

CHAPTER V

ASSESSMENT OF CUSTOMS REVENUE

We found from test check of records (February 2015 to March 2016), 29 cases of incorrect assessment of customs duties having total revenue implication of ₹ 17.48 crore. Out of these, 14 cases are discussed in the following paragraphs and 15 cases which have been accepted by the department and recoveries made/recovery proceedings initiated are mentioned in **Annexure 9**.

5.1 Imports cleared without levying applicable anti dumping duty

As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty (ADD). Accordingly, ADD was imposed from time to time on goods like 'Hexamine', 'Methylene chloride', Albendazole, Electronic calculator, 'Aluminum alloy wheels' and Phenol when these were imported from specified countries like Saudi Arabia, China, Singapore, USA, European Union and Taiwan.

Assessing officers cleared 67 consignments of such goods imported by M/s Ashish life Science Pvt. Limited and 28 others from these specified countries without levying applicable ADD amounting to ₹ 6.23 crore.

The Ministry/ICD Tughlakabad/JNCH, Mumbai authorities in respect of import of Hexamine, Electronic calculators and 'Aluminum alloy wheels' reported recovery of ₹ 1.33 crore beside issue of less charge cum demand notice to one importer.

The JNCH authorities in respect of import of 'Polypropylene' stated that CBEC (Board) vide notification no.29/2016-cus (ADD) dated 5 July 2016 had excluded 'Polypropylene beads' from levy of ADD, therefore ADD is not applicable vide notification dated 8 March 2016.

The department reply is not acceptable because the amendment to notification no.7/2016-cus (ADD) dated 8 March 2016 came into force from 5 July 2016 (notification no.29/2016-cus (ADD) while the goods were imported from 10 March 2016 to 29 March 2016 during which notification no.7/2016-cus (ADD) was applicable and accordingly the goods were liable for ADD.

Reply in respect of imports, made from ICD Tughlakabad, JNCH, Nhava Sheva, Mumbai by 10 importers is awaited (December 2016).

5.2 Non-collection of revenue due to delay in disposal of warehoused goods (liquor)

According to section 2 read with section 61 (1) (b) of the Customs Act 1962, if the warehoused goods are not removed within the prescribed period, the

proper officer has to demand full amount of duty chargeable on account of such goods together with interest payable till the date of payment of duty. In case of failure to pay the amount demanded, the proper officer is required to immediately proceed to detain the goods and take action for recovery of duty by auctioning the goods according to the provisions of section 72 of Customs Act, 1962. If such recovery falls short of demand, the importer is liable for further recovery action under section 142 of the Customs Act 1962.

Audit scrutiny in disposal section of JNCH and NCH revealed that 157 bonds/lots of liquor (103 in JNCH and 54 in NCH) pertaining to period 2001-02 to 2013-14 were lying in bonded warehouses. Further, in 136 lots/bonds worth ₹ 3.53 crore involving duty element of ₹ 5.65 crore, inordinate delay was noticed in taking action on the expired bonds at the bonds section and issuing disposal orders to disposal section for auctioning goods which led to deterioration of goods and its commercial value with the passage of time.

On this being pointed out (February 2016), JNCH Authorities stated (April 2016) that 28 bonds/lots were already disposed, 2 bonds/lots are under process for re-export and 1 bond wherein duty has been paid is under disposal. The fact remains that pending disposal of remaining 105 lots/bonds having assessable value of ₹ 1.65 crore, duty of ₹ 2.64 crore remained unrealised. Further progress is awaited (December 2016).

5.3 Non levy of anti dumping duty on DTA clearances

Sub-section 2A of Section 9A of the Customs tariff Act, 1975, provides that goods imported by the Exported Oriented Units (EOUs) are exempted from ADD. If the goods imported are either cleared as such into domestic tariff area (DTA) or used in the manufacture of any goods that are cleared into the DTA, ADD shall be levied on that portion of the goods so cleared or so used as was leviable when it was imported into India. Similar provisions were stipulated under paragraph 10 of circular no.12/2008-cus dated 24 July 2008. Accordingly, an amount equal to ADD foregone on the goods at the time of import is also required to be paid on the equivalent quantity of goods used for manufacture of any goods which are cleared into DTA or on such quantity of goods which are cleared such into DTA.

'Polypropylene' (CTH 39021000 OR 39023000) originated and exported from Singapore {Notification no.119/2010-cus (serial no.19 of the table)} is leviable to ADD at the prescribed rate dated 19 November 2010.

M/s Fiberweb India Pvt. Limited, an EOU under Daman Commissionerate is engaged in manufacturing of 'spun bond Non woven Fabrics' (Chapter 56) from 'Polypropylene'. EOU imported Polypropylene from M/s Exxon Mobil Chemical Asia Pacific, Singapore and also procured Polypropylene from

domestic market. The unit had cleared 7369.89 MT of manufactured goods, waste/scrap and rejects valued at ₹ 78.22 crore in DTA from 2009-10 to 2013-14 without payment of ADD on the quantity of Polypropylene used in these goods. Since the unit had imported Polypropylene (CTH 39021000) leviable to ADD but for exemption to EOU was liable to ADD on the portion of polypropylene used in the manufacture of goods cleared in DTA in terms of aforesaid provisions. This resulted in non levy of ADD of ₹ 1.07 crore which was recoverable with applicable interest.

On this being pointed out (February 2015), Ministry stated (November 2016) that show cause notice has been adjudicated (February 2016) and the unit had filed appeal before CESTAT which is pending. However, the unit had deposited (May 2016) ₹ 1.07 lakh. Further progress is awaited (December 2016).

5.4 Irregular regularization of sanctioned drawback

As per Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the Drawback (DBK) paid to any exporter stands recoverable if sale proceeds are not realized within the period allowed under the Foreign Exchange Management Act (FEMA), 1999, subject to any extensions by the RBI. The said period of realization was 12 months prior to 31 March 2013 and 9 months thereafter as specified by RBI vide RBI A.P. (DIR series) circular no.105 dated 20 May 2013 and circular no.37 dated 20 November 2014 respectively. It follows that exporter becomes ineligible for payment of DBK, if export realization period is not extended by RBI.

Scrutiny of exports foreign exchange outstanding statement (XOS) for the half year ended December 2014, received from RBI, Kolkata along with drawback shipping bills and drawback scrolls pertaining to payment of drawback, revealed that the full export proceeds in respect of goods exported through 53 (fifty three) shipping bills (for the period of February 2013 to June 2014) from Kolkata Airport Commissionerate, involving drawback of ₹ 90.48 lakh were not realized even after expiry of more than twelve months from the date of export or any extended period allowed by RBI.

On this being pointed out (January 2016), the department forwarded (May 2016) documentary evidences of full/part recovery of ₹ 11.09 lakh and informed (June 2016) that balance amount of drawback was regularized on the basis of e-BRC certificate submitted by the exporters by recovering interest on drawback amount for the period of delay in export realization.

Scrutiny of copy of e-BRC furnished by the department revealed that in respect of 29 shipping bills, the export realization was made after expiry of permissible period of export realization prescribed by RBI under aforesaid circulars but no documents/evidence for extension of export realization period granted by RBI

were produced to Audit. In absence of any extension being granted by RBI, such export realization becomes ineligible for claim of drawback, in terms of aforesaid Rule 16A which warrants recovery of proportional drawback. Therefore, the regularization of sanctioned drawback amount of ₹ 50.43 lakh by customs department by recovering interest on such drawback amount for the period of delay in export realization, in contravention to prescribed rules/provisions/instruction was irregular.

On this being pointed out (June/July 2016), the customs department informed (July/August 2016) of having issued letter for recovery of drawback in the objected cases and stopping disbursing of drawback of these exporters. Further progress is awaited (December 2016).

5.5 Non levy of safeguard duty

5.5.1 ‘Seamless tubes, pipes of iron, alloy or non-alloy steel of specified dimensions and characters’ falling under specified tariff items of the Customs Tariff Act, 1975 attract safeguard duty at the rate of 20 per cent ad valorem with effect from 13 August 2014, when imported from developed countries and China.

M/s Emerson Climate Technologies (India) Limited and three others had imported (August to November 2014) a consignment of ‘Seamless tubes, pipes’ through JNCH, Nhava Sheva, Mumbai. The imported goods were classified under CTH 73041910, 73041990 and 73042990 and cleared without levying safeguard duty. This resulted in short levy of duty of ₹ 23.44 lakh.

This was pointed to the department in December 2015/March 2016. Their reply is awaited (December 2016).

5.5.2 ‘Saturated Fatty Alcohols with specified carbon chain length’, and falling under Customs tariff heading (CTH) 382370 attract safeguard duty.

M/s Chemo India and two others importers had imported (October 2014/October 2015) three consignments of ‘Industrial fatty alcohol’ classified under CTH 38237090 through JNCH Nhava Sheva, Mumbai. The goods were cleared without levying safeguard duty amounting to ₹ 10.80 lakh which includes interest of ₹ 1.42 lakh.

On this being pointed, JNCH authorities reported (November 2016) issue of less charge cum demand notice to M/s Esteem Industries Pvt. Ltd which is under adjudication.

Reply in respect of other two importers is awaited (January 2017).

5.6 Excess drawback payment due to incorrect application of rate

As per Drawback Schedule effective from 1 October 2011, (notification no.68/2011-cus (N.T.) dated 22 September 2011), Cotton Denim Fabrics classifiable under Drawback Schedule Sub-heading number 520905, 520906, 520907 & 521103 were eligible for drawback at the rate of 4.7 per cent/5 per cent of FOB value of exports whether CENVAT facility has been availed or not. The said drawback rates were amended vide notification no. 75/2011-cus (N.T.) dated 28 October 2011, giving its effect from 1 October 2011, whereby the drawback rate in respect of afore mentioned items under drawback sub serial number Nos. 520905B, 520906B, 520907B & 521103B were revised at the rate of 1 per cent of FOB value, when CENVAT facility was availed.

Scrutiny of drawback cases under Commissioner of Customs (Preventive), West Bengal, revealed that M/s. Arvind Limited was sanctioned drawback for exports (October/November 2011) of “Cotton denim fabrics” made through 16 bills at higher rate of 4.7/5 per cent although CENVAT credit facility has been availed for exported goods, the fact which has been accepted by the exporters through their declaration in ARE-1. This had resulted in excess payment of drawback to the tune of ₹ 20.55 lakh which was recoverable along with applicable interest.

On this being pointed out (March/May 2015/July 2016), the Ministry reported (September 2016) recovery of ₹2.81 lakh including interest in respect of one export consignment and stated that exporter’s appeal against confirmation of demand is pending. Further progress is awaited (December 2016).

5.7 Loss of revenue due to non recovery of interest

As per section 47 (2) of Customs Act, 1962 read with notification no.28/2002-cus (NT) dated 13 May 2002, where the importer fails to pay the import duty under sub section (1) within five days (excluding holidays) from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at the rate of 15 per cent, till the date of payment of the said duty.

An amendment of section 47 of Customs Act, 1962 was made on 10 May 2013 by which the number of days within which the importers need to pay the customs duty was reduced from five to two days (excluding holidays).

Analysis of the ICES 1.5 dump data for the months of April 2013 and May 2013 (received in March/April 2015) revealed that the duty of customs were paid belatedly in respect of 135 bills of entries after the allowable period of 5 days or 2 days as stated aforesaid. However, no interest was calculated for the delayed payment of customs duty by the EDI system,

Due to deficiency in the application software, the system failed to calculate the interest element due from the importers beyond 5/2 days (as the case may be), from the date of assessment to the date of payment of duty, automatically, in the 135 cases. This had resulted in non-collection of interest from importers leading to loss of revenue of ₹ 10.29 lakh.

This was pointed out to the department in October 2015. Their reply is awaited (December 2016).