in the notification has not been complied with. Further, it has been stipulated that the importer has to fulfil the EO specified in the licence within the period specified or within the extended period allowed by exporting the resultant products and produce the evidence of discharge of export obligation in the form of EODC issued by Regional Licensing Authority (RLA) to the satisfaction of the Assistant/Deputy

Commissioner within 60 days of the expiry of period allowed for fulfillment of EO.

#### **4.4.1 Non enforcement of bond/bank guarantee to recover the duty and interest on non fulfillment of export obligation**

On scrutiny of Bond Registers maintained in Group 7 of Chennai (Sea), Customs, it was observed (November 2015) that in 53 cases of imports made against AAs and DFIA issued by RLA, Coimbatore, Chennai, Puducherry and Madurai during 2009-10, the bonds are still pending cancellation due to non submission of EODC from concerned RLAs. The EO period in these 53 cases had already expired and the EODC is pending submission for more than two years.

The total value of imports made in the 48 cases worked out to ₹ 1529.67 crore and the duty involved was ₹ 382.42 crore. Bond/Bank Gurantee had not been enforced by the department to realize the revenue in terms of the aforesaid provision for imports for which EODC were not produced.

JDGFT, Puducherry stated (May 2016) that documents in support of export obligation/payment of duty with interest for non fulfillment of export obligation had been called for in respect of two cases (M/s Hindustan National Glass Industries Ltd and M/s Manatec Electronics) pointed out by Audit.

JDGFT, Coimbatore stated (April 2016) that adjudication orders have been issued/under issue in respect of four cases and in the balance two cases, letters had been sent to the firms for payment of duty with interest to regularize the case.

Chennai (Sea) authorities stated (July 2016) that in 14 licences of M/s Bharat Heavy Electornics Limited (BHEL) demand notices have been issued, in 2 licences (M/s Petro Araldite Private Limited), the BG was extended upto January 2017 and in the remaining 39 licences pertaining to various importers, demand notices have been issued and alert put in the EDI system.

Further progress is awaited (December 2016).

Ministry reply has not been received (December 2016).

#### **4.5 Served from India Scheme (SFIS)**

In terms of paragraph 3.12.4 of the FTP, 2009-14, Service Providers of services listed in Appendix 41 of HBP Vol-I, are entitled to Duty credit scrip equivalent to 10 per cent of free foreign exchange earned during current financial year, under the Served From India Scheme (SFIS). As per paragraph 9.53 (ii) of FTP “Service provider” means a person providing supply of a ‘service’ from India to service consumer of any other country in India. Therefore, while allowing SFIS duty credit to Service Providers in terms of paragraph 9.53 (ii), it is necessary

to ensure that the services had been supplied to the service consumers of any other country in India.

#### **4.5.1 Incorrect grant of SFIS duty credit**

M/s VIT University, Vellore was issued SFIS duty credit scrip of ₹ 195.84 lakh for the free foreign exchange earned for rendering “Higher education service”. Scrutiny revealed that the Foreign Inward Remittance Certificate issued by Bank was towards the “fees” collected by the University, from Non-resident Indian (NRI). However, from the list of students from whom the fees in foreign currency were collected, no proof of their nationality or status of residence could be seen.

As the university had claimed SFIS duty credit in terms of paragraph 9.53 (ii), the grant of duty credit without ensuring the nationality of the students, was not in order. This had resulted in incorrect grant of duty credit under SFIS to the tune of ₹ 1.48 crore which was recoverable with interest.

Further, it was also observed that duty credit amounting to ₹ 0.40 lakh in 17 cases on the earnings from the sale of application which was also not correct as cost of applications does not fall under the ambit of services and hence was recoverable with interest.

On this being pointed out (February 2015), the RLA, Chennai replied (February 2016) that the issue had been referred to their Headquarters for a decision. Further progress is awaited (December 2016).

Ministry reply has not been received (December 2016).

#### **4.5.2 Grant of SHIS duty credit to ineligible goods**

In terms of paragraph 3.16.1 (b) of the FTP, 2009-14, Status Holders of sectors specified in paragraph 3.16.4 shall be entitled to a duty credit scrip at one per cent of FOB value of exports made during the year 2009-10 to 2012-13. Further, additional sectors as specified in paragraph 3.10.8 of the HBP Vol-I, 2009-14 shall be eligible for Status Holder Incentive Scrip (SHIS) on exports made during 2010-11 to 2012-13. According to the above provisions, Basic chemicals (excluding Pharma products) falling under chapter 28 and 29 of ITC (HS) classification and chemical and allied products as specified in paragraph 3.10.8 of HBP are eligible for grant of credit under SHIS.

M/s Oren Hydrocarbons Pvt. Limited was issued (April 2013) an SHIS scrip for ₹ 1.92 crore for the exports made during the period April 2011 to March 2012, under the sector “Basic chemicals (excluding Pharma products)” by Regional Licensing Authority (RLA), Chennai.

Audit observed that the company had exported goods falling under various chapter/tariff items which were neither specified under “Basic chemicals

sector” nor under the ‘Chemicals and allied products sector’ and had claimed duty credit under SHIS. This had resulted in incorrect grant of SHIS duty credit of ₹ 1.31 crore which was recoverable with interest.

On this being pointed out (February 2015), Customs department stated (October 2016) that the licence has been utilized (₹ 1.84 crore) with available duty credit of ₹ 8 only (as on October 2016). Reply from RLA, Chennai is awaited (December 2016).

Ministry reply has not been received (December 2016).

#### **4.5.3 Non recovery of late cut**

As per paragraph 3.6 (b) of Handbook of Procedure (HBP) VOL-I, 2009-14, an application of SFIS duty credit shall be filed within 12 months from the end of relevant month/quarter/half year/year for the foreign exchange earned during the current financial year. Further, as per the paragraph 9.3 of HBP, Vol-I, 2009-14, whenever application is received after expiry of duty date, such application may be considered after imposition of late cut at the rate of 2 per cent , 5 per cent and 10 per cent applicable.

It was observed that in 15 SFIS scrips issued to M/s Father Muller Charitable Institutions and six others late cut amounting to ₹ 15.49 lakh was not levied for delayed submission of application for duty credit as per the aforesaid provisions. The omission to levy late cut resulted in excess issue of duty credit scrip for ₹ 15.49 lakh to the scrip holders.

On this being pointed out (December 2015/January 2016), the RLA (JDGFT Bengaluru) recovered late cut amounting to ₹ 0.41 lakh including interest from M/s Indfrag Limited (February 2016). Recovery details for ₹ 15.17 lakh from the remaining six units are awaited (December 2016).

Ministry reply is awaited (December 2016).

#### **4.6 Focus Product Scheme**

Focus Product Scheme (FPS), an export promotion scheme under Chapter 3 of the Foreign Trade Policy (FTP), 2009-14, provides for duty credit equivalent to 2/5 per cent of FOB value of exports realized in free foreign exchange for export of products listed in Table 1 of Appendix 37D of Handbook of Procedure (HBP), Vol-I.

##### **4.6.1 Grant of excess duty credit under FPS scheme**

As per public notice 42 (RE 2012)/2009-14 dated 31 December 2012 (as amended) ‘Handmade pouffes/Articles of Bedding, cushions’ etc. falling under ITC-HS code 94049099 are allowed additional bonus benefit of 2 per cent in FPS under serial no.583 of Table 1 of Appendix 37D for exports made with effect from 1 January 2013.

M/s Raga Textile India Pvt. Limited and 34 other exporters were granted bonus additional duty credit of 2 per cent of FOB value on exports of 'Power loom seat pad and Cotton Power loom yarn dyed cushion filled with polyester/cotton' under FPS. The bonus duty credit was granted in 55 scrips for exports made during the period January 2013 to January 2015.

Audit pointed out that the exported items were Power loom products and not handmade items/articles of Bedding, cushion etc. therefore are ineligible for additional bonus credit as per aforesaid Appendix 37D. This had resulted in grant of excess duty credit of ₹ 77.43 lakh.

On this being pointed out (January 2016), the DGFT, Coimbatore stated (March to June 2016) that in respect of 35 scrips, excess duty of ₹ 45.34 lakh along with interest of ₹ 9.77 lakh was recovered by way of adjustment in the licences issued subsequently. Reply in respect of remaining 20 scrips is awaited (December 2016).

Ministry reply has not been received (December 2016).

#### **4.7 Incremental exports incentivisation scheme (IEIS)**

##### **4.7.1 Excess benefit granted under IEIS**

As per paragraph 3.14.4 (b) of Foreign trade policy (FTP), 2009-14, an Importer Exporter Code (IEC) holder would be entitled for a duty credit scrip at the rate of 2 per cent on the incremental growth achieved during the period 1 January 2013 to 31 March 2013 compared to the period from 1 January 2012 to 31 March 2012 on the FOB value of exports. Further, Director General of Foreign Trade (DGFT), New Delhi directed (F.No.01/61/180/AM13/PC3/657 dated 16 October 2014) that the benefit of Incremental Export Incentivisation Scheme (IEIS) for the last quarter of 2012-13 (i.e January to March 2013) will be limited to 25 per cent growth or Incremental growth of ₹ 10 crore in value, whichever is less.

Regional Licensing Authority (RLA), Jaipur issued an IEIS authorization for benefit of ₹ 29.77 lakh to M/s Gravita India Limited, Jaipur for incremental growth during the period January 2013 to March 2013 in comparison to January 2012 to March 2012. Audit scrutiny revealed that as per aforesaid DGFT instruction the benefit allowable however, works out of ₹ 7.55 lakh. Thus, excess benefit of ₹ 22.22 lakh was granted to M/s Gravita India Limited, Jaipur which is recoverable.

This was pointed to the RLA, Jaipur in November 2015, their reply is awaited (December 2016).

Ministry reply has not been received (December 2016).

