

CHAPTER-5

REGULATORY FRAMEWORK FOR THE OPERATIONS OF ICDs AND CFSs

The regulatory framework for ICDs and CFSs is derived from legislation, i.e., Customs Act 1962; Customs Tariff Act, 1975; Customs Manual and regulations like; Goods Imported (Conditions of Transshipment) Regulations, 1995; Handling of Cargo in Customs Areas Regulations, 2009; Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and Instructions, Circulars and Notifications issued by CBEC from time to time.

The regulatory framework lays down certain key requirements for monitoring of cargo passing through ICDs and CFSs, provisions for safeguarding government revenue, provisions for ensuring environment protection and requirement of internal control and internal audit.

Audit, through test check of transactions at selected ICDs and CFSs and examination of relevant records, examined the level and extent of compliance with the regulatory framework. In the process, audit also assessed whether the regulations were sufficient and their compliance was effective in safeguarding the government revenue.

5.1 Monitoring of cargo

With a view to ascertain the system for monitoring movement of containers from Gateway port to ICDs and CFSs and *vice versa* in respect of Import and Export cargo, Audit examined whether the monitoring was done manually or through transshipment module of ICES which involves exchange of messages electronically among Customs, Port authorities, ICDs and Shipping Agents for the transshipment of containerised cargo.

In the manual system of monitoring, to gather assurance that periodical reconciliation was carried out, Audit examined whether the landing certificates issued by the ICDs and CFSs are submitted to the Customs at the originating port in respect of import cargo and transference copy of the Shipping Bill along with a copy of EGM was received by ICDs and CFSs from Gateway port(s) in respect of Export cargo.

Analysis of pending unclaimed/un-cleared cargo at selected ICDs and CFSs was also conducted with a view to identify the reasons involved for long-standing containers which occupy storage space of the custodians and also to ascertain the nature of cargo and its impact on revenue as well as on the environment. At the transaction level, Audit exercised checks to ensure that the import and export restrictions/prohibitions on certain goods through specified ICDs were scrupulously followed.

5.1.1 Lack of proper monitoring of the movement of export cargo

An Export Transshipment Module (ETM) has been implemented in ICES for the transshipment of export containers from ICD or CFS to any other Gateway Port. The transshipment bond furnished by the carrier/custodian is now mandatorily required to be registered in the ICES application. A transshipper has to submit an Export Transshipment Permit (ETP) application in the ICES which would be verified by the Preventive Officer of the respective ICD or the CFS and an ETP Approval permit issued, which should accompany the container being transhipped. As soon as the ETP permit is issued, the Bond will be debited and would be suitably re-credited after successful filing of the Export General Manifest (EGM).

From the information provided to Audit, it was observed that the ETM was not operationalised in two ICDs and seven CFSs falling under Noida, Kanpur, Central Excise, Bolpur and Kolkata Port Commissionerate and in another 4 ICDs falling under Noida, Meerut and Shillong, NER Commissionerates, the status of operationalisation of ETM are not known **(Statement 11)**.

CGST Commissionerate, Bolpur (December 2017) stated that message exchanging facility is not available in EDI system at ICD, Durgapur either for imports or exports, and data is being exchanged manually.

In Chennai Commissionerate where ETM was introduced in all ICDs and CFSs attached to Chennai Port vide Public Notice No. 158/2016 dated 13 July 2016, the ETM for transshipment of containers from ICDs and CFSs to other Ports viz., Ennore and Kattupalli Ports has not been operationalised due to non-assignment of necessary roles in the ICES to the customs officers posted at the CFSs. On being pointed out, the department stated (August 2017) that the roles in ICES will be assigned on receipt of requisition from the custodians.

Due to non-operationalisation of ETM at ICDs and CFSs, monitoring the delivery of export cargo transhipped from ICDs and CFSs to other Ports/ICDs/CFSs is done only through transference copy of shipping bills in terms of Board's circular No.57/98 dated 4 August 1998.

As per the aforesaid Circular, for goods exported from ICDs/CFSs, the transference copy of the shipping bills which is a proof of arrival of the cargo at the Gateway Port has to be received at the ICD or CFS within 90 days.

In thirteen ICDs and twelve CFSs falling under nine¹⁴ Commissionerates, transference copies of shipping bills for the period of April 2016 to March 2017 were not received even after the lapse of more than 90 days from the date of

¹⁴Mumbai Customs Zone I, Shillong NER, Kolkata Port, Ludhiana, Ahmedabad, Kanpur, Jodhpur, Jamnagar, Mundra

exports of such goods **(Statement 12)**. At ICD Durgapur of Bolpur Central Excise and Customs Commissionerate, the reconciliation was not done by customs authority for the period from 2012-13 to 2014-15. In respect of ICD Mulund, the department stated that instructions have been given for timely reconciliation of the transference copies.

Non-operationalisation of Export Transshipment module and non-reconciliation of the transference copies of shipping bills being an alternative mechanism to monitor the movement of export cargo has rendered the monitoring inadequate.

DoR stated (February 2018) that ETM is functional at Chennai. In Mumbai I Commissionerate transference copies at ICD Mulund are now being received regularly after much persuasion, while the matter regarding receipt of transference copies for the past period is being pursued.

In respect of Shillong Commissionerate it was stated that EDI is not operational at ICD, Amingaon.

DoR's response confirms the audit observation that monitoring of container movement from ICD/CFS to gateway ports is not only heavily based on physical movement of documents which in itself is beset with many risks, even though ETM module has been made functional in the EDI system there is hardly any monitoring being done through the system.

5.1.2 Lack of monitoring for movement of import cargo

As per CBEC Circular No. 46/2005-Customs dated 24 November 2005 transshipment of containerized cargo from one Port to an Inland Port or ICD or CFS where the Indian Customs EDI System (ICES) is operational has been automated and would involve exchange of messages electronically among Customs, Port authorities, ICDs and Shipping Agents. The container arrival report, submitted electronically in the ICES system by the transporter at the destination ICD or CFS, will be matched with the transshipment message received from the Gateway Port based on which a 'landing certificate' message will be generated by the inland port/ICD/CFS which will be transmitted to the Gateway port for closure of IGM Lines.

In all 5 CFSs, falling under Kolkata (Port) Commissionerate and also in 7 ICDs and 6 CFSs falling under other six¹⁵ Commissionerates, the monitoring of import cargo was done manually and no electronic exchange of messages for Transshipment of Cargo was being carried out **(Statement 13)**.

Further, even in those Commissionerates where the Import Transshipment Module (ITM) had been implemented, the 'Landing Certificate' acknowledging

¹⁵ Ahmedabad, Hyderabad, Shillong NER, Bolpur C.Ex., Mundra, Jamnagar

receipt of the containers is being issued manually by the Custodian of ICD to the Gateway port and the bond is also re-credited manually. Audit pointed out that a suitable provision in ICES needs be incorporated for electronic submission of 'Landing certificate' and 'automated re-credit of bond amount'.

Similarly, the movement of containers from Gateway Port to CFSs has also been automated and being monitored through ICES application but the module could not be used effectively in ascertaining the actual destination of containers. In Chennai Sea Customs Commissionerate, in the module, the destination of four containers was shown as Gateway Distriparks CFS and the corresponding BEs also indicated that the clearance had been given from that CFS. But on enquiry, the custodian stated that none of the containers were received and no Out of Charge (OOC) was issued from their CFS.

Only after the discrepancy was pointed out by Audit, the Container Movement Facilitation Cell (CMFC) of Chennai Customs Commissionerate, which monitors the movement of these containers, examined the issue and stated that one of the containers had actually moved to a SEZ location and the remaining three containers were directly taken out from the port under *Direct Port Delivery*(DPD).

Despite the automation in the movement of containers, tracking of containers as to its actual destination could not be ascertained by the department.

On the shortcoming in automation being pointed out, the department informed (October 2017) that DG (Systems), New Delhi has been addressed to automate the re-credit of bond by populating the landing certificate message into ICES and also accepted (November 2017) the need for additional provisions in ICES for identifying the location of the containers.

DoR while accepting the audit observation stated (February 2018) that presently the automated transshipment module is implemented between JNPT and ICD Tughlakabad and detailed procedure is being worked out by the DG (Systems) and will be circulated to all automated customs location.

Further, in response to shortcomings pointed out in automation, DoR stated that the provision is available in ICES software whereby the custodian can present arrival report electronically and also for automation of bond re-credit. However, as problems have been reported, the same is being rectified.

Final outcome is awaited.

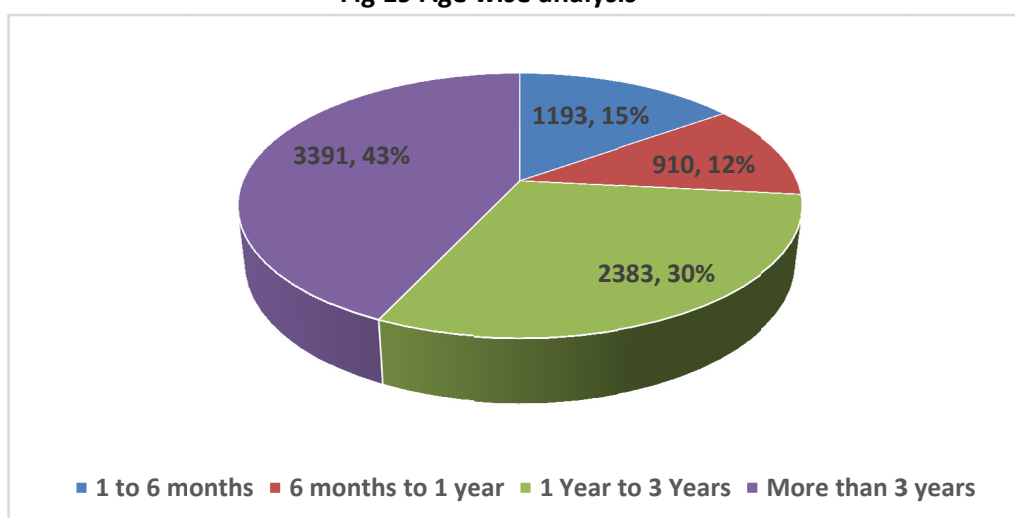
5.2 Pendency of uncleared cargo

As per Regulation 6(m) of HCCAR 2009, goods lying unclaimed, uncleared or abandoned may be disposed off by the custodian in the manner specified within a period of 90 days, which may be extended by the Commissioner of

Customs, on sufficient cause being shown. The custodian will furnish to the customs department the list of items with complete particulars such as Bill of Lading, Description of goods, weight, name of the consignee/consignor, etc to be considered for disposal.

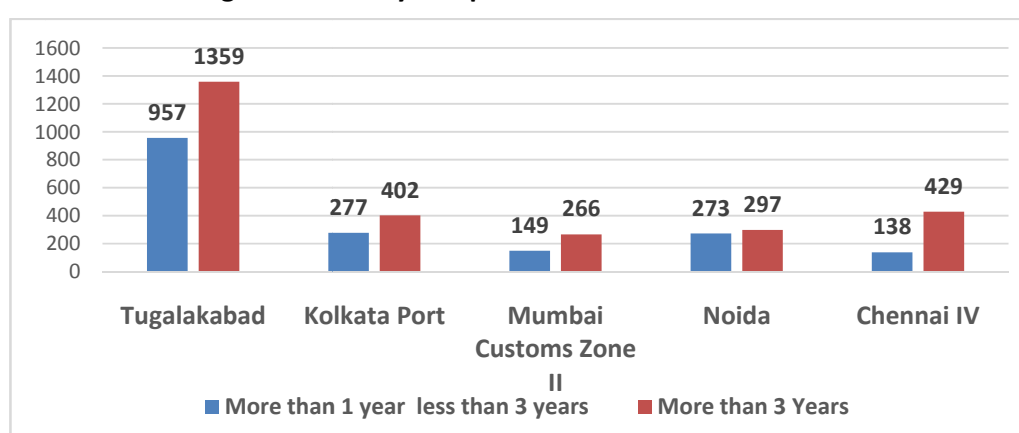
From the uncleared cargo details furnished by the custodians of the 85 selected ICDs and CFSs, it was observed that 7877 containers occupying storage space of 117052.22 m², were pending for disposal as on 31 March 2017 (**Statement 14**), out of which 3391 containers involving storage space of 50390.26 m² were pending disposal for more than 3 years. A break up of the pendency status of the containers and the age-wise analysis of the pending cargo is shown below:

Fig 19 Age wise analysis



of the 5774 containers pending for more than 1 year, 4547 containers (79 per cent) are pending in the following five commissionerates.

Fig 20: Pendency – Top Five Commissionerates



A scrutiny of the status of the pending containers revealed that 3535¹⁶ containers (45 *per cent*) are lying uncleared for more than 1 year due to delays at various stages (**Appendix III**).

Table 4
Reasons for Uncleared cargo

| Status of pendency | Pending containers | |
|--|--------------------|---------------------|
| | More than 3 yrs | Between 1 and 3 yrs |
| Pending clearance after filing bill of entry | 351 | 273 |
| UCC Section | 304 | 288 |
| Warehouse Disposal | 223 | 215 |
| Destruction | 151 | 65 |
| Confiscated & Detained goods | 1080 | 272 |
| Others | - | 313 |
| Total | 2109 | 1426 |

Analysis of the uncleared cargo cases pending for more than one year and more than 3 years revealed that the inordinate delay in clearance was mainly attributable to (i) issue of no objection certificate (NOC) by the customs department (ii) issue of clearance certificate by the various Participating Government agencies(PGA) like Plant Quarantine (PQ), Pollution Control Board (PCB), Port Health Officer (PHO), Food Safety and Standards Authority of India (FSSAI) etc., (iii) implementing the orders for destruction of cargo (iv) re-exporting the cargo in cases where such re-export orders had been issued.

Consequent to delay in initiating action for disposal of uncleared cargo, in four ICDs and six CFSs falling under ten¹⁷ Commissionerates, 262 containers of perishable goods like food items, fruits, Medicines, Betel Nuts, Pulses etc., pending for a period ranging from 1 to 12 years were rendered unfit for human consumption (**Statement 15**).

Further, in seven CFSs falling under Chennai Customs Commissionerate, 86 containers of Timber/teak logs were pending clearance for a period ranging from 2 to 10 years. The goods were ordered for destruction by the Regional PQ authorities but the destruction has not been carried out as the Commissionerate had sought clearance from the PQ Headquarters at New Delhi to avoid loss of revenue on account of the destruction and also to avoid the impact on environment due to incineration of the wooden logs.

At ICD CONCOR, Kanakpura, falling under Jodhpur Commissionerate, 27 live bombs and 19.4 MTS of war material scrap were lying undisposed since 2008 which is a serious cause for concern. Similarly, at ICD, Udaipur and ICD, Bhagat

¹⁶Details of ICD Tuglakabad not included as break up of pendency were not furnished

¹⁷Kandla, Chennai V, Chennai IV, Cochin, Tughlakabad, Vishakapatnam, Nagpur 1, Bengaluru, Tuticorin, Patparganj

Ki Kothi, falling under Jodhpur Commissionerate, 195 Kgs of empty cartridge shells and 102.8 MTS of war material scrap were lying undisposed since 2004.

Fig: 21

Photographs of uncleared war material in ICD Bhagat ki Kothi, Jodhpur



Though CBEC has laid down clear procedures¹⁸ for expeditious disposal of unclaimed and uncleared cargo, the fact that 7877 containers of unclaimed and uncleared goods are lying undisposed reflects a poor compliance of Board's instructions. Audit has also noticed that 469 containers out of 7877 lying uncleared contain hazardous materials and municipal waste which poses a serious threat to the environment and safety (See Para 5.3).

Audit noticed that some importers, taking shelter under Section 23 of Customs Act, routinely abandoned the containers. As on 31 March 2017, in the selected ICDs/CFSS, 838 Containers were abandoned after filing of bill of entry, which remained uncleared (See Para 5.4).

DoR while accepting the audit observation stated (February 2018) that efforts are being made to clear the long pending cargos in a time bound manner.

5.2.1 Absence of independent mechanism to verify the uncleared cargo (UCC) report furnished by the custodian

Presently, the pending list of uncleared/unclaimed cargo is prepared by the custodian, using their own customized software and submitted to the department. However, many discrepancies were noticed in the list submitted by the custodian which the department could not detect due to lack of any independent cross verification mechanism. A few illustrative cases detected in the test checked CFSs is detailed below:

In CFS, M/s. Marigold Logistics (P) Ltd (Bengaluru), seven containers of unclaimed cargo imported between July 2015 and January 2016 was not reported in the Monthly Technical Reports (MTRs) submitted to the Commissioner of Customs by ICD.

¹⁸ Circular 50/2005 dt 1.12.2005, Procedure for disposal of uncleared/unclaimed cargo under Section 48 of Customs Act 1962

In Kolkata (Port) Commissionerate, the Special Disposal Cell (SDC) maintains only records/data of UCC cargo for which NOC for disposal are sought by the various CFS custodians from time to time, and does not maintain data on the total pendency of UCC at the various CFSs.

Kolkata (Port) Commissionerate (December 2017) replied that the data are acquired and compiled by the SDC as and when the custodian provides the same and there is no mechanism to verify the veracity of these data.

In Patparganj Commissionerate, disposal of goods were 'nil' during 2012-13 to 2016-17 whereas 423 numbers of cargo were shown as disposed in the uncleared cargo report furnished by the custodian (CWC) during this period.

In ICD Mulund falling under Mumbai Customs Zone I Commissionerate, 17 containers which were physically available in the ICD was not reflected in the inventory maintained by them.

In ICD Irungattukottai falling under Chennai V Customs Commissionerate, goods which remained uncleared for more than 180 days from the inward date did not figure in the UCC list of the ICD during the relevant period, which was confirmed from the fact that no monthly statement of uncleared/unclaimed cargo report was being submitted by the ICD to the Commissionerate.

In CWC, Virugumbakkam, a CFS under Chennai VI Customs Commissionerate, out of 472 lots of goods lying uncleared for more than one year, details of only 101 lots were submitted by the custodian to UCC section as of August 2017.

In Sanco CFS of Chennai V Customs Commissionerate, two containers imported in June 2009, which were lying unopened and unexamined for nearly 8 years, were not reported by the custodian in their monthly statement. When Audit pointed out, the department stated (September 2017) that the containers were not examined due to restrictions as these were hazardous and that steps have since been initiated to identify all such cases of cargo lying unopened in other CFSs for early disposal.

DoR in their reply stated (February 2018) that in respect of Bengaluru Commissionerate details of unclaimed cargo are now incorporated in the monthly report, and unclaimed cargo lying in seven containers have now been disposed off.

Replies in the remaining cases was awaited.

5.3 Dumping of Hazardous waste

As per Para 2.32.1 of the Handbook of Procedures, Vol. I, 2009-14, Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap

containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise. Import of seconds and defective, rags, PET bottles / waste is regulated as per the Import Policy prescribed under Schedule I of ITC (HS).

As per the Hazardous wastes (Management, Handling and Transboundary Movement) Rules, 2008, import of hazardous goods like metal scraps and used tyres without Pre-Shipment Inspection Certificate (PSIC) and permission from Ministry of Environment and Forest (MoEF) and clearance from State Pollution Control Board requires the importers to re-export the goods within 90 days from the date of its arrival into India and its implementation will be ensured by the concerned State Pollution Control Board.

From the Uncleared Cargo (UCC) details furnished by the custodians as on 31 March 2017, 469 containers of hazardous waste like metal scrap, municipal waste, used tyres were lying uncleared for a period ranging from one to seventeen years (**Statement 16**). These included live bombs, war material scrap in ICDs Kanakpura, BhagatkiKothi and Udaipur (already reported in para 5.2 above), 92 containers of used tyres, metal scrap and hazardous chemicals in CFS Navkar Corporation under Mumbai Customs Zone II, 15 containers of hazardous cargo in ICD Tughlakabad and 50 containers of mixed waste in ICD Moradabad, among others. Audit noticed that the department had not initiated any action against the importers including those cases where re-export orders had been issued.

An examination of *modus operandi* leading to import of hazardous waste into India revealed that such imports take place partly due to laxity in following rules and procedures under the Customs Act, and partly due to the lacuna in the Customs Act itself. A few illustrative cases are discussed below:

(i) Import of hazardous cargo without mandatory documents

In five¹⁹ CFSs and one²⁰ ICD falling under Mumbai Customs Zone II and Nagpur I Commissionerate respectively, 197 containers of metallic waste and scrap, used tyre scrap were imported between April 2007 and March 2017 by 79 importers without the required documents (PSIC, sales contract, Certificate from PCB, clearance from MoEF) and were lying unclaimed. This includes 20 containers pertaining to M/s Mumbai Fabrics Pvt. Ltd. who had been regularly importing and clearing similar goods.

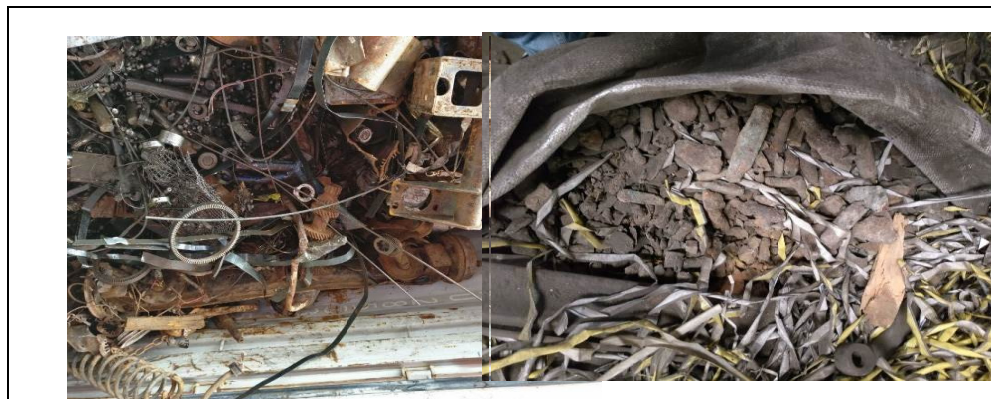
Further, in the adjudication orders passed by the department in respect of five cases involving four importers under CWC Logistic Park CFS, Mumbai, for the

¹⁹ Speedy Multimodes Ltd, CWC Logistics Park, United Linear Agency, Continental Warehousing, Navkar Corporation Ltd.

²⁰ Ajni ICD

irregular imports, no penalty was imposed on the shipping lines for loading such cargo without the mandatory documents as prescribed in Board Circular No.56/2004 dated 18 October 2004.

Fig: 22
Metal scrap lying unclaimed in ICD, Ajni, Nagpur



(ii) Import of municipal waste through High Sea Sales

In ICD Mulund falling under Mumbai Customs Zone I Commissionerate, 11 containers of “Old Mutilated Rags & Rugs” were imported (September 2016) by M/s Sparkgreen Energy (Ahmednagar) Pvt. Ltd on High Sea Sale (HSS) from M/s Netcradle India Pvt. Ltd. for a meagre value of ₹ 2.53 lakh and abandoned the cargo. Interestingly, M/s Netcradle India Pvt Ltd was engaged in the business of computer related activities (maintenance of website etc.) and M/s Sparkgreen Energy in the business of Power project thus making it evident that they were not the end users of the imported goods.

Fig: 23
Photograph of abandoned container of M/s Sparkgreen Energy at ICD Mulund



(iii) Imports of municipal waste by mis-declaring cargo

In Tuticorin Commissionerate, 20 containers of municipal waste were imported by five importers²¹ by mis-declaring the goods as mixed plastic waste, waste paper and paper scrap.

From the details available, it was found that 10 out of 20 containers were imported from Saudi Arabia and United States of America. In all cases, the Tamil Nadu Pollution Control Board (TNPCB), Tuticorin had inspected the cargo and recommended for re-export to the sender. Based on TNPCB orders, the customs department imposed penalty on the importers and ordered for re-export of containers to the country of origin by the custodian. These orders were issued as early as in 2005 and latest by 2015 but no further follow-up action was initiated either by the importers or by the custodians to re-export the cargo. Thus, 20 containers with municipal waste continue to lie at Tuticorin ICD for periods ranging from two to eleven years.

At CMA-CGM Logistics Park Private Limited, Dadri of Noida Commissionerate, Audit found that one importer, M/s Anand Triplex Board Ltd imported 12 containers between 19 June 2009 and 27 June 2009 by declaring the contents as “waste paper” but which were found to contain highly contaminated municipal waste, domestic waste etc. All the containers were imported from Southampton, U.K. It was seen that all the containers are lying undisposed for a period of eight years.

Failure to lay down the procedure for re-export of such cargo to the originating country and the accountability of person(s) responsible for such dumping has led to widespread dumping of municipal and hazardous waste.

DoR in their reply stated (February 2018) that in ICD Tughlakabad, Mumbai I, Mumbai II, Hyderabad and Tuticorin Commissionerates action had been initiated against defaulting importers by levy of redemption fine and penalty and by giving orders to re-export the cargo. Mumbai II Commissionerate further stated that disposal of uncleared hazardous waste is a time consuming process due to problems in coordination with the agencies who can bid for such cargo for safe disposal.

Fact remains that dumping of municipal waste is a growing menace in the country and disposal of uncleared hazardous waste which cannot alone be tackled through post facto actions in isolated cases. A concerted effort by strengthening laws with stringent penal clauses and improving coordination among related agencies to effectively block dumping of municipal waste is needed.

²¹ M/s Harbour Petrochem Industries (P).Ltd, M/s Vel Steel, M/s Global Infra India (P).Ltd, M/s Vedagiri Paper & Boards (P) Ltd, M/s G.S.N. Enterprises

As explained in the next paragraph certain clauses in the Customs Act may also be encouraging such imports need to be reviewed.

5.4 Undue advantage to the importers under Section 23 of Customs Act, 1962.

As per Section 23 of the Customs Act, the owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon, provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force. However, the provisions do not specify the conditions under which the goods could be abandoned.

As on 31 March 2017, in the selected ICDs/CFSSs, 838 Containers were abandoned after filing of bill of entry, which remained uncleared. Scrutiny of the list of uncleared cargo revealed that certain importers routinely abandon the cargo while continuing to import and clear similar cargo. Such cases noticed in Chennai Customs Commissionerate are illustrated below:

(a) M/s Leitwind Shriram Manufacturing Limited imported (2015-16 and 2016-17) 'Parts of Wind Mill' in 25 BEs valued at ₹ 25.8 crore and abandoned the goods which were lying uncleared whereas similar imports made during the same period were cleared by the importer.

(b) Another importer M/s Kaizen Cold Formed Steel Private Limited imported (2015-16 and 2016-17) 'steel coils' in 89 BEs valued at ₹ 6.6 crore but the abandoned goods were lying uncleared while similar cargo was imported and cleared by the same importer at the same time.

(c) Similarly, M/s Falcon Tyres Ltd imported (2013-14 and 2014-15) 'Synthetic Butyl Rubber' in eight BEs valued at ₹ 3.2 crore and abandoned the goods which were lying uncleared though the importer continued to import and clear similar cargo.

(d) M/s International Flavours & Fragrances India Private Limited imported (2012-13 and 2016-17) 'Flavouring agents' valued at ₹ 2.60 crore through 26 BEs. The goods were lying uncleared as on 31 March 2017, while similar imports were cleared by the importer during the same period.

Audit did not find any recorded reasons which had led the importers to wilfully abandon the goods involving such high value. This was pointed out to the department to examine the grounds for such frequent abandoning of the

cargo and also to rule out the possibility of any *malafide* intention in relinquishing the cargo particularly when it involved huge remittances of foreign exchange to the consignor.

DoR in their reply (February 2018) stated that CBEC will examine the issue to rule out *malafide* intention in frequent abandoning of cargo.

5.5 Absence of mandatory compliance with environmental regulations

As per Ministry of Environment, Forest and Climate Change (MoEF) Notification No. S.O. 2265 (F) dated 24 September 2008, every occupier (Custodian) of the facility who is engaged in handling, storage, packaging, transportation etc of the hazardous goods shall be required to make an application to the State Pollution Control Board and obtain a clearance from the State Pollution Control Board within a period of sixty days from the date of commencement of the ICD. The clearance granted by the State Pollution Control Board under sub-rule (2) shall be accompanied by a copy of the field inspection report signed by that Board indicating the adequacy of facilities for storage, transportation, destruction etc., of the hazardous goods and compliance to the guidelines or standard operating procedures specified by the Central Pollution Control Board from time to time.

As per provisions (Rule 5) of the Hazardous Waste (Management and Handling Transboundary Movement Rules 2008) and the Water (Prevention and Control of Pollution) Act 1974, every person who is engaged in storage, collection, export and import of hazardous goods shall obtain No Objection Certificate (NOC) from State Pollution Control Board and Central Pollution Control Board. The NOC so obtained shall be renewed from time to time.

From the information furnished by 29 ICDs/CFSSs, out of the 85 test checked in audit, 12 ICDs and 11 CFSSs reported that clearance from the State/Central Pollution Control Board (PCB) was not obtained by the custodians even though hazardous cargo was handled (**Statement 17**). In addition, one ICD and six CFSSs stored and handled hazardous goods for different durations without required renewal of NOC from pollution control boards as detailed below:

Table 5 : Unauthorised handling of hazardous cargo

| Sl. No. | Name of CFS, ICD and Customs Commissionerate | Approval date for handling hazardous goods | Period of handling | Type of hazardous cargo |
|---------|---|--|-----------------------------|--|
| 1 | Speedy Multimodes Ltd., NhavaSheva-IV | 5 Dec 2016 | October 2011 to Sept. 2016 | Dioxabicyclo octane, ethyl acetate, refrigerant gas, diclofenac sodium |
| 2 | CWC Logistics Park, NhavaSheva-III | 3 Sep 2014 | January 2012 to August 2014 | Amino 4 chlorobenzene nitro flouride, empty chlorine cylinders, Zinc ash |
| 3 | ICT & IPL (previously United Liner Agencies), NhavaSheva -III | 1 Dec 2016 | March 2011 to November 2016 | Sodium cyanide, acrylic acid, terephthaloy, refrigerant gas |

| Sl. No. | Name of CFS, ICD and Customs Commissionerate | Approval date for handling hazardous goods | Period of handling | Type of hazardous cargo |
|---------|---|--|-----------------------------|--|
| 4 | Continental Warehousing Corporation, NhavaSheva -I | 19 Dec 2016 | March 2011 to November 2016 | Pellets, paints, raw wool, 2,2, dithiodibenzoic acid |
| 5 | Punjab State & Container Warehousing Corporation, NhavaSheva -III | 13 Oct 2014 | March 2011 and October 2014 | Pellets, paints, alkalyte benzene, Grease |
| 6 | Navkar corporation Ltd., NhavaSheva-V | 3 Sep 2014 | March 2011 to August 2014 | Ferrous Sulphate powder, firecrackers |
| 7. | ICD, Ajni, Nagpur I Commissionerate | Goods handled without PCB certificate | July 2016 to March 2017 | Metal scrap, hazardous waste |

Source: Data furnished by local Customs Commissionerates

The abovementioned six CFSs attached to Nhava Sheva port had unauthorisedly dealt in hazardous cargo before receiving due approval from appropriate authority and thereby had put the safety of the other cargo and human lives at risk.

Kolkata (Port) Commissionerate stated (December 2017) that CFS CWC, Kolkata has applied to PCB for clearance and the other audited CFSs have intimated that they don't need PCB clearance for their premises as they are not manufacturing/processing/recycling units. However, they have PCB clearance for Genset. CFS LCL Logistix, Haldia has intimated that they are applying for PCB clearance for their Genset. The department has added that no explicit provisions are available in HCCAR 2009 to empower the customs authority to implement the norms of Environmental Risk Assessment for CFSs.

Further, CGST Commissionerate, Bolpur, stated (December 2017) that there is no need of clearance from state and Central Pollution Control Board as there is no pollution generating machine at ICD, Durgapur.

The reply is not acceptable since ICDs cannot pre-empt that in future the ICD will not handle any hazardous goods. If required, Ministry may consider to amend HCCAR 2009 accordingly.

DoR in their reply (February 2018) stated that CBEC intends to ask all Chief Commissioners to inform all custodians about the observation of audit and also ask them to issue suitable instructions to all custodians.

5.6 Import and export of prohibited and restricted goods

"Prohibited Goods" as defined in Section 2(33) of the Customs Act, 1962 means "any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force". Thus, a prohibition under any other law can be enforced under the Customs Act, 1962. Under sections 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government can make provisions for prohibiting, restricting or otherwise regulating the import or export of the goods, which

finds reflected in the FTP laid down by DGFT, Department of Commerce. Some of the goods are absolutely prohibited for import and export whereas some goods can be imported or exported against a licence and/or subject to certain restrictions.

Certain products are required to comply with the mandatory Indian Quality Standards (IQS) and for this purpose exporters of these products to India are required to register themselves with Bureau of Indian Standards (BIS).

Responsibility of Customs has also been to ensure compliance with prohibitions or restrictions imposed on the import and export of goods under FTP and other Allied Acts. Import and Export of specified goods may be restricted/prohibited under other laws such as Environment Protection Act, Wild Life Act, Arms Act, etc. and these will apply to the penal provisions of the Customs Act, 1962 rendering such goods liable to confiscation under Sections 111(d) for import and 113(d) for export of the said Act. Thus, for the purpose of the penal provisions of the Customs Act, 1962 it is relevant to appreciate the provisions of these allied legislations.

Import and Export of prohibited Items: In ICD CONCOR, Tondiarpet falling under Chennai IV Commissionerate, items valued at ₹ 0.89 crore involving 43 consignments which were prohibited for export were found to be exported despite the prohibition in force on goods during the relevant period of exportation/importation (**Statement 18**).

Import and Export of Restricted Goods: In four ICDs falling under four²² Commissionerate, 49 consignments of restricted goods viz., Steel sheets, Steel melting scrap, Drugs and Pharmaceutical products etc., were cleared for importation and restricted items like Eri Cocoons was allowed for exportation. The value of cargo in respect of three consignment was ₹ 9.03 crore. The value of remaining consignments was not made available to audit. However, the documents for having fulfilled the mandatory clearance from MoEF or fulfilment of conditions as specified in Schedule 1 and Schedule 2 of ITC (HS) Import and Export Policy respectively, in respect of those goods was not furnished. (**Statement 19**). Few cases are illustrated below:

(i) As per Rule 43A of the Drugs and Cosmetics Rules, 1945, as amended up to 31 December 2016, no drugs shall be imported into India except through the specified Ports and ICDs. The Commissioner of Customs, Ahmedabad in Public Notice dated 19 March 2007 issued instructions restricting import of drugs and pharma goods through ICD.

²² Chennai V, Marmagao, Ahmedabad, Shillong NER

In ICD Khodiyar, Gandhinagar, 14 consignments of drugs and pharma products falling under Chapter 30 of Customs tariff was imported and cleared during 2012-13 to 2016-17. The restriction imposed by the Commissioner on such imports was not enforced and the department allowed clearances of these goods through ICD.

(ii) In terms of Para 2.32 of Chapter-2 (Foreign Trade Policy 2009-14), Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/ scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise and Import of scrap would take place only through specified designated ports. ICD Verna has not been specified for such importation. 19 containers of Non-Alloy Steel Melting Scrap (506.79 MT) imported by Marmagoa Steel Ltd., through ICD, Verna was cleared though the ICD Verna was not included in the list of specified ports for handling scrap.

DoR in their reply (February 2018) stated that in Noida Customs clearance of restricted goods has been allowed only on production of import license issued by MoE&F. In Tughlakabad Commissionerate, Show Cause Notice had been issued proposing confiscation beside imposition fine and penalties. Further in ICD, Khodiyar, Ahmedabad the imported commodity was pharmaceutical drug which was cleared looking at the fact that it was bearing expiry date and might get contaminated had it been not cleared within due course of time. In ICD Verna Goa a consignment of non-alloy steel melting scrap (506.79 MT) was imported through Marmagoa Port at Harbour but was stored at ICD Verna with prior permission.

Reply of DoR is not acceptable as the said import licenses in case of imports under Noida Commissionerate were not produced to Audit. Clearance of restricted drugs by Ahmedabad Commissionerate despite these being on the restricted list needs more convincing justification than mere fact that the drugs expiration date was approaching. Storage of metal scarp at ICD Verna was unlawful as the ICD is not on the list of ports authorized to handle metal scarp.

5.7 Safeguarding of Government revenue

5.7.1 Non realisation of foreign exchange

In terms of the provisions of Section 75(1) of Customs Act, 1962 read with the sub-rule 16 A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, where an amount of drawback has been paid to an exporter but the sale proceeds in respect of such export goods have not been realised within the time allowed under the Foreign Exchange Management Act (FEMA) 1999, such drawback amount is to be recovered. Sub-rule 16A (2) stipulates that if the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the FEMA 1999 or as extended by the Reserve Bank of India (RBI), the Assistant/Deputy Commissioner of Customs shall issue a notice to the exporter for production of evidence of realisation of export proceeds, failing which an order shall be passed to recover the amount of drawback paid to the claimant.

(a) In nine ICDs under seven²³ Commissionerates, department did not initiate any action to recover the duty drawback of ₹ 534.9 crore in 35092 consignments of exports where foreign exchange to the tune of ₹ 3838.46 crore remained unrealised. Details are furnished in **Statement 20**.

Out of nine ICDs, in four ICDs under four²⁴ Commissionerate, it was confirmed from Reserve Bank of India Foreign Exchange Outstanding statement (RBI_XOS) as on 31 December 2016 that export proceeds amounting to ₹ 3692.43 crore were not realised in 34013 SBs filed prior to 31 March 2016 involving duty drawback of ₹ 208 crore. Audit pointed out that no action was initiated by the department to recover the duty drawback involved.

Tuticorin Commissionerate stated (October 2017) that 125 Show Cause Notices (SCNs) were issued to the exporters for the pending Bank Realization Certificates (BRCs) from 2012 onwards and a special drive has been initiated to reduce the pendency.

However, no recovery details have been furnished and further reply is awaited.

(b) In ICD Mulund, department confirmed the demand in 54 cases and ordered that duty drawback of ₹ 13.95 crore was required to be refunded since export proceeds have not been realised even after the lapse of the period ranging from 2 to 8 years. In the absence of any appeal being filed by the parties concerned against these Orders-In-Original (OIO), the department ought to have initiated recovery action as provided in the Customs Act 1962.

²³Tuticorin, Chennai IV, Chennai V, Bengaluru city, Jodhpur, Hyderabad, Mumbai Customs Zone I

²⁴Tuticorin, Chennai IV, Chennai V, Mumbai Customs Zone I

Delay in initiating action for recovery of duty drawback of ₹ 13.95 crore was pointed out to the department.

In reply, department stated that in 46 cases initiatives are under way for recovery of drawback amount of ₹ 8.50 crore and in 7 cases involving drawback of ₹ 4.97 crore action could not be initiated as the exporters have gone on appeal. In one case involving drawback of ₹ 0.48 crore the charges were dropped.

However, department failed to pursue recovery of drawback amount in terms of Section 142 of the Customs Act which provides for issue of detention notice or by attachment of property.

DoR in their reply (February 2018) stated that in Bengaluru Commissionerate, M/s E-Land Apparel Ltd. (formerly known as Mudra Lifestyle Ltd.) has produced e-BRC. Further, Show Cause Notices have been issued with regard to other two exporters namely M/s Indsur Global Limited and M/s UB Global Limited for non-realisation of export proceeds.

In Tuticorin, Chennai IV, Jodhpur, Hyderabad and Mumbai Zone I Commissionerates, action have been initiated to recover the drawback in cases where the exports proceeds have not been realised.

Failure to monitor foreign exchange realisation in lieu of duty benefits availed by importers puts to question the entire revenue foregone of ₹ 534.9 crore.

5.8 Internal Control and Internal audit

Internal control including internal audit and inspection is an important management tool and comprises all the methods and procedures adopted by the management of an entity to assist in achieving business goals. Audit verified the criteria such as adherence to prescribed procedures, mechanisms to safeguard assets, systems in place to prevent and detect misuse including prevention and detection of fraud, and system of data management, accounting and internal reporting to assess the effectiveness of internal controls. For this, Audit relied on internal records, files, minutes of meetings, inspection reports and action taken on inspection reports to derive audit conclusions.

5.8.1 Shortfall in execution of Bond, Bank Guarantee and Insurance by custodians

According to Para 5(3) of HCCAR, 2009, the custodian has to execute:

- I. a bond equal to the average amount of duty involved on the imported goods and ten *per cent* of value of export goods likely to be stored in the customs area during a period of 30 days;

- II. furnish a bank guarantee (BG) or cash deposit equivalent to ten *per cent* of such duty;
- III. insurance for an amount equal to the average value of goods likely to be stored in the customs area for a period of 30 days based on the projected capacity.

Further, in terms of Circular No.42/2016 dated 31 August 2016, the storage period for the purpose of calculation of bond and insurance to be taken by the custodian has been brought down from 30 days to 10 days.

Short execution of Storage bonds, BG and Insurance taken by custodians amounting to ₹ 703.62 crore, ₹ 1.75 crore and ₹ 398.97 crore respectively was noticed in seven ICDs falling under seven²⁵ Commissionerate out of 44 ICDs selected for test check (**Statement 21**).

Similarly, short execution of storage Bond, BG and Insurance by custodians amounting to ₹ 450.38 crore, ₹ 39.06 crore and ₹ 8530.40 crore respectively was also noticed in fifteen CFSs falling under five²⁶ Commissionerates, out of 41 CFSs selected for test check (**Statement 22**).

M/s CONCOR, custodian of ICD Mulund falling under Mumbai customs Zone I Commissionerate did not execute any storage bond since its operationalisation (1995) and even after the HCCAR, 2009 came into effect. Due to non-execution of bond amount of ₹ 44.51 crore, the customs revenue in respect of goods stored in the custody of the ICD was not safeguarded by the department.

In ICD Tughlakabad falling under Tughlakabad Commissionerate, the custodian executed a bond of ₹ 1051 crore for the period 17 March 2014 to 16 March 2019 only on 01 February 2017, which implies that the ICD was functioning for almost 3 years without any storage bond.

In ICD Patparganj, falling under Patparganj Commissionerate, the custodian (Container Warehousing Corporation) had renewed the custodian cum carrier bond for ₹ 100 crore only on 12 June 2017, after 15 months of the lapse of earlier storage bond on 21 March 2016.

Although ICD Amingaon under Shillong NER Commissionerate became operational since 01 June 1986, the custodian (CONCOR) executed the bond for ₹ 8 crore only on 23 June 2017.

M/s Speedy Transport Private Limited under Mumbai Customs Zone II Commissionerate was notified as co-custodian vide Notification No. 16/2005 dated 30 December 2005 but the department did not insist on executing BG by

²⁵ Kanpur, Noida, Bolpur C. Ex., Patparganj, Tughlakabad, Mumbai Customs Zone-1, Pune

²⁶ Noida, Kolkata, Kochi, Chennai IV, Mumbai Customs Zone II

the custodian even at the time of renewal of licence from 2010 to 2016 i.e. after the HCCAR, 2009 came into effect.

In respect of M/s CWC Logistics Park, CFS, falling under Mumbai Customs Zone II Commissionerate there was no insurance coverage during the period 15 May 2015 till 30 December 2015 in respect of goods stored.

M/s Balmer Lawrie & Co. Ltd., a CFS under Kolkata (Port) Commissionerate, was appointed as custodian vide P.N. 104/94 dated 1 November 1994 and even after coming into force of the HCCAR 2009, the custodian did not submit any bond required to be executed as per Regulation 5(3).

Kolkata Port stated (December 2017) that the CFSs have been asked to submit data on import value, export value and import duty for the year 2016-17 and based on the said data the CFSs have been directed to submit revised bank guarantee.

DoR, in their response (February 2018) stated that Custodians have been requested to comply with the audit observation.

5.8.2 Customs staffing and cost recovery charges

As per regulation 5(2) of HCCAR 2009, the custodian has to undertake to bear the cost of the Customs officers posted by the Commissioner at such customs area, on cost recovery basis, and shall make payments at such rates and in the manner prescribed, unless specifically exempted by an order of the Government of India in the Ministry of Finance;

In terms of Para 4 of Chapter 27 of CBEC Manual, for the purpose of customs clearance at the ICDs/CFSs, customs staff is provided on cost recovery basis by issue of a sanction order by the Administrative Wing of the Board. The custodians are required to pay @ 185 *per cent* of total salary of officers actually posted at the ICD or the CFS to be paid in advance for every quarter.

Cost recovery posts of ICDs/CFSs that have been in operation for two consecutive years with following performance benchmark for past two years will be considered for regularization.

- (i) No. of containers handled by ICD - 7200 TEUs per annum
- (ii) No. of containers handled by CFS - 1200 TEUs per annum
- (iii) No. of B/E processed by ICDs/CFSs - 7200 per annum for ICDs and 1200 for CFSs.
- (iv) Benchmark at (i) to (iii) shall be reduced by 50 percent for those ICDs/CFSs exclusively dealing with exports as per staffing norms.

However, the waiver of cost recovery charges would be prospective with no claim for past period.

Out of 44 ICDs selected as sample, in 15 ICDs falling under 12²⁷ Commissionerate, Cost recovery charges were pending recovery, of which in eleven ICDs, the amount recoverable was ₹ 20.11 crore and in the remaining 4 ICDs the amount of CRC recoverable could not be ascertained. **(Statement 23)**

Similarly, out of the Commissionerate records and the 41 CFSs selected for test check, audit noticed that in 23 CFSs falling under ten²⁸ Commissionerate, the CRC were pending recovery of which in 11 CFSs the amount recoverable was ₹18.24 crore and in the remaining 12 CFSs the amount recoverable could not be ascertained **(Statement 24)**.

DoR, in their reply (February 2018) stated that except ICD Tughlakabad and ICD Patparganj, which were not operating on cost recovery basis, action has been initiated to recover the dues or to regularise the cases where Custodians have sought waiver.

5.8.3 Inconsistency in posting of Customs officers

Century Ply JJP, CFS in Kolkata Customs Commissionerate was granted waiver from CRC till 24 February 2017. Audit observed that the CFS handled 47,748 TEUs and 16,265 documents in 2016-17, accordingly 13 Customs officers are required to be deputed in the CFS. However 18 officers were posted therein resulting in excess posting of officers in the CFS. In CFS, M/s Balmer Lawrie & Co. which handled 44,614 TEUs and 17,014 documents, the strength of customs officers was only ten.

In this connection, the Expenditure Management Wing, Directorate General of HRD, CBEC has instructed, *inter alia*, vide its letter dated 3 November 2015, that excess staff deployed over and above the staffing norms shall be withdrawn without causing disruption of work. Therefore, posting of officers in excess of the prescribed staffing norms and for which cost recovery charges are also not being realised, is unjustifiable and against the DG (HRD) norms.

In ICD Kalinganagar, no Customs staff was allocated for handling of Customs work. Staff of Jajpur Road Customs Division, were deployed to handle the work of Customs at the ICD on Merchant Overtime (MOT) basis. When reasons for non-posting of staff at ICD were brought to the notice (August 2017) of the jurisdictional Assistant Commissioner, it was replied (August 2017) that the matter was referred to Commissionerate of Customs (Preventive), Bhubaneswar.

At ICD Sanathnagar, 4 posts of Appraiser/Superintendent, 3 posts of TAs and 7 posts of Havildars were lying vacant out of the sanctioned posts. Similarly, at

²⁷ Nagpur I, Jodhpur, Belgaum C.Ex., Ludhiana, Trichy Cus. and C.Ex., Chennai IV, Marmagoa, Butibori, Ahmedabad, Tughlakabad, Patparganj, Noida

²⁸ Mundra, Jamnagar, Ahmedabad, Mangaluru, Kolkata, Bengaluru City, Kochi, Hyderabad, Noida, Kandla

ICD Thimmapur, posts of 2 TAs, 2 LDCs and 4 Sepoys were vacant during 2016-17. Considering the high volume of BEs and SBs filed, particularly in ICD Sanathnagar, the shortage of staff would have negative impact on both trade facilitation and quality of assessments.

DoR in their reply (February 2018) stated that the jurisdictional Commissioner at Kolkata has justified continued deployment of excess staff due to volume of work, while paucity of staff was stated as the reason for vacancies in ICD Kalinganagar and ICD Sanathnagar.

DoR's response reinforces the issue of uneven distribution of manpower pointed out by Audit. The staff deployment policy may need a review in order to rationalize the number of sanctioned posts that justify work load on an all India basis.

5.8.4 Theft and pilferage of cargo

The Custodian shall be responsible for the safety and security of imported and export goods under its custody and shall be liable to pay duty on goods pilfered after entry thereof in the customs area as envisaged in Regulation 6 of HCCAR, 2009.

In 2 ICDs and 2 CFSs falling under four²⁹ Commissionerates, theft and missing cargo was noticed (**Statement 25**) which indicates serious lapses on the part of the custodian in securing the premises and causing loss of revenue to the exchequer. Few instances are described below:

In Sanco Trans Limited, CFS Chennai falling under Chennai V Customs Commissionerate, 76430 Kgs of metal scrap was imported (November 2012) by M/s Vignesh Traders but remained uncleared by the importer. The department adjudicated (January 2015) the case and ordered for absolute confiscation of the goods. The cargo was subsequently e-auctioned in April 2016. But the highest bidder refused to take possession of the cargo as shortage of 34070 kgs of metal scrap was noticed. No action was, however, initiated by the department for fixing the responsibility for the shortage of cargo and the balance quantity is still lying uncleared.

M/s Speedy Multimodes Ltd., CFS, Mumbai failed to detect the systematic theft/pilferage of 36.29 MT 'Red sanders' from six containers stored in their safe custody due to negligence on the part of the CFS. The goods were confiscated by SIIB (X) and kept in the CFS for safe custody of Customs. The said case was noticed in the month of November/December 2014. A total of ₹ 12.29 crore was recovered from the CFS on 28 Oct 2016. Similar case of

²⁹ Mumbai Customs Zone I, Mumbai Customs Zone II, Chennai V and Jodhpur

theft/pilferage of 'Red sanders' was also noticed in M/s Punjab State Warehousing Corporation Ltd.

DoR in their reply (February 2018) pertaining to Mumbai I and II Commissionerates stated that the Custodians have been sensitized to follow the proper procedure and correct the anomaly, and intimate the action taken in the matter to the Commissionerates.

Audit is of the view that DoR seems to have washed its hands off from the issue of thefts and pilferage by simply passing on the instructions, instead of taking an investigative action for cases of thefts reported in Audit which could help in plugging systemic loopholes that may be making such thefts possible.

5.8.5 Filing of manual Bills of entry and Shipping Bills

As per Regulation 5 of HCCAR, 2009, one of the conditions to be fulfilled by the CCSP is that the custodian has to provide hardware, networking and the equipment for secure connectivity with the Customs Automated system and for exchange of information between Customs Community partners.

According to Sections 46 and 50 of the Customs Act 1962, import documents and Export documents are mandatorily required to be filed electronically (through EDI system). In order to prevent misuse, CBEC issued instructions on 4 May 2011, that manual processing and clearance of import/export goods shall be allowed only in exceptional cases and data for manual documents should be compulsorily entered and transmitted by all locations within the stipulated time period.

In eight ICDs and six CFSs falling under seven³⁰ Commissionerates, 11535 number of manual Bills of entry (BEs) and Shipping bills (SBs) were filed during the period from 2012-13 to 2016-17, which is against the principles of the instructions issued by the Board (**Statement 26**).

In CWC Panambur CFS, which started operations in 1997, all the BEs were filed manually due to absence of ICES connectivity whereas in ICD Verna, which commenced operations in 2001, the manual filing was permitted due to non-operationalisation of the ICES system on account of technical issue related networking and BSNL lease line.

DoR in their reply (February 2018) informed that in ICD Tughlakabad most of the shipments cleared through manual clearance procedure comprise the manual shipping Bills filed at SEZs. Since the said Shipping Bills have been filed manually at SEZs, they cannot be cleared through ICES as there is no option in ICES for clearance of manual Shipping Bills through EDI System. In Hyderabad

³⁰Mangaluru, Bengaluru, Hyderabad, Tughlakabad, Shillong NER, Bolpur CE, Ludhiana

Commissionerate manual filing is being permitted only after due permission from the Commissioner, only when it is not feasible to file EDI Shipping Bills.

5.8.6 Local Risk Management Committee not set up at ICDs to assess the local risks for assessment and examination

Para 5.1 to 5.3 of CBEC Circular No. 23/2007-Cus dated 28 June 2007 provides that a Local Risk Management (LRM) committee shall be constituted in each custom house and shall be headed by an officer not below the rank of Commissioner of customs. The Committee shall meet once every month to review trends in imports of major commodities and valuation with a view to identifying risk indicators.

- (i) Decide the interventions at the local level, both for assessment and examination of goods prior to clearance and for PCA.
- (ii) Review results of interventions already in place and decide on their continuation, modification or discontinuance etc.
- (iii) Review performance of the RMS and evaluate the results of the action taken on the basis of the RMS output.
- (iv) Send periodic reports to the RMD, as prescribed by the RMD, with the approval of the Commissioner of Customs.

CBEC had also subsequently assured the Public Accounts Committee (PAC) that LRM Committees had been constituted at all 89 EDI locations where RMS was operational, in response to PAC query regarding functioning of LRM Committees, in Paras 38 and 39 of the 23rd Report (2015-16) of the PAC (16th Lok Sabha) on 'The CAG's Performance Audit on ICES 1.5' (*Report No. 11 of 2014*)

Out of 38 functional ICDs, in 12 ICDs³¹ LRM Committee was not formed and in another 14 ICDs³² though LRM Committee was formed and meetings conducted, it was not held on monthly basis as per Board's Circular. Remaining 12 ICDs did not furnish information about the constitution of LRM Committee. Only at ICD Pithampur (MP) it was noticed that LRM committee's meetings were conducted every month (**Statement 27**).

DoR in their reply (February 2018) stated that LRM monthly meetings will be held in accordance with CBEC circular No. 23/2007-cus.

³¹ICDs Sanathnagar, Kalinganagar, Thimmapur, Tumb, Dashrath, Amingaon, Mulund, Ajni, Verna, Tuticorin, Irungattukottai, Talegaon

³² ICDs Whitefield, Dadri, Loni, Panki, Pitambur, Patparganj, Mandideep, Kottayam, GRFL, PSWC, Dhandhari Kalan, Kanech, Durgapur, Marripalem

5.8.7 Non-constitution of Customs Clearance Facilitation Committee

As per Board Circular no. 44/2016-Customs dated 22 September 2016, Customs Clearance Facilitation Committee (CCFC) was to be set up in the Commissionerate, having jurisdiction over ICDs. The CCFC would be headed by the Principal Commissioner of Customs or Commissioner of Customs for their respective jurisdictions. Its membership would include the senior-most jurisdictional functionary of various departments/agencies/stakeholder whose permission are required in the clearance of exported/imported goods. One of the mandates of CCFC is resolving grievances of members of the trade and industry in regard to clearance process of imported and export goods.

From the information provided by the department, only four³³ Commissionerates have stated that CCFC has been constituted to address the grievances faced by the importers/exporters availing the facilities of Inland Container Depots and four³⁴ Commissionerates had not constituted the Committee. Information in respect of 27 Commissionerates was, however, not furnished (**Statement 28**).

DoR in their reply (February 2018) in respect of ICD Patparganj, Noida, Nagpur, Mumbai I and Hyderabad Commissionerates stated that CCFCs have been constituted in respective commissionerates since 2016/2017 and meetings are being held regularly.

5.8.8 Non-renewal of approval for appointment of CCSP

As per Regulation 13 of HCCAR, 2009, the Commissioner of Customs may on application made by the CCSP before the expiry of the validity of the appointment under Regulation 10, renew the approval for a further period of five years from the date of expiration of the original approval granted under Regulation 10 or of the last renewal of such approval, as the case may be, if the performance of the approved Customs Cargo Service Provider is found to be satisfactory with reference to his obligations under any of the provisions of the Act and the rules, regulations, notifications and orders made there under.

Regulation 12(8) of the HCCAR 2009 provides that if any CCSP contravenes any of the provisions of these regulations, or abets such contravention or who fails to comply with any of the provisions of the regulation with which it was his duty to comply, then he shall be liable to a penalty which may extend to 50 thousand rupees.

³³ Tughlakabad, Indore, Shillong NER, Kolkata

³⁴ Noida, Meerut, Kanpur, Bhopal

As on 31 March 2017, three ICDs³⁵ and three CFS³⁶ were continuing the operations even though the approval for appointment as custodian was not renewed under regulation *ibid*.

In ICD Patparganj under Patparganj Commissionerate, the custodian applied for renewal of custodianship to Commissioner of Customs after 15 months of lapse of legal validity of custodianship but it could not be ascertained whether any approval for renewal of custodianship was granted.

M/s Speedy Multimodes Limited (previously M/s Speedy Transport Limited) in Mumbai Customs Zone II Commissionerate was appointed co- custodian of JNCH vide notification No. 16/2005 dated 30 October 2005 for a period of 5 years. Despite the expiry of the original custodianship approval on 31 December 2010, the custodian continued the operations. The renewal for appointment as custodian was issued only on 28 October 2016 after lapse of more than 5 years.

On being pointed out by audit, M/s CWC Panambur renewed (September 2017) their custodianship vide Public Notice No.40/2017 dated. 27.11.2017, after a lapse of fifteen years.

This indicates poor monitoring on the part of the department in issue of extension of approvals and the penal provisions are not being invoked for failing to comply with the Regulations.

DoR in their reply (February 2018) in respect of ICD Patparganj, stated that before October, 2014, ICD PPG was functioning as the part of ICD TKD, and the custodian had executed their Bond on 22.03.2011 at ICD, TKD. Being a Public Sector Unit, CWC has fulfilled all the conditions under Cargo Handling Regulation Rules. The lapse was regularized for the intervening period. In future, care shall be taken that Bond is properly monitored. In respect of Mumbai I Zone, the Commissioner is regularly renewing CONCOR as CCSP for ICD/Mulund before the expiry of last renewal.

5.8.9 Deficiency in performance of Post Clearance Audit (PCA) wing

According to Board Circular No.15/2012 dated 13 June 2012, in order to implement self-assessment effectively and ensure its benefits to the trade, Board decided that current facilitation level under RMS should be enhanced significantly. Accordingly, it was decided to enhance facilitation level up to 60 *per cent* in case of ICDs by rationalising risk rules and risk parameters. Higher facilitation at the same time has led to need for more scrutiny of Bills of Entry at Post Clearance Audit (PCA).

³⁵ ICD Dhandari Kalan (Ludhiana), ICD Moradabad, ICD Amingaon

³⁶ CFS M/s Central Warehousing Corporation Kandla, M/s Balmer Lawrie & Co. Ltd. and M/s. CWC- Panambur,- Mangaluru

Out of 38 functional ICDs, in 25 ICDs PCA wing has been constituted and in five ICDs³⁷ PCA wing was not constituted till March 2017. Details of constitution of PCA wing in eight ICDs³⁸ were not furnished (**Statement 29**). In three ICDs/CFSS³⁹, 15351 BEs were selected for PCA during 2012-13 to 2014-15 out of which 11072 were audited and remaining 4279 BEs became time barred as detailed in the **Statement 30**.

In view of the high facilitation levels prescribed by the Board, PCA assumes great significance and any leniency shown by the department would result in failure of procedure prescribed by the Board.

DoR in their reply (February 2018) stated that with the increase in facilitation levels, CBEC has recognized the need for greater importance to audit and accordingly three Audit Commissionerate at Delhi, Mumbai and Chennai have been notified to carry out such functions efficiently.

5.8.10 Non conduct of Internal audit

Out of 44 ICDs, in six ICDs internal audit was conducted by the jurisdictional Commissionerate and in 15 ICDs internal audit was not conducted. Remaining 23 ICDs did not furnish details of internal audit conducted.

Out of 41 CFSS audited, only in three CFSS internal audit was conducted by the jurisdictional Commissionerate and in ten CFSS internal audit was not conducted. Remaining 28 CFSS did not furnish information about conduct of internal audit (**Statement 31**).

DoR in their reply (February 2018) stated that with the increase in facilitation levels, CBEC has recognized the need for greater importance to audit and accordingly three Audit Commissionerate at Delhi, Mumbai and Chennai have been notified to carry out such functions efficiently.

Conclusion

The facility for online tracking of containers through Custom's EDI system is not only a much needed trade facilitation measure, it is also an important regulatory mechanism for the Customs department to monitor the container movement between ports and ICDs and CFSSs. However, Audit noticed instances of non-operationalisation of export transshipment module and lacunae in import transshipment module which defeated the purpose of introducing the online tracking mechanism.

³⁷ Ballabgarh, Marripalem, Amingaon, Verna, Kalinganagar

³⁸ Tondiarpet, Hosur, GRFL (Ludhiana), PSWC (Ludhiana), Dhandhari Kalan, Kanech, Patparganj, Sanand

³⁹ ICD Ajni, CFS Star Track Terminal, CFS Albatross Inland Port Pvt. Ltd.

Further, Audit found a huge pendency of 7877 containers which were lying uncleared in the ICDs and CFSs test checked during audit for periods ranging from one year to ten years. An analysis of uncleared cargo has revealed a plethora of issues that plague management of containerized cargo for imports and exports. While delay in obtaining NOC from customs authorities and other government agencies like plant quarantine, pollution control, food safety etc. for auction/disposal of containers is one end of the problem. Audit found that the problem is compounded manifold because of numerous instances of containers being dumped with hazardous materials. Test check by Audit has revealed that not only hazardous material like metallic scrap, mutilated rubber and war materials are imported through ICDs in violation of environmental regulations and customs procedures, the ICDs have also become a steady destination for dumping of municipal waste from abroad. Audit's scrutiny has revealed that many of the importers of such cargo are regular importers.

Government's response in dealing with dumping of hazardous materials and municipal waste is greatly impeded due to lacunae in regulations themselves. Audit noticed that Section 23(2) of Customs Act was routinely used by some importers to abandon containers. No action was taken by Customs to prevent such importers from importing similar goods in future, and at the same time Custom authorities were saddled with the uncleared containers. There is nothing in Customs Act or any other regulations to prevent importers from abandoning the cargo unless there are strictly unavoidable reasons.

Audit also noticed that while regulations for re-export of hazardous material are not effective as a result of which importers do not face stringent action for delay in following the re-export orders, there are no regulations which came to Audit's notice for dealing with dumping of municipal waste. As a result, containers with municipal waste continue to lie unattended at the ICDs and CFSs waiting to be incinerated which in itself is a serious environmental hazard.

Among other instances of violation of regulatory framework, many of the ICDs and CFSs were found to be handling hazardous cargo without the required clearance from central and state pollution control boards. Audit noticed cases of imports and exports of prohibited and restricted items indicating a weak monitoring system.

The internal control mechanism which reflects in robust regulatory procedures being followed was found wanting as instances of shortfall in bonds, bank guarantees and insurance were noticed. Despite implementation of EDI system, Audit found that manual filing of bills of entry and shipping bills was prevalent in eight ICDs and six CFSs. Absence of Local Risk management Committees and non-constitution of Customs Clearance Facilitation

Committees at many ICDs were other indications of weak regulatory and facilitation mechanisms. The Post Clearance Audit function was not set up in as many as 5 ICDs test checked by Audit. All these together lead Audit to conclude that the overall compliance environment at ICDs and CFSs was weak.

Recommendations

1. To strengthen the monitoring of container movement, Board may consider bringing suitable modifications in ICES to automate the re-credit of bond by populating the landing certificate message into ICES. Board may also consider developing a reporting mechanism to independently monitor the uncleared cargo/ containers rather than relying upon the custodians report.

DoR stated (February 2018) that the provision is available in ICES software whereby the custodian can present arrival report electronically and also for automation of bond re-credit. However, as problems have been reported with their operations, the same is being rectified. On recommendation regarding development of a reporting mechanism to independently monitor un-cleared cargo/containers rather than relying upon the custodian's report, CBEC will examine the issue and take steps to improve reporting and monitoring mechanism.

2. To check the large scale dumping of municipal and hazardous waste into India through cross border trade, provision in the Customs Act / Customs Regulations may be provided to invoke the Hazardous Materials (Management, Handling and Transboundary Movement) Rules, 2008 or any other relevant laws of the land to initiate stringent penal action including criminal action, if warranted, against defaulting importers and shipping lines. CBEC may issue relevant guidelines to its field formations in this regard.

DoR stated (February 2018) that provisions to impose penalty on the importers already exist in the Customs Act, 1962. Further, in cases of abetment of offence, Shipping lines are also liable to penal action. Implementation of suggestion regarding re-export of hazardous cargo by the importers at their own cost within stipulated time would require consultations with the nodal ministry. As CBEC intends to review the Handling of Cargo in Customs Areas Regulations the above recommendation to penalise a carrier, in such cases would also be considered.

3. To avoid any ambiguity in procedures for re-export of hazardous waste, Board may lay down these procedures in consultation with other concerned ministries like the Ministries of Environment and Shipping.

DoR stated (February 2018) that the Ministry agrees with the observation that hazardous waste wrongfully imported should be re-exported back by the

concerned importer. Ministry would take necessary steps in consultation with the nodal ministry.

4. To address the risk of importers taking undue advantage of provisions of Section 23 for wilful abandoning of cargo routinely, Board may review the provision so that abandoning of cargo is allowed only as a rarest of rare case.

DoR stated (February 2018) that Ministry intends to examine the recommendation and if required suitable modifications shall be brought in the Act.

New Delhi
Dated: 09 July 2018



(SHEFALI S. ANDALEEB)
Principal Director (Customs)

Countersigned

New Delhi
Dated: 10 July 2018



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