सत्यमेव जयते

Report of the Comptroller and Auditor General of India

for the year ended March 2018

भारतीय लेखापरीक्षा और लेखा विभाग ✦ INDIAN AUDIT AND ACCOUNTS DEPARTMENT

सत्यमेव जयते

लोकहितार्थ सत्यनिष्ठा
Dedicated to Truth in Public Interest

Union Government
Department of Revenue
(Indirect Taxes – Central Excise and Service Tax)
Report No. 4 of 2019

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Laid on the table of Lok Sabha/Rajya Sabha on _____

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Preface

This Report for the year ended March 2018 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Central Board of Indirect Taxes and Customs (CBIC) under the Department of Revenue – Indirect Taxes (Central Excise and Service Tax) of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of test audit during the period 2017-18, as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Executive Summary

Section 16 of Comptroller & Auditor General's Duties, Power and Conditions of Service Act, 1971 mandates CAG to audit receipts payable into Consolidated Fund of India and to satisfy that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. We examined functions of Central Excise and Service Tax Department relating to scrutiny, internal audit etc. and verified records of assessees, which form the basis for tax calculation, to examine the extent of effectiveness of the systems in place in ensuring that assessees comply with extant rules and procedures in this era of self-assessment.

This Report has 263 audit paragraphs containing 369 audit observations on Central Excise and Service Tax, having financial implication of ₹ 465.55 crore. The Ministry/Department had, till November 2018, accepted 230 paragraphs involving revenue of ₹ 345.22 crore and reported recovery of ₹ 68.15 crore in 122 cases. Highlights of some significant observations and findings are as follows: -

Chapter I: Central Excise and Service Tax Administration

Total revenue collection of Central Excise, Service Tax and Goods and Service Tax (with effect from 1 July 2017) has increased by ₹ 1,49,068 crore (23.48 per cent) in FY18 as compared to FY17. However, after excluding GST Compensation Cess amounting ₹ 62,612 crore from the GST revenue, as GST Compensation Cess is not part of the Consolidated Fund of India, total indirect tax (Central Excise, Service Tax, GSTT and Customs) decreased by ₹ 11,277 crore in FY18 from FY17. One of the reasons for decrease in the indirect tax revenue during FY18 may be attributed to the fact that the GST amount of ₹ 32,179 crore for the month of March 2018 was collected in the subsequent month of April 2018, unlike Central Excise and Service Tax.

(Paragraph 1.5)

After the implementation of GST, the number of registered assessees had increased to 1,05,05,913. Further, as on 31 March 2018, the total number of GST registrants under CBIC administration were 32,11,352 of whom 10,54,859 were migrated from the old tax regime and 21,56,493 were new registrants.

(Paragraph 1.11)

Chapter II: Audit Mandate, Audit Universe and Extent of Audit

Audit Universe consisted of 4,898 departmental units (27 Zones, 141 Commissionerates, 737 Divisions, 3,530 Ranges and 463 other departmental units which accounted for a revenue of ₹ 6,34,994[1] crore (₹ 3,80,495 crore Central Excise and ₹ 2,54,499 crore Service Tax). Audit Sample consisted of 22 Zones (81 per cent), 68 Commissionerates (48 per cent), 216 Divisions (29 per cent), 744 Ranges (21 per cent) and 90 other departmental units (19 per cent). In the audited 744 Ranges, we examined 69,610 returns submitted by 2,772 assessees, out of a total of 62,295 assesses with revenue of more than ₹ 1 crore, during FY18.

(Paragraph 2.2, 2.3 & 2.4)

During the last five years we raised 33,205 observations through Local Audit Reports, of that the Department accepted 16,010 observations (48.22 per cent). The Department did not furnish even the first reply in a large number of cases. Such cases increased from 1,300 cases (18.40 per cent) in FY14 to 3,067 cases (47.71 per cent) in FY18 resulting in accumulation of 8,497 cases awaiting first reply as on 31 March 2018.

(Paragraph 2.5.2)

Chapter III: Monitoring Mechanism for Appeal Cases in CBIC

We examined and found shortcomings in monitoring mechanism for Appeal Cases in CBIC. Major observations are as under:

In Central Excise, 45,749 cases involving revenue of ₹ 1,04,718 crore were pending in Appeals at the end of FY18 registering a marginal decrease of 3.5 per cent over the amount pending at the end of FY17. In Service Tax, 43,718 cases involving Service Tax revenue of ₹ 1,20,907 crore were pending in Appeals at the end of FY18 registering one per cent decrease over the amount pending at the end of FY17.

(Paragraph 3.5.1)

The mechanism to monitor the performance of field formations in respect of cases pending in Appeals was deficient as Zone/Commissionerate-wise data was not maintained at Board level. Also, accuracy of data maintained at Board and field formations level was not ensured as discrepancies were noticed in data maintained at Directorate of Legal Affairs and data reported in Monthly Performance Reports (MPRs).

(Paragraph 3.5.3.1 to 3.5.3.4 and 3.5.4.1)

[1] For FY17

In 28 Commissionerates, out of total 4,286 Appeal cases disposed, we examined 1,833 cases and observed that in 60 cases (3 per cent) pertaining to 13 Commissionerates, involving revenue of ₹ 126.33 crore, Appeals were dismissed due to lapses on part of the Department.

(Paragraph 3.5.5)

Instructions of the Board for early disposal of high revenue cases were not complied with as out of 3,047 appeal cases involving revenue of ₹10 crore and above in each case, proactive action for filing early hearing applications, getting the stay vacated by filing Interlocutory Applications etc. were taken only in 260 cases (8.53 per cent). Further, in 41 cases (5 per cent) involving revenue of ₹ 1,110 crore, test checked at field formations, early hearing applications were not filed while in 145 cases (48 per cent of test checked cases) involving revenue of ₹ 211.85 crore, bunching of similar cases was not done.

(Paragraph 3.5.3.5, 3.5.6.2 and 3.5.6.3)

Chapter IV: Monitoring mechanism for Recovery of Arrears in CBIC

We examined and found shortcomings in monitoring mechanism for recovery of arrears in CBIC. Major observations are as under:

In the selected 20 Commissionerates, out of total pending 5,672 arrear cases involving money value of ₹ 6,816.77 crore in Central Excise as on 31 March 2018, we examined 119 case files (2 per cent) involving money value of ₹ 1,217.29 crore. Similarly, out of total pending 12,046 arrear cases involving money value of ₹ 13,549.19 crore in Service Tax as on 31 March 2018, we examined 154 case files (1 per cent) involving money value of ₹ 6,317.34 crore.

(Paragraph 4.4)

Total arrears had increased from ₹ 1,17,904 crore in FY17 to ₹ 1,66,553 crore in FY18 in respect of Service Tax. Similarly, total arrears had increased from ₹ 84,200 crore in FY17 to ₹ 96,496 crore in FY18 in respect of Central Excise. Further, recovery as per cent of gross arrears had reduced from 1.19 per cent in FY17 to 1.02 per cent in FY18 for Service Tax. Similarly, recovery as per cent of gross arrears had reduced from 1.85 per cent in FY17 to 1.27 per cent in FY18 for Central Excise.

The closing balance of gross arrears was ₹ 1,66,553 crore and ₹ 96,496 crore for Service Tax and Central Excise, respectively, as on 31 March 2018. However, the closing balance of arrears as per Tax Arrear Recovery reports for March 2018 was ₹ 1,27,809 crore and ₹ 85,158 crore for Service Tax and Central Excise, respectively. One of the reasons for difference was that

closing balance of Tax Arrear Recovery reports of June 2017 was not taken correctly in the opening balance of July 2017.

(Paragraph 4.5.1.1)

There were discrepancies in figures of arrear amount in litigation as reported by Directorate of Legal Affairs and Tax Arrear Recovery reports for FY18. Total pending arrears in litigation as per Tax Arrear Recovery reports was ₹ 66,604 crore in 32,100 cases whereas as per Directorate of Legal Affairs report, the figure was ₹ 74,406 crore in 35,199 cases in respect of Central Excise. Similarly, total pending arrears in litigation as per Tax Arrears Recovery reports was ₹ 1,11,851 crore in 36,367 cases whereas as per Directorate of Legal Affairs report, the figure was ₹ 94,825 crore in 35,163 cases in respect of Service Tax.

(Paragraph 4.5.1.2)

16 Zones did not achieve their recovery targets and six Zones achieved less than 50 per cent of recovery targets.

(Paragraph 4.5.1.3)

No time limit was prescribed for communication of Orders-in-Original to Range Offices. We noticed that the delay in communication of Order-in-Original to Range Offices ranged from one day to 20 months in 148 cases in nine Commissionerates.

(Paragraph 4.5.2)

In 115 cases (47 per cent of test checked cases) under 16 Commissionerates, action for recovery under section 11 of Central Excise Act, 1944, section 142 of Customs Act, 1962 and section 87 of the Finance Act, 1994 was not initiated, which resulted in non-recovery of ₹ 1,202.33 crore.

(Paragraph 4.5.3)

Inadequate/non-pursuance of the case with Official Liquidator resulted in non-recovery of ₹ 15.61 crore.

(Paragraph 4.5.4)

In 10 Commissionerates, no cases were transferred to Recovery Cell during FY17 and FY18.

(Paragraph 4.5.5 (i))

Chapter V: Effectiveness of Tax Administration and Internal Controls (Service Tax)

We examined 18,000 ST-3 returns submitted by the assessees in the audited 744 ranges in FY18. We observed significant deficiencies in broadening of tax base, scrutiny of returns, internal audit, sanctioning of refund claims etc. by the departmental officials in 104 cases having financial implication of

₹ 206.54 crore. Further, we observed instances of non-payment/short payment of Service Tax, incorrect availing/utilisation of CENVAT credit and non-payment of interest by the assessee in 63 cases having financial implication of ₹ 52.00 crore.

Apart from above, we also observed deficiencies in working of the Department in 109 instances during our audit in FY18 in areas of third party data verification, scrutiny of returns, anti-evasion etc.

(Paragraph 5.2)

Chapter VI: Effectiveness of Tax Administration and Internal Controls (Central Excise)

We examined 51,610 Central Excise returns submitted by the assessees in the audited 744 ranges in FY18. We observed 67 instances of serious lapse of the departmental officials in Scrutiny of returns, Internal Audit, Show Cause Notice and Adjudication, maintenance of Call Book etc. having financial implication of ₹ 45.65 crore.

We also observed 26 instances of non-compliance by the assessees on issues of non/short payment of Central Excise duty/interest and irregular availing/utilization of CENVAT credit etc. having financial implication of ₹ 129.65 crore.

(Paragraph 6.2)

Chapter I

Central Excise and Service Tax Administration

1.1 Resources of the Union Government

The resources of Government of India include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from Direct and Indirect Taxes. Table 1.1 below shows the summary of resources for the financial year 2017-18 (FY18) and FY17.

Table 1.1: Resources of the Union Government

(₹ in crore)

	FY18	**FY17**
A. Total Revenue Receipts	23,64,148	22,23,988
i. Direct Tax Receipts	10,02,738	8,49,801
ii. Indirect Tax Receipts including other taxes	9,16,445	8,66,167
iii. Non-Tax Receipts	4,41,383	5,06,721
iv. Grants-in-aid & contributions	3,582	1,299
B. Miscellaneous Capital Receipts[2]	1,00,049	47,743
C. Recovery of Loans and Advances[3]	70,639	40,971
D. Public Debt Receipts[4]	65,54,002	61,34,137
Receipts of Government of India (A+B+C+D)	**90,88,838**	**84,46,839**

Source: Union Finance Accounts of respective years.
Note: Direct Tax receipts and Indirect Tax receipts including other taxes have been worked out from the Union Finance Accounts. Total Revenue Receipts include ₹ 6,73,005 crore in FY18 and ₹ 6,08,000 crore in FY17, share of net proceeds of Direct and Indirect Taxes directly assigned to states.

The total receipts of the Union Government increased to ₹ 90,88,838 crore in FY18 from ₹ 84,46,839 crore in FY17. In FY18, its own receipts were ₹ 23,64,148 crore, an increase of ₹ 1,40,160 crore which is an increase of 6.30 per cent over the previous year. This included Gross Tax receipts of ₹ 19,19,183 crore of which Indirect Tax receipts including other taxes accounted for ₹ 9,16,445 crore.

1.2 Nature of Indirect Taxes

The Audit Report is based on the audit conducted up to the FY18 and covers transactions involving levy and collection of Central Excise and Service Tax. The major indirect taxes in vogue as on that date are discussed below:

a) **Central Excise duty:** Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise

[2] This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts;

[3] Recovery of loans and advances made by the Union Government;

[4] Borrowing by the Government of India internally as well as externally.

duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc. (Entry 84 of List 1 of the Seventh Schedule of the Constitution).

b) Service Tax: Service Tax was levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax was a tax on services rendered by one person to another. Section 66B of the Finance Act, 1994 envisaged that there shall be a tax levied at the rate of 14 per cent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.[5] 'Service' had been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.[6]

c) Customs duty: Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution).

d) Goods and Service Tax: Goods and Service Tax (GST) is a tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption (article 366(12A) of Constitution of India) in India with effect from 1 July 2017 (including Jammu and Kashmir with effect from 8 July 2017). Central Excise duty (except five Petroleum products), Service Tax, Countervailing duty (CVD), Special Additional duty (SAD) components of customs and most of the indirect taxes of states (excluding alcoholic liquor for human consumption) have been subsumed into GST. Central Excise duty is continued on five Petroleum products as these products are out of GST at present and will be brought under GST later. Tobacco products are subject to Central Excise and GST both. GST is a consumption based tax i.e. tax is payable in the state where goods or services or both are finally consumed. In addition to GST, a cess named GST Compensation Cess is levied on some goods i.e. Tobacco products, Coal, Aerated water, Motor cars etc.

[5] Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

[6] Section 66E of the Finance Act, 1994 lists the declared services.

There are three components of GST as follows:

- **Central Goods and Service Tax (CGST):** payable to the Central Government on supply of goods and service within state/union territory.
- **State/Union territory Goods and Service Tax (SGST/UTGST):** payable to the State/Union territory Government on supply of goods and service within state/Union territory.
- **Integrated Goods and Service Tax (IGST):** In case of inter-state supply of goods and services, IGST is levied by Government of India. Equivalent IGST is also levied on imports into India. IGST shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

This chapter discusses trends, composition and systemic issues in Central Excise and Service Tax using data from finance accounts, departmental accounts and relevant data available in public domain.

1.3 Organisational Structure

The Department of Revenue (DoR) of Ministry of Finance (MoF) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Indirect Taxes and Customs (CBIC) formerly Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Central Excise, Service Tax and GST are looked after by the CBIC.

Indirect Tax laws are administered by the CBIC through its field offices, the Commissionerates. For this purpose, in view of implementation of GST, the country is divided, with effect from 16 June 2017, into 21 Zones of GST headed by the Principal Chief Commissioner/Chief Commissioner. Under these 21 Zones, there are 107 Central Goods and Service Tax Commissionerates that deal with GST and Central Excise and headed by the Principal Commissioner/Commissioner. Divisions and Ranges are the subsequent formations, headed by Deputy/Assistant Commissioner and Superintendents respectively. Apart from these Central Goods and Service Tax Commissionerates, there are 49 GST Appeal Commissionerates, 48 GST Audit Commissionerates and 22 Directorates General/Directorates dealing with specific function.

The overall sanctioned staff strength of the CBIC was 91,628 as on 1 January, 2018.

1.4 Growth of Indirect Taxes - Trends and Composition

Table 1.2 depicts the relative growth of Indirect Taxes during FY14 to FY18.

Table 1.2: Growth of Indirect Taxes

(₹ in crore)

Year	Indirect Taxes*	GDP	Indirect Taxes as per cent of GDP	Gross Tax revenue	Indirect Taxes as per cent of Gross Tax revenue
FY14	4,97,349	1,13,45,056	4.38	11,38,996	43.67
FY15	5,46,214	1,25,41,208	4.36	12,45,135	43.87
FY16	7,10,101	1,35,76,086	5.23	14,55,891	48.77
FY17	8,62,151	1,51,83,709	5.68	17,15,968	50.24
FY18	9,13,486	1,67,73,145	5.45	19,19,184	47.59

Source: Tax revenue - Union Finance Accounts, GDP – Press note of CSO[7]. *Indirect Taxes includes, Revenue from CX, ST, GST, Customs and other taxes on commodity and services.

It is observed that Indirect tax collection, inclusive of GST compensation cess, increased by ₹ 51,335 crore (5.95 per cent) in FY18 in comparison to FY17. As a percentage of GDP it decreased to 5.45 per cent in FY18 from 5.68 per cent in FY17. Its share in Gross Tax revenue also decreased to 47.59 per cent in FY18 from 50.24 per cent in FY17.

1.5 Indirect Taxes – Relative Contribution

Table 1.3 depicts the trajectory of the major Indirect Tax components in GDP terms for the period FY14 to FY18.

Table 1.3: Indirect Taxes – percentage of GDP

(₹ in crore)

Year	GDP	CE revenue	ST revenue	GST revenue	(CE+ST+GST) revenue	(CE+ST+GST) revenue as per cent of GDP	Custom revenue	Custom revenue as per cent of GDP
FY14	1,13,45,056	1,69,455	1,54,780		3,24,235	2.86	1,72,085	1.52
FY15	1,25,41,208	1,89,038	1,67,969		3,57,007	2.85	1,88,016	1.50
FY16	1,35,76,086	2,87,149	2,11,415		4,98,564	3.67	2,10,338	1.55
FY17	1,51,83,709	3,80,495	2,54,499		6,34,994	4.18	2,25,370	1.48
FY18	1,67,73,145	2,58,636	81,229	4,44,197	7,84,062	4.67	1,29,030	0.77

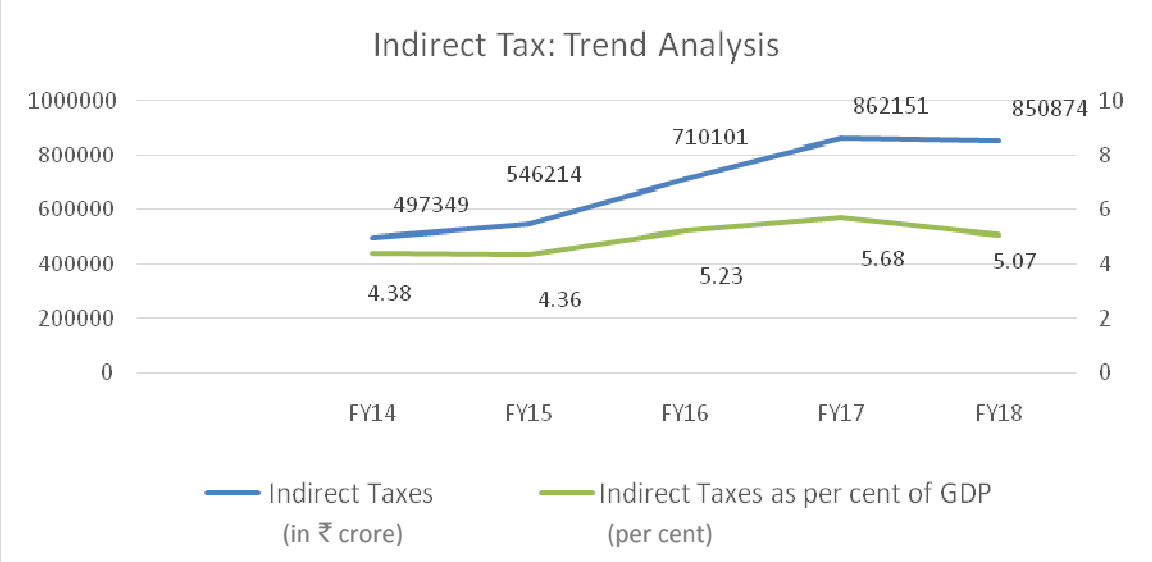
Source: Figures of tax receipts are as per Union Finance Accounts of respective years.

GST revenue included CGST (₹ 2,03,261 Cr.), IGST (₹ 1,76,688 Cr.), UTGST (₹ 1,635 Cr.) and Compensation cess (₹ 62,612 Cr.).

[7] Press note on GDP released on 31 May 2018 by Central Statistical Office (CSO), Ministry of Statistics and Programme Implementation.

However, for the purpose of trend analysis of Indirect Taxes vis-a-vis GDP and comparison with previous years revenue, GST compensation Cess, amounting ₹ 62,612 crore should be excluded from the GST revenue as the Section 10(1) of the GST (Compensation to the States) Act, 2017, provides that proceeds of GST Cess leviable shall be credited to the non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the Public Account of India. Accordingly, after excluding GST compensation Cess from the GST revenue, it is observed that in FY18 there is a decrease of ₹ 11,277 crore from FY17 in the Indirect Tax receipts[8] as shown in figure 1.1 below. One of the reasons for the decrease in indirect tax receipts from the previous year is that GST for the month of March is collected in the subsequent month, unlike Central Excise and Service Tax which were collected in the month of March itself. The GST for the month of March 2018, amounting to ₹ 32,179 crore[9], was collected in April 2018.

Chart 1.1: Indirect Taxes – Trend Analysis



1.6 Central Excise and Service Tax Receipts vis-à-vis CENVAT Credit Utilised

A manufacturer and Service provider can avail credit of duty of Central Excise paid on inputs or capital goods as well as Service Tax paid on input services and can utilise credit so availed in payment of Central Excise duty and Service Tax.

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[8] Indirect Tax includes Central Excise, Service Tax, Customs and other taxes on commodity and services.

[9] CGST for the Month of April 2018 is ₹ 32,089 crore and UGST for the month of April 2018 is ₹ 90 crore.

Table 1.4 depicts Central Excise collections through Personal Ledger Account (PLA) i.e. cash and CENVAT credit during FY16 to FY18.

Table 1.4: Central Excise receipts: PLA and CENVAT utilisation

(₹ in crore)

Year	CE duty paid through PLA		CE duty paid through CENVAT credit		CE duty paid from CENVAT credit as per cent of PLA payments
	Amount#	Per cent increase from previous year	Amount*	Per cent increase from previous year	
FY16	2,87,149	51.90	3,10,335	6.39	108.07
FY17	3,80,495	32.51	3,39,274	9.33	89.17
FY18	2,58,636	(-)32.03	99,808	(-)70.58	38.59

Source: # Union Finance Accounts of respective years.
* Figures furnished by the Ministry.

It is observed that Central Excise revenue paid through PLA showed negative growth in FY18. This is due to the fact that after GST implementation from 1 July 2017, all commodities, except five petroleum products and tobacco products, had been subsumed in the GST. It is also observed that the Central Excise duty paid from CENVAT credit as per cent of PLA payment has also decreased in FY18.

Table 1.5 depicts the growth of Service Tax collections through PLA and CENVAT credit during FY16 to FY18.

Table 1.5: Service Tax receipts: PLA and CENVAT utilisation

(₹ in crore)

Year	ST duty paid through PLA		ST duty paid through CENVAT credit		ST paid from CENVAT credit as per cent of PLA payments
	Amount#	Per cent increase from previous year	Amount*	Per cent increase from previous year	
FY16	2,11,415	25.87	1,10,823	34.22	52.42
FY17	2,54,499	20.38	1,24,057	11.94	48.75
FY18	81,229	(-)68.08	38,915	(-)68.63	47.91

Source: # Union Finance Accounts of respective years. Figures of FY18 are provisional. * Figures furnished by the Ministry.

After implementation of GST with effect from 1 July 2017, Service Tax has been subsumed in the GST. Therefore, figures for Service Tax revenue and CENVAT utilisation showed negative growth in comparison to the previous years. It is also observed that the percentage of Service Tax paid from CENVAT credit as per cent of PLA payments also showed negative growth in FY18.

1.7 Central Excise Revenue from Major Commodities

After the implementation of GST, five petroleum products (crude oil, diesel, petrol, natural gas and air turbine fuel) and tobacco products[10] are kept After

[10] Tobacco products are subject to both Central Excise and GST.

under the purview of Central Excise. However, vide Notification No. 11/2017-Central Excise, dated 30 June 2017, the effective Central Excise duty, from 1st July 2017, on tobacco products, which is subject to both Central Excise and GST, was Nil. Central Excise revenue from these two categories of commodities during FY18 is shown in table 1.6[11].

Table 1.6: Revenue from Petroleum and Tobacco commodities

(₹ in crore)

Commodities	FY16	FY17	FY18
Petroleum products	1,80,734	2,43,748	2,43,592
Tobacco products	21,463	19,846	6,010
Others	84,952	1,16,901	9,034
Total	**2,87,149**	**3,80,495**	**2,58,636**

Source: Figures provided by the Ministry in the DDM-CE-1 return.

The reason for decline in Central Excise revenue from the tobacco products is that after implementation of GST, with effect from 1 July 2017, GST and GST compensation cess are being levied on the tobacco products and the effective Central Excise duty has been brought to nil.

In respect of Central Excise revenue from the petroleum products it was observed there was an increase of ₹ 63,014 crore in FY17 from the previous year. However, there is no increment in the revenue from the petroleum sector in FY18 from FY17. When requested, Ministry attributed (March 2019) slight shortfall of revenue in petroleum sector to the reduction in the rate of duty on Motor Spirit and High Speed Diesel by ₹ 2 per litre from October 2017.

1.8 Budget Estimate Vs Actual Receipts

Tables 1.7 and 1.8 depict a comparison of the Budget Estimates and the corresponding actuals for Central Excise, Service Tax and GST receipts.

Table 1.7: Budget, Revised estimates and Actual receipts (CE, ST and GST)

(₹ in crore)

Year	Budget estimates		Revised budget estimates			Actual receipts		
	CE	ST	CE	ST	GST	CE	ST	GST
FY14	1,97,554	1,80,141	1,79,537	1,64,927		1,69,455	1,54,780	
FY15	2,07,110	2,15,973	1,85,480	1,68,132		1,89,038	1,67,969	
FY16	2,29,809	2,09,774	2,84,142	2,10,000		2,87,149	2,11,415	
FY17	3,18,670	2,31,000	3,87,369	2,47,500		3,80,495	2,54,499	
FY18	4,06,900	2,75,000	2,76,995	79,507	4,44,631	2,58,636	81,229	4,44,197

Source: Union Finance Accounts and receipt budget documents of respective years.

It is observed that budget estimates were made for Central Excise and Service Tax while revised estimates were made after implementation of GST and

[11] The Ministry provided the latest revenue figures from the petroleum sector in the form DDM-CE-1, which are different from the figures provided earlier.

accordingly revised estimates for Central Excise and Service Tax were reduced. Actual revenue collection in comparison to revised estimates was short in Central Excise by ₹ 18,359 crore (6.63 per cent), excess by ₹ 1,722 crore (2.17 per cent) in Service Tax and short by ₹ 484 crore (0.10 per cent) in GST.

Table 1.8: Variation between budget estimates and actual receipts (CE, ST and GST)

(₹ in crore)

Year	Budget estimates (CE+ST))	Revised budget estimates (CE+ST+GST)	Actual receipts (CE+ST+GST)	Diff. between actuals and BE	Diff. between actuals and RE	Percentage variation between actuals and BE	Percentage variation between actuals and RE
FY14	3,77,695	3,44,464	3,24,235	(-)53,460	(-)20,229	(-)14.15	(-)5.87
FY15	4,23,083	3,53,612	3,57,007	(-)66,076	3,395	(-)15.62	0.96
FY16	4,39,583	4,94,142	4,98,564	58,981	4,422	13.42	0.89
FY17	5,49,670	6,34,869	6,34,994	85,324	125	15.52	0.02
FY18	6,81,900	8,01,133	7,84,062	1,02,162	(-)17,071	14.98	(-)2.13

Source: Union Finance Accounts and receipt budget documents of respective years. Figures of actual receipts of FY18 are provisional.

Actual revenue of CE, ST and GST in FY18 was short by ₹17,071 crore (2.13 per cent) from revised estimates while in comparison to budget estimates it was ₹ 1,02,162 crore (14.98 per cent) more.

1.9 Central Excise Revenue Forgone under Central Excise Act, 1944

Central Government has been granted powers under Section 5A(1) of the Central Excise Act, 1944 to issue exemption notifications in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedules. The rates prescribed by exemption notifications are known as the "effective rates". Revenue forgone is defined as the difference between the duty that would have been payable but for the exemption notification and the actual duty paid in terms of the said notification and till budget for FY17 was calculated in the following manner:

- In cases where the tariff and effective rates of duty are specified as ad valorem rates - **Revenue forgone= Value of goods X (Tariff rate of duty - Effective rate of duty).**
- In cases where the tariff rate is on ad valorem basis but the effective duty is levied at specific rates in terms of the exemption notification, then – **Revenue forgone = (Value of goods X Tariff rate of duty) - (Quantity of goods X Effective rate of specific duty).**
- In cases where the tariff rates and effective rates are a combination of ad valorem and specific rates, revenue forgone is calculated accordingly.

- In all cases, where the tariff rate of duty equals the effective rate, revenue forgone will be zero.

From budget for FY18, the methodology to calculate the revenue impact of tax incentives on the Central Excise was modified. The rates imposed by unconditional notifications had been considered as *de facto* tariff rates and excluded from calculation of revenue forgone. The revenue forgone was then only on account of conditional exemptions which allowed reduced rates vis-a-vis the tariff rates or the *de facto* tariff rate.

Table 1.9 depicts figures of Central Excise related revenue forgone during last five years as reported in budget documents of the Union Government.

Table 1.9: Central Excise receipts and total revenue forgone

(₹ in crore)

Year	Central Excise receipts$	Revenue forgone*	Revenue forgone as per cent of Central Excise receipts
FY14	1,69,455	1,96,223	115.80
FY15	1,89,038	1,96,789	104.10
FY16	2,87,149	79,183	27.58
FY17	3,80,495	71,164	18.70
FY18	2,58,636	-	-

Source: $Union Finance Accounts, figures for FY 18 are provisional. *Union Receipts Budget. FY16 and FY17 figures as recast and reflected in Budget document of FY18.

In the Receipt Budget FY19, Government reported that excise duty had been subsumed in GST[12], the revenue impact of tax incentives for excise has been discontinued from FY18 onwards. It has also been reported that the revenue impact of exemptions under GST would be provided from Budget of FY20 onwards.

1.10 Service Tax Revenue Forgone under Finance Act, 1994

A perusal of the budget documents revealed that details of revenue foregone for Direct Taxes and other Indirect Taxes such as Central Excise and Customs have been laid before Parliament each year during the respective budget commencing with the budget of FY07. However, the revenue foregone in respect of Service Tax is not available in the budget documents. In reply to the similar issue pointed out in paragraph No. 1.12 of Audit Report No. 6 of 2014, the Ministry replied that the figure was not being maintained due to absence of adequate data.

The same issue was examined by the Tax Administration Reform Commission, in its third report (November 2014) and it was mentioned that for Service

[12] Except on tobacco products and five petroleum products (crude oil, diesel, petrol, natural gas and air turbine fuel).

Tax, the Department should consider ways to estimate revenue foregone figures and do a gap analysis.

However, no action had been taken in this regard as revenue forgone under Service Tax had not been calculated by the Department.

1.11 Tax Base in Central Excise, Service Tax and GST

"Assessee" means any person who is liable for payment of Central Excise duty as a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorised agent of such person as per definition in Rule 2 (c) of Central Excise Rules, 2002 or any person who is liable to pay Service Tax and includes his agent as per definition in Section 65(7) of the Finance Act, 1994 (as amended).

In respect of GST, as per the Section 2(107) of the CGST Act, 2017, "taxable person" means a person who is registered or liable to be registered under Section 22 or Section 24 of the CGST Act, 2017.

Table 1.10 depicts the data of the number of persons registered with the CBIC and GST registrations.

Table 1.10: Tax base in Central Excise, Service Tax and GST

Year	No. of registered assessees (CE)	No. of registered assessees (ST)	Total assessees (CX & ST)	No. of registered assessees (GST)	Per cent growth over previous year
FY14	4,35,213	22,73,722	27,08,935		-
FY15	4,67,286	25,26,932	29,94,218		10.53
FY16	4,98,273	28,28,361	33,26,634		11.10
FY17	5,27,534	31,60,281	36,87,815		10.86
FY18 (Jun 17)	5,39,203	32,47,480	37,86,683		-
FY18 (Mar 18)	5,39,725	32,48,014	37,87,739	1,05,05,913	-

Source: Figures furnished by the Ministry.

It is observed that number of registered assessees increased during all five years. After the implementation of GST the number of registered assessees, as on 31 March 2018, were 1,05,05,913. But the tax base under Central Excise and Service Tax is not comparable with the GST tax base. It is due to the fact that GST registrants include registered assessees of State VAT regime who now migrated to GST. Out of 1,05,05,913 assessees, 41,16,360 new assessees had been registered under GST. The total registered assessees of GST have been divided into CBIC and State Tax Departments. The basis of such bifurcation is that all the migrated assessees paying GST less than ₹ 1.5 crore have been divided in the ratio of 90:10 between States and Centre and the migrated assessees paying GST more than ₹ 1.5 crore and new

registrants have been divided in the ratio of 50:50 between States and Centre. Accordingly, as on 31 March 2018, the total number of GST registrants under CBIC administration were 32,11,352.

1.12 Revenue Realised because of Anti-Evasion Measures

Both, Director General of Central Excise Intelligence (DGCEI) (Now Directorate General of Goods and Service Tax Intelligence) as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Central Excise duty and Service Tax. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field, are the first line of defence against duty evasion, DGCEI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications. Table 1.11 depicts the performance of DGCEI during last three years.

Table 1.11: Anti-evasion performance of DGCEI in respect of Central Excise and Service Tax during last three years

(₹ in crore)

Year	Central Excise			Service Tax		
	Detection		Voluntary payment during Investigation	Detection		Voluntary payment during Investigation
	No. of cases	Amount	Amount	No. of cases	Amount	Amount
FY16	2,366	5,297	804	7,519	18,971	4,658
FY17	2,127	5,773	795	8,085	17,846	5,313
FY18	903	6,440	359	5,319	24,243	3,564

Source: Figures furnished by the Ministry.

It is observed that number of cases detected by DGCEI in FY18 decreased from 2,127 to 903 in Central Excise and from 8,085 to 5,319 in Service Tax in comparison to FY17, though amount involved has increased from ₹ 5,773 crore to ₹ 6,440 crore in Central Excise and from ₹ 17,846 crore to ₹ 24,243 crore in Service Tax. Voluntary payment during investigation has, however, decreased from ₹ 795 crore to ₹ 359 crore (54.84 per cent) in Central Excise and from ₹ 5,313 crore to ₹ 3,564 crore (32.91 per cent) in Service Tax.

1.13 Revenue Collection due to Departmental Efforts

There are various methods by which the Department collects the revenue due but not paid by the taxpayers. These methods include Scrutiny of Returns, Internal Audit, Anti-Evasion, Adjudication etc.

The result of departmental efforts is shown in Table 1.12.

Table 1.12: Revenue recovered by departmental efforts

(₹ in crore)

Sl. No.	Departmental action	Central Excise		Service Tax	
		Recovery during FY17	Recovery during FY18	Recovery during FY17	Recovery during FY18
1	Internal audit	304	219	500	386
2	Anti-Evasion	382	159	1,620	1,153
3	Confirmed Demands	1,043	577	650	897
4	Pre-deposits	368	575	525	502
5	Scrutiny of Returns	291	77	234	179
6	Recovery from Defaulters	3,486	1,093	1,106	470
7	Provisional Assessment	64	11	3	9
8	Others	174	125	379	425
	Total	**6,112**	**2,836**	**5,017**	**4,021**

Source: Figures furnished by the Ministry.

Total Central Excise and Service Tax collection during FY18 was ₹ 2,58,636 crore and ₹ 81,229 crore, respectively. Out of which, only ₹ 2,836 crore (1.09 per cent) in Central Excise and ₹ 4,021 (4.95 per cent) in Service Tax were recovered due to the departmental efforts. Further, figures of revenue collection shown under Anti-Evasion in Table 1.12 for FY17 and FY18 do not tally with the amount relating to same category shown in Table 1.11.

1.14 Cost of Collection

Table 1.13 depicts the cost of collection vis-a-vis the revenue collection.

Table 1.13: Central Excise and Service Tax receipts and cost of collection

(₹ in crore)

Year	Receipts from Central Excise	Receipts from Service Tax	Receipts from GST (CGST+ IGST)	Total receipts	Cost of collection	Cost of collection as % of total receipts
FY14	1,69,455	1,54,780		3,24,235	2,635	0.81
FY15	1,89,038	1,67,969		3,57,007	2,950	0.83
FY16	2,87,149	2,11,415		4,98,564	3,162	0.63
FY17	3,80,495	2,54,499		6,34,994	4,056	0.64
FY18	2,58,636	81,229	4,44,197	7,84,062	5,249	0.67

Source: Union Finance Accounts of respective years. Figures of FY18 are provisional.

The cost of collection as per cent of total receipts has increased to 0.67 per cent in FY18 from 0.64 per cent in FY17.

Chapter II

Audit Mandate, Audit Universe and Extent of Audit

2.1 Audit Mandate

Article 149 of the Constitution of India provides that the Comptroller and Auditor General of India (CAG) shall exercise such powers and perform such duties in relation to the accounts of the Union and of the states and of any other authority or body as may be prescribed by or under any law made by the Parliament. The Parliament passed the Comptroller and Auditor General's DPC Act (CAG's DPC Act) in 1971. Section 16 of the CAG's DPC Act authorizes CAG to audit all receipts (both revenue and capital) of the Government of India and of Government of each state and of each Union territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. Regulations on Audit & Accounts, 2007 (Regulations) lay down the principles for Receipt Audit.

2.1.1 Examination of systems and procedures and their efficacy

Audit of receipts includes an examination of the systems and procedures and their efficacy mainly in respect of:

a. identification of potential tax assessees, ensuring compliance with laws as well as detection and prevention of tax evasion;
b. exercise of discretionary powers in an appropriate manner including levy of penalties and initiation of prosecution;
c. appropriate action to safeguard the interest of the Government on the orders passed by appellate authorities;
d. any measures introduced to strengthen or improve revenue administration;
e. amounts that may have fallen into arrears, maintenance of records of arrears and action taken for the recovery of the amounts in arrears;
f. pursuit of claims with due diligence and to ensure that these are not abandoned or reduced except with adequate justification and proper authority.

2.1.2 Audit of Central Excise and Service Tax

Indian Central Excise and Service Tax System is a self-assessment system in which the tax payers prepare their own tax returns and submit it to the Department. This system is guided by the fiscal laws including the Central Excise Act, 1944 and Finance Act, 1994. Central Excise and Service Tax Department assesses and scrutinizes the returns by way of preliminary

scrutiny, detailed scrutiny, internal audit etc. and ensures the correctness of the tax so deposited by the tax payer.

To examine the efficacy of the systems and procedures of the Central Excise and Service Tax Department, CAG examines the records related to the returns submitted by the assessees along with the records of the various field formations and functional wings of the Board.

2.2 Audit Universe

The audit universe includes the CBIC, it's subordinate organisations and field formations. Accordingly, as on 1 April 2017 audit universe had 4,898 Units which accounted for a revenue of ₹ 6,34,994[13] crore (₹ 3,80,495 crore Central Excise and ₹ 2,54,499 crore Service Tax) and included 27 Zones, 141 Commissionerates, 737 Divisions, 3,530 Ranges and 463 other Units.

Due to implementation of GST with effect from 1 July 2017, Department underwent restructuring and the number of the departmental units changed as mentioned in the Para 1.3 of this Report.

2.2.1 CBIC

The Central Board of Indirect Taxes and Customs, in the Ministry of Finance, is the apex body for administering the levy and collection of indirect taxes of the Union of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs & Central Excise duties and Goods and Service Tax, prevention of smuggling and administration of matters relating to Customs, Central Excise, Goods and Service Tax and Narcotics to the extent under CBIC's purview. CBIC is headed by a Chairman and consists of six members.

2.2.2 Zones

Zones are the highest auditable entities headed by Principal Chief Commissioner/Chief Commissioner. Principal Chief Commissioner/Chief Commissioner of Zone exercises supervision and control over the technical and administrative work of all the Commissionerates in the Zone. They monitor the revenue collection by each Commissionerate in the Zone and the proper implementation of Acts/Rules and Board's instructions/guidelines issued from time to time.

2.2.3 Commissionerates

Each Zone comprises several Commissionerates headed by Principal Commissioner/Commissioner. Administratively, each Commissionerate is a 3-tier set-up with its Headquarters at the helm, four to six Divisions at the

[13] For FY17

second level and four to six Ranges under each Division at the third and final level. Commissionerates are divided in three categories viz. Executive Commissionerates, Commissionerates (Audit) and Commissionerates (Appeal).

The primary function of a Central Excise Commissionerate/Service Tax Commissionerate (Executive Commissionerate) is to implement the provisions of Central Excise/Service Tax Act, rules framed under these Acts and other allied Acts of the Parliament under which duty of Central Excise/ Service Tax is levied and collected.

In each Central Excise/Service Tax zone there may be one or more Audit Commissionerates headed by a Commissioner (Audit). The main function of the Audit Commissionerate is to conduct audit of the assessees falling under its jurisdiction, convening of monitoring committee meetings, helping executive Commissionerates in pursuing the cases against the assessees etc.

Commissioner (Appeal) acts as an appellate authority and passes orders on appeal in relation to all adjudication orders passed by an authority subordinate to the rank of a Commissioner.

2.2.4 Divisions

Each executive Commissionerate has four to six Divisions headed by a Deputy/Assistant Commissioner. The Divisional heads are responsible for proper compliance of laws and procedures within their jurisdiction. They are also responsible for collection of intelligence, organizing the anti-evasion operations and perform quasi-judicial function, viz. adjudication of cases falling within their competence. They are the original authority to decide classification of goods and their assessable value.

2.2.5 Ranges

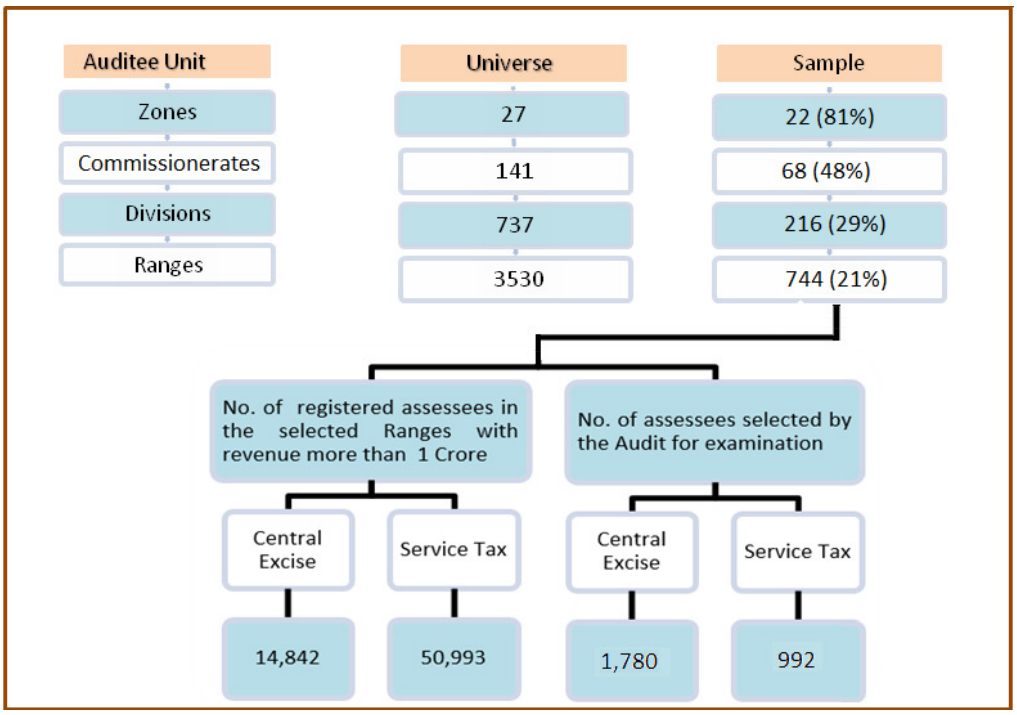
Each Division consists of four to seven Ranges. The Range, headed by a Superintendent, is the first office of contact between the assessee and the Department. The assessees are registered with the Range office. Scrutiny of the assessment is done by the Range on the basis of prescribed returns filed by the assessees. Apart from the assessment work, the Range officials also check the correctness of statutory declarations filed by the assessees.

2.3 Audit Sample

As discussed in Para 2.2.5, the Ranges are the departmental units where the assessees are registered and submit returns. Ranges are, therefore, responsible for verification of the registrations, scrutiny of returns, monitoring of revenue collection etc. We examined the efficacy of the system and procedures, as envisaged in Para 2.1.1.

As on 1 April 2017, the total number of assessees registered with the Department were 36,87,815 (5,27,534 Central Excise assesses and 31,60,281 Service Tax assessee) of that 3,32,421 assessees (54,269 Central Excise assesses and 2,78,152 Service Tax assessees) were paying revenue more than one crore per annum. We selected 2,772 assessees (1,780 Central Excise and 992 Service Tax) on various criteria[14] for examination as shown in figure 2.1 below:

Chart 2.1: Audit Universe and Sample



Further, we also audited 90 (19.44 per cent) out of 463 other departmental units such as Audit Commissionerates, Appeal Commissionerates, Directorate of Data Management, Directorate of Legal Affairs, Directorate General of Performance Management etc., to assess the efficacy of monitoring mechanism of the Department.

2.4 Audit Efforts and Audit Products

Compliance Audit was conducted by our nine field offices headed by Directors General (DsG)/Principal Directors (PDs) of Audit, who audited 1,140 departmental units and records of 2,772 assessees in FY18 as per Regulations on Audit and Accounts, 2007 and in conformity with the Auditing Standards, issued by the Comptroller and Auditor General of India. Data/information

[14] High revenue, high percentage of CENVAT and low percentage of PLA, nature of commodities/services, nature of transactions, number of SCNs issued, confirmed demand cases, year of last CAG audit etc.

from the Union Finance Account, and Management Information System (MIS), Monthly Technical Reports (MTRs) of the Board were also used.

During FY18, in 744 Ranges we examined 69,610 returns (Central Excise 51,610 and Service Tax 18,000) submitted by the selected 2,772 assessees and raised 4,641 observations involving revenue of ₹ 1,485.91 crore. Out of these 4,641 observations, we included 102 (Central Excise 43 and Service Tax 59) significant observations involving ₹ 201.32 crore (Central Excise ₹ 33.32 Crore and Service Tax ₹ 168.00 crore) in this report. We also raised 1788 observations involving revenue of ₹ 732.30 crore related to other functions like issuance of SCN and adjudication, broadening of tax base, anti-evasion, refunds etc. of the Field Formations and included 125 (Central Excise 05 and Service Tax 120) observations involving ₹ 39.01 crore (Central Excise ₹ 0.72 crore and Service Tax ₹ 38.29 crore) in this report.

Further, we examined the Monitoring Mechanism of Appeal cases and Monitoring Mechanism of Arrear cases and results of audit are included in the Chapter III and Chapter IV of this Report. Apart from this, we also included 142 (Central Excise 45 and Service Tax 97) observations involving revenue of ₹ 225.22 crore (Central Excise ₹ 141.26 Crore and Service Tax ₹ 83.96 Crore) which came to notice in the course of test audit during earlier years but could not be reported in the previous Audit Reports. Significant observations pertaining to Service Tax and Central Excise are discussed in Chapter V and VI respectively of this report.

2.5 Response to CAG's Audit, Revenue Impact/Follow-up of Audit Reports.

2.5.1 We elicit response to our observations from the audited entities at different stages of audit. As per provisions of the regulation 193 of CAG's Regulations on Audit and Accounts, 2007, on completion of field audit, we issue the Local Audit Report (LAR) to the Department for comments.

As per the provisions of the regulation 197, the officer in charge of the auditable entity shall send the reply to an audit note or LAR within four weeks of its receipt. Even if it is not feasible to furnish the final replies to some of the observations in the audit note or LAR within the aforesaid time limit, the first reply shall not be delayed on that account and an interim reply may be given indicating the likely date by which the final reply shall be furnished.

Further, Board's circular No. 1023/11/2016-CX dated 8 April 2016 prescribed the procedure for dealing with audit observations raised by CAG Audit and instructed its field formations to reply to the Local Audit paragraphs within thirty days. The circular also provided for the Zones to hold quarterly

coordination meetings with Audit to discuss and settle the pending LAR paragraphs.

As per provisions of regulations 193 to 204, ibid we took measures like sending of important audit observations to head of the Commissionerates for follow-up, communicating the significant audit observations to Zonal Heads, convening of Audit Committee Meetings etc. for the purpose of monitoring and ensuring compliance and settlement of pending audit observations.

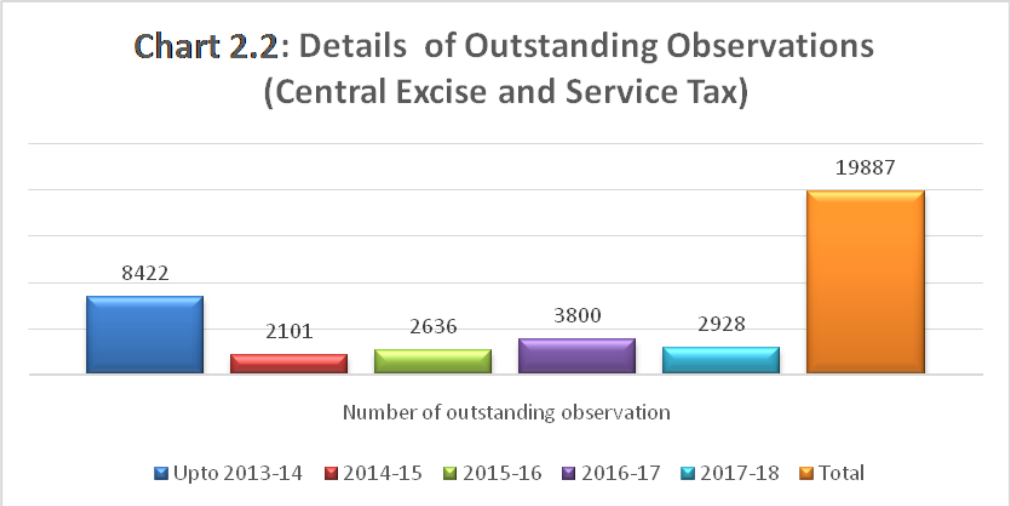
2.5.2 Table 2.1 below depicts the position of number of observations included in the LARs during FY14 to FY18, replies thereto and observations accepted by the Department.

Table 2.1: Observations raised and Department replies thereto

Year	Observations Raised	Observations Accepted	First reply not received	Percentage of observations accepted	Percentage of First reply not received
FY14	7,064	3,724	1,300	52.72	18.40
FY15	5,957	2,994	1,176	50.26	19.74
FY16	7,099	3,669	1,313	51.68	18.50
FY17	6,656	3,624	1,641	54.45	24.65
FY18	6,429	1,999	3,067	31.09	47.71
Total	**33,205**	**16,010**	**8,497**	**48.22**	**25.59**

During the last five years we raised 33,205 observations, of that the Department accepted 16,010 observations (48.22 per cent). The Department did not furnish even first reply in large number of cases which increased from 1,300 cases (18.40 per cent) in FY14 to 3,067 cases (47.71 per cent) in FY18 which resulted in accumulation of 8,497 cases awaiting first reply.

2.5.3 Chart 2.2 below shows the position of pendency of Local Audit observations[15].



[15] LAR observations raised up to 30.09.2017 and outstanding as on 31.03.2018.

The accretion in pendency in replies to audit findings each year has resulted in accumulation of 19,887 observations as of 31 March 2018[16].

The main reason for the huge pendency of the LAR observations is lack of timely response from the Department. An age wise analysis of the outstanding observations revealed that 8,422 (42.37 per cent), 2,101 (10.57 per cent), 2,636 (13.26 per cent), 3,800 (19.12 per cent), 2,928 (14.73 per cent) were pending for more than five years, four years, three years, two years and one year, respectively. It is evident from the huge accumulation of LAR observations that the field formations did not adhere to the instructions issued by the Board. The Board/Ministry need to ensure compliance and effectiveness of its instructions and evolve an appropriate mechanism to fix responsibility in case of non-compliance.

2.5.4 Recovery at the instance of Local Audit Reports

During FY18, the Department recovered ₹ 29.40 crore in 1,614 cases raised during Local Audits up to FY18.

Table 2.2: Recovery at the instance of Audit[17]

(₹ in crore)

	Admitted		**Recovered**	
	Numbers	Amount	Numbers	Amount
Central Excise	2,918	123.33	833	12.02
Service Tax	2,361	517.39	781	17.38
Total	**5,279**	**640.72**	**1,614**	**29.40**

2.5.5 Follow-up of CAG's Audit Reports

In the last five Audit Reports (including current year's report), we had included 1,295 audit paragraphs pertaining to Central Excise duty and Service Tax involving ₹ 3,351.46 crore.

Table 2.3 Follow-up of Audit Reports

(₹ in crore)

Year			**FY14**	**FY15**	**FY16**	**FY17**	**FY18**	**Total**
Paragraphs Included		**No.**	246	231	255	300	263	**1,295**
		Amt.	897.19	534.37	435.56	1,018.79	465.55	**3,351.46**
Paragraphs accepted	**As on 15.11.18**	**No.**	232	213	237	269	230	**1,181**
		Amt.	568.29	510.17	384.78	548.56	345.22	**2,357.02**
Recoveries effected	**As on 15.11.18**	**No.**	134	139	178	160	122	**733**
		Amt.	194.75	83.27	110.97	372.15	68.15	**829.29**

[16] LAR observations raised up to 30.09.2017 and pending on 31.03.2018.

[17] Recoveries at the instances of observations in LAR which are not included in the CAG's Audit Reports.

The Ministry had accepted audit observations in 1,181 audit paragraphs involving ₹ 2,357.02 crore and had recovered ₹ 829.29 crore in 733 cases.

2.6 Report Overview

Out of the total audit observations raised by Audit, we issued significant observations to the Ministry for comments before inclusion in the Audit Report. We gave six weeks to the Ministry to offer their comments on cases issued to them before inclusion in the Audit Report. We included 263 draft paragraphs containing 369 observations of ₹ 465.55 crore in the current Audit Report. The Ministry furnished replies to all draft paragraphs, of which the replies to three draft Paragraphs i.e. the Monitoring Mechanism of Appeal cases in CBIC, Monitoring Mechanism of Recovery of Arrear cases in CBIC and other functions of the Field Formations of CBIC were partial. The Ministry accepted 230 Draft paragraphs (87.78 per cent) having tax effect of ₹ 345.22 crore (74.15 per cent).

Chapter III

Monitoring Mechanism for Appeal Cases in CBIC

3.1 Appeals in Central Excise and Service Tax

While collecting the Government revenue, there is bound to be difference of opinions and disputes between the Department and the assessee. To provide a level playing field a well defined mechanism of dispute resolution has been evolved in the Department.

Every proceeding starts with the issue of a Show Cause Notice (SCN) for recovery of revenue due to non/short levy of duty or some other reasons. The SCN puts forth the grounds, on which the department has made a particular opinion. While setting out the said grounds, the Department discloses all the relevant facts, evidences, reports and law to the noticee and gives the details of offences committed and the action that is proposed against him alongwith the dues short paid or non-paid. The SCN is then adjudicated by the competent authority. Against the adjudication order, assessee as well as the Department can go for Appeal.

3.2 Process of Appeals in CBIC

Chapter VI A of the Central Excise Act, 1944 lays down the provisions for Appeals. Sections 35 and 36 of the Act provide for Appeals to Commissioner (Appeals), Appellate Tribunal, High Court, and the Supreme Court. The provisions of the Act relating to Appeals have been made applicable to Service Tax as per Section 83 of the Finance Act, 1994.

Both the assessee and the Department have been conferred with a right of multi stage remedies against the orders passed under the Act and Rules. For the orders passed by officers lower than the rank of Commissioner of Central Excise, the first Appeal lies to the Commissioner (Appeals) and there from to the Appellate Tribunal, High Court and finally to the Supreme Court.

3.3 Monitoring of Appeal Cases

Appeal cases are monitored at Commissionerates, Divisions and Ranges and all the data are maintained by them. Appeals to be filed upto High Court level are decided by field formations while Appeals to be filed in Supreme Court are decided at Board level and monitored by the Directorate of Legal Affairs (DLA) in the Board through Monthly Performance Reports (MPRs) furnished by field formations.

3.4 Audit Coverage

To examine the adequacy of data maintenance and monitoring of Appeal mechanism at Board level, we examined records/data of DLA in respect of

Appeals pending at various fora. We also examined data/records of 28 Commissionerates[18] pertaining to Appeals in CESTAT, High Court and Supreme Court.

3.5 Audit Findings

We observed instances of non-maintenance of field formation data at Board level, discrepancy in data maintained at Board and field level and non-compliance of Board's instructions by field formations i.e. delay in review of Court decisions, non-filing of Appeals for early hearing, bunching of cases on similar issues, delay in filing Appeals and lapses on part of the Department leading to dismissal of departmental Appeals. The observations are discussed in succeeding paragraphs.

3.5.1 Appeal cases pending at various fora

Based on data furnished by the Board, pendency of Appeals in different fora in respect of Central Excise is depicted in the table 3.1 below:

Table 3.1: Pendency of Appeals in Central Excise

(₹ in crore)

Year	Forum	Appeals pending at the end of the year					
		Details of Departmental Appeals		Details of party's Appeals		Total	
		No. of Appeals	Amount Involved	No. of Appeals	Amount Involved	No. of Appeals	Amount Involved
FY17	Supreme Court	977	5,804	581	2,267	1,558	8,071
	High Court	3,170	10,329	3,528	9,005	6,698	19,334
	CESTAT	7,120	11,915	30,201	65,760	37,321	77,675
	Settlement Commission	0	0	71	77	71	77
	Commissioner (Appeals)	2,243	359	12,711	3,047	14,954	3,406
	Total	**13,510**	**28,407**	**47,092**	**80,156**	**60,602**	**1,08,563**
FY18	Supreme Court	1,054	9,121	501	2,644	1,555	11,765
	High Court	3,149	9,325	3,285	10,045	6,434	19,370
	CESTAT	4,660	11,374	23,136	58,668	27,796	70,042
	Settlement Commission	0	0	28	50	28	50
	Commissioner (Appeals)	1,687	492	8,249	2,999	9,936	3,491
	Total	**10,550**	**30,312**	**35,199**	**74,406**	**45,749**	**1,04,718**

Source: Figures furnished by the Ministry

[18] Ahmedabad North, Belagavi, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Bolpur, Chennai Outer, Daman, Delhi East, Delhi North, Delhi South, Delhi West, Dibrugarh, Guwahati, Haldia, Howrah, Hyderabad, Kochi, Kolkata North, Kolkata South, Mangalore, Mysore, Shillong, Siliguri, Surat and Trichy.

The table indicates that 45,749 cases involving revenue of ₹ 1,04,718 crore were pending in Appeals at the end of FY18 registering a marginal decrease of 3.50 per cent over the amount pending at the end of FY17. Further, it is observed that party's Appeals have been reduced from 47,092 involving ₹ 80,156 crore in FY17 to 35,199 involving ₹ 74,406 crore in FY18. While departmental Appeals, though, decreased in number from 13,510 in FY17 to 10,550 in FY18 but the revenue involved increased from ₹ 28,407 crore in FY17 to ₹ 30,312 in FY18. It is also observed that amount of cases pending at the Supreme Court had increased from ₹ 8,071 crore in FY17 to ₹ 11,765 crore in FY18.

As no action can be initiated for recovery of revenue till the Appeal is pending, efforts for early disposal by the various authorities to bring in possible revenue of ₹ 1,04,718 crore to the Government coffers, is important.

Pendency of Appeals in different fora in respect of Service Tax is depicted in the table 3.2 below:

Table 3.2: Pendency of Appeals in Service Tax

(₹ in crore)

Year	Forum	Appeals pending at the end of the year					
		Details of departmental Appeals		Details of party's Appeals		Total	
		No. of Appeals	Amount Involved	No. of Appeals	Amount Involved	No. of Appeals	Amount Involved
FY17	Supreme Court	508	6,116	220	2,031	728	8,147
	High Court	917	3,067	2,549	9,383	3,466	12,450
	CESTAT	5,610	15,506	21,737	78,821	27,347	94,327
	Settlement Commission	0	0	75	189	75	189
	Commissioner (Appeals)	2,513	497	16,720	6,398	19,233	6,895
	Total	**9,548**	**25,186**	**41,301**	**96,822**	**50,849**	**1,22,008**
FY18	Supreme Court	615	6,578	251	7,032	866	13,610
	High Court	1,023	5,338	2,721	10,086	3,744	15,424
	CESTAT	4,584	13,401	20,076	72,748	24,660	86,149
	Settlement Commission	1	1	58	253	59	254
	Commissioner (Appeals)	2,332	764	12,057	4,706	14,389	5,470
	Total	**8,555**	**26,082**	**35,163**	**94,825**	**43,718**	**1,20,907**

Source: Figures furnished by the Ministry

The table indicates that cases involving Service Tax revenue of ₹ 1,20,907 crore were pending in Appeals at the end of FY18 registering one per cent decrease over the amount pending at the end of FY17. It is also observed that though the total Appeals reduced from 50,849 in FY17 to 43,718 in FY18, there was an increase of Appeal cases from 728 cases

involving ₹ 8,147 crore in FY17 to 866 cases involving ₹ 13,610 crore in FY18 in the Supreme Court and from 3,466 cases involving ₹ 12,450 crore in FY17 to 3,744 cases involving ₹ 15,424 crore in FY18 in High Courts.

The Ministry stated (October 2018) that Appeal cases are being monitored regularly and DLA is responsible for maintaining and monitoring data in this respect. Arrears of revenue are tracked by Tax Arrear Recovery cell at apex level.

The Ministry's reply is general in nature as there is no significant reduction in pending Appeal cases and amount involved therein. During our examination, we observed that codal provisions in respect of Appeals were not being complied with by field formations as mentioned in succeeding paragraphs.

3.5.2 Disposal of Appeal cases

Status of cases disposed during last two years in different fora in respect of Central Excise is depicted in the table 3.3 below:

Table 3.3: Breakup of Central Excise Appeal cases decided during last two years

Year	Forum	Department's Appeal				Party's Appeal			
		Decided in favour of the Deptt.	Decided against the Deptt.	Remand-ed	% of Successful Appeal of the Deptt.	Decided in favour of party	Decided against party	Remand-ed	% of Successful Appeal of party
FY17	Supreme Court	27	204	8	11.30	21	36	8	32.31
	High Court	165	1,212	26	11.76	296	359	80	40.27
	CESTAT	422	3,179	275	10.89	4,260	1,056	1,199	65.39
	Settlement Commission	0	0	0	0	13	45	4	20.97
	Commissioner (Appeals)	395	573	51	38.76	4,759	3,328	383	56.19
	Total	**1,009**	**5,168**	**360**	**15.44**	**9,349**	**4,824**	**1,674**	**59.00**
FY18	Supreme Court	37	79	12	28.91	93	38	35	56.02
	High Court	142	693	69	15.71	302	300	147	40.32
	CESTAT	674	1,769	392	23.77	5,080	1,975	2,302	54.29
	Settlement Commission	0	0	0	0	5	27	8	12.50
	Commissioner (Appeals)	895	916	111	46.57	4,685	5,692	1,028	41.08
	Total	**1,748**	**3,457**	**584**	**30.20**	**10,165**	**8,032**	**3,520**	**46.81**

Source: Figures furnished by the Ministry

The table indicates that success rate of the Department's Appeals has increased significantly from 15.44 per cent in FY17 to 30.20 per cent in FY18, while success rate of party's Appeals has decreased from 59.00 per cent in FY17 to 46.81 per cent in FY18. It is also observed that success rate of the

Department's Appeals was very low in comparison to party's Appeals in CESTAT (23.77 per cent against 54.29 per cent), High Court (15.71 per cent against 40.32 percent) and Supreme Court (28.91 per cent against 56.02 per cent) in FY18.

Status of cases disposed during last two years in different fora in respect of Service Tax is depicted in the table 3.4 below:

Table 3.4: Breakup of Service Tax Appeal cases decided during last two years

Year	Forum	Department's Appeal				Party's Appeal			
		Decided in favour of the Deptt.	Decided Against the Deptt.	Remand-ed	% of Successful Appeals	Decided in favour of party	Decided against party	Remand-ed	% of Successful Appeals
FY17	Supreme Court	9	14	4	33.33	2	6	9	11.76
	High Court	29	204	10	11.93	139	346	79	24.65
	CESTAT	198	1,508	135	10.76	1,560	644	635	54.95
	Settlement Commission	0	0	0	0	17	53	4	22.97
	Commissioner (Appeals)	485	781	122	34.94	4,026	3,803	2,098	40.56
	Total	**721**	**2,507**	**271**	**20.61**	**5,744**	**4,852**	**2,825**	**42.80**
FY18	Supreme Court	1	61	26	1.14	3	4	6	23.08
	High Court	20	171	117	6.49	124	286	110	23.85
	CESTAT	393	754	274	27.66	1,920	855	1250	47.70
	Settlement Commission	0	0	0	0	6	35	13	11.11
	Commissioner (Appeals)	631	847	341	34.69	4,140	6,462	1,849	33.25
	Total	**1,045**	**1,833**	**758**	**28.74**	**6,193**	**7,642**	**3,228**	**36.29**

Source: Figures furnished by the Ministry

The table indicates that over all success rate of the Department's Appeals has increased from 20.61 per cent in FY17 to 28.74 per cent in FY18. It is also observed that success rate of the Department's Appeal was very low in comparison to party's Appeal in CESTAT (27.66 per cent against 47.70 per cent), High Court (6.49 per cent against 23.85 per cent) and Supreme Court (1.14 per cent against 23.08 per cent) in FY18. Further, the success rate of the Department's Appeals in Supreme Court cases has decreased from 33.33 per cent in FY17 to 1.14 per cent in FY18. Similarly, in High Court cases, it decreased from 11.93 per cent in FY17 to 6.49 per cent in FY18.

The Ministry stated (October 2018) that it is only statistical data which is being monitored by DLA. No comments have been offered over the low

success rate of the Department and reasons thereof. The Ministry needs to examine the low success rate of the Department's Appeals and take suitable measures.

3.5.3 Monitoring of Appeals at Board level

As envisaged in the Board's order F. No. 275/20/2016-CX.8A dated 10 June 2016, DLA is the nodal agency to monitor legal and judicial work of the Board and its field formations. DLA is required to work in close coordination with the Board, Chief Departmental Representative (CDR) office, Law Ministry, Directorate of Systems, field formations of the Board, Central Agency Section (CAS) under Department of Legal Affairs, Senior Law officers, Government Counsel etc. DLA is also mandated to maintain and monitor the legal and judicial database of Appeals pertaining to Supreme Court, High Court and CESTAT on all India level basis. We examined the system of data maintenance and the adequacy and effectiveness of monitoring mechanism in respect of Appeals at DLA. We noticed some observations as follows:

3.5.3.1 Deficiency in mechanism to monitor the performance of field formations at Board level

We observed that Zone/Commissionerate-wise reports were not maintained at DLA or submitted to higher authorities. On being asked by Audit, DLA stated that only all India level consolidated data was available which is downloaded from the system maintained by Directorate of Data Management (DDM) and submitted to the Board. DLA further intimated that downloading data for all Commissionerates would be a time consuming exercise and would take three months to compile field formation-wise information. Non-maintenance of Zone/Commissionerate wise reports indicates absence of monitoring of status of Appeals in Zone/Commissionerate and planning/review and issue of instructions for disposal of the same by the Board.

The Ministry stated (October 2018) that data pertaining to Appeals pending in various appellate fora is being maintained online by DDM on its website. DLA is functional owner of database and helps in maintaining the data online. Zone-wise and Commissionerates-wise data is available on the DDM website which can be downloaded by feeding customized command. It was further stated that the monthly data of Appeals is used by Board to monitor pendency and to devise plans/strategies, based on which instructions are issued to field formations for disposal of Appeals.

Reply is not tenable as, though the detailed data was available in the system maintained by DDM, DLA was not utilizing the same for monitoring performance of Zones/Commissionerates because the system does not

support downloading of Commissionerate-wise consolidated report. DLA should get the necessary changes made in the system to utilize the data more effectively.

3.5.3.2 Improper maintenance of database regarding pending Appeal cases in Supreme Court.

DLA is the nodal agency of the Board and field formations and mandated to maintain database and monitor the Appeal cases pertaining to Hon'ble Supreme Court. Accordingly, DLA is required to maintain a database to monitor the admitted cases and provide assistance and liaise between field offices and the Central Agency Section of the Ministry of Law and Justice including the Law Officers and Counsels.

We collected details of 3,006 pending cases of Appeals in Supreme Court from DLA. Scrutiny of the details revealed deficiencies in data for the year ended March 2018, as detailed below:

(i) Civil Appeal Diary number was not mentioned in 146 cases.

(ii) Civil Appeal/Special Leave Petition number and year was not mentioned in 102 cases.

(iii) CESTAT/High Court order number was not mentioned in 74 cases.

(iv) 'Issue involved' was not mentioned in 67 cases.

(v) 'Date last listed' was not available in 11 cases.

(vi) Central Agency Section number and year was not mentioned in 1,526 cases.

(vii) Name of Commissionerate was not mentioned in six cases.

(viii) Unit of revenue figures was not shown uniformly in the database. It was shown in rupees, in thousand, in lakh or in crore in different cases. Further, in 123 cases, the figure was depicted as zero or column was left blank.

When we pointed this out (June 2018), the Ministry admitted the observation (October 2018) stating that the discrepancies pointed out by Audit have been rectified/are being rectified by DLA in consultation with Central Agency Section (CAS) and the field formations.

Audit is of the view that incompleteness/deficiencies in data not only affects the monitoring of Appeal cases in the DLA, but also depicts incorrect picture of revenue involved and other information to the Board.

3.5.3.3 Discrepancy in data of Appeal cases depicted in Monthly Performance Reports (MPRs)

As part of the monitoring mechanism, all field formations are required to provide status of Appeal cases pending in various fora in the form of MPRs and the DLA is required to consolidate the MPRs and submit all India status to the Board.

We noticed some discrepancies in the MPR data maintained by the DLA which are detailed below:

(i) Closing balance of number and amount of Appeal cases, shown in the MPRs of Central Excise and Service Tax for the month March 2018 was incorrect (closing balance calculated as opening balance plus new cases appealed during the year minus cases disposed during the year), as detailed in table 3.5.

Table 3.5: Discrepancy in Closing Balance as shown in the MPR of March 2018

(₹ in crore)

	Appeals filed by	Closing Balance (As per MPR March 2018)		Closing Balance (As per Audit calculation)		Difference	
		No	Amount	No.	Amount	No.	Amount
Central Excise	Department	10,550	30,312	11,806	35,547	(-)1,256	(-)5,235
	Party	35,199	74,406	41,632	86,518	(-)6,433	(-)12,112
Service Tax	Department	8,555	26,082	10,003	35,596	(-)1,448	(-)9,514
	Party	35,163	94,825	40,810	1,21,430	(-)5,647	(-)26,605

One of the reasons for difference was that closing balance in the MPR of the month of June 2017 was not taken correctly in the opening balance of MPR of July 2017. Similar discrepancies were noticed at field formations as we observed in Delhi North Commissionerate that closing balance of June 2017 (73 cases amounting to ₹ 217.37 crore) was taken incorrectly in the opening balance for the month of July 2017 (8 cases, amounting to ₹ 46.93 crore). Similarly, in Delhi East Commissionerate, closing balance of June 2017 (42 cases, amounting to ₹ 112.05 crore) was taken incorrectly in the opening balance for the month of July 2017 (15 cases, amounting to ₹ 3.26 crore).

(ii) We also observed discrepancy in figures of cases disposed of, as the figures did not match with their break up i.e. decided in favour of the Department, decided in favour of the assessee, partly allowed, remanded and transferred in respect of Central Excise (as per statement DLA-CE-1 and DLA CE-2) and Service Tax (as per statement DLA-ST-1 and DLA-ST-2), as detailed in table 3.6:

Table 3.6: Difference in number of total Appeal cases disposed w.r.t. their breakup shown in MPR of March 2018

	Appeals filed by	Total cases disposed (1)	Break Up- of cases- decided during FY 18					Difference [col. 1-(2+3+4+5+6)]
			Decided in favour of the Deptt. (2)	Decided against the Deptt. (3)	Partly allowed (4)	Reman-ded (5)	Transf-erred (6)	
Central Excise	Department	6,697	1,748	3,457	238	584	132	538
	Party	26,611	8,032	10,165	1,932	3,520	489	2,473
Service Tax	Department	4,042	1,045	1,833	142	758	21	243
	Party	22,463	7,642	6,193	3,598	3,228	450	1,352

When we pointed this out (June 2018), the Ministry stated (October 2018) that MPR is maintained online at the DDM website and observations pertain to DDM. Mis-match of closing balance is due to error in the software. The Audit observation had been forwarded (August 2018) to DDM requesting them to rectify the errors and submit compliance to the Audit directly with a copy to DLA.

Reply is not tenable as DLA being the nodal agency to monitor the Appeal cases have to ensure correctness of data rather than passing the Audit observation to DDM for intimating to Audit directly. It also indicates that being the functional owner of the data, DLA is not monitoring the data maintained by the DDM. The Ministry may take steps to ensure correctness of data, being submitted to the Board, at each level.

3.5.3.4 Discrepancy in data maintained by DLA in respect of Supreme Court cases and MPR

There was difference between the total Appeal cases[19] maintained by the DLA in respect of Supreme Court and the figures of the same depicted in MPRs as detailed below:

Table 3.7: Discrepancy in data of Supreme Court Appeal cases

Year	Total cases as per MPR provided by DLA	Total cases as per detailed data maintained by DLA	Difference
FY16	2,925	2,975	50
FY17	2,946	3,323	377
FY18	3,080	3,006	(-)74

When we pointed this out (July 2018), the Ministry stated (October 2018) that mismatch of manual data is a normal phenomenon. Special Monitoring Cell under DLA updates its data sheet daily, whereas, field formations do the same upon receipt of certified copies of the judgement and after following

[19] Includes appeal cases of Central Excise, Service Tax and Customs

certain administrative procedures, which consumes time. Reconciliation of such mis-match is an exercise undertaken periodically and the same had been reconciled in the present case also.

The Board/Ministry need to take necessary steps to ensure timely reconciliation of data and correctness of data furnished to the Board for effective monitoring. Differences in basic data regarding cases to be followed up in the Commissionerates is a serious matter and need to be reconciled on urgent basis.

3.5.3.5 Non-compliance of Board's instructions for early disposal of high revenue cases

The Board vide D.O. No. 1080/24/DLA/Tech/Meeting-Litigation/17 (Part) dated 25 August 2017, observed that 3,047 cases involving revenue of ₹ 10 crore or more were pending for more than one year in Supreme Court/High court/CESTAT as on 30 June 2017 and directed all Pr. Chief Commissioners/Chief Commissioners/Pr. Commissioners, Central GST and Customs to liquidate the pending cases of Supreme Court/High Court/CESTAT by way of filing Miscellaneous Applications for early hearing/vacation of stay for early disposal of pending cases in a time bound manner.

On examination of action taken by field formations and its monitoring at DLA, we observed (July 2018) that 63 Interlocutory Applications (IA) for the cases pertaining to Supreme Court involving revenue of ₹ 10 Crore and above for early listing of those cases have been filed. Also, 197 applications have been filed in CESTAT and High Court. Thus, out of 3,047 cases, action was taken only in 260 cases (8.53 per cent).

The Ministry stated (October 2018) that out of 3,047 cases involving revenue of ₹ 10 Crore and above in each case, 201 is the total number of Department's cases pending in the Supreme Court. Out of these, early hearing applications have already been filed in 63 cases, and in 11 cases, drafting of early hearing applications are under process. In party filed Appeals where stay has been granted, the Department has initiated steps for getting the stay vacated by filing IA in cases where the revenue involvement is large. Further, 197 such applications have been filed in CESTAT and High Courts as per the reports received from field formations.

It is evident from the Ministry's reply that out of 3,047 cases, action was taken/being taken in 271 cases (8.89 percent) only.

The Board/Ministry need to ensure that its instructions in this regard are complied with by all concerned.

3.5.4 Monitoring of Appeal cases in field formations

We also examined maintenance of database in respect of Appeal cases and monitoring thereof in 28 Commissionerates. We observed discrepancy in data maintained by field formations in respect of Appeal cases. We also observed instances of non-compliance of procedures/instructions resulted in non-disposal of cases as well as disposal of cases against the Department. The observations are discussed in succeeding paragraphs:

3.5.4.1 Improper maintenance of data of Appeal cases

(i) We observed discrepancy in data maintained by four Commissionerates[20] and depicted in their MPRs as mentioned below:

- In Ahmedabad Commissionerate, 345 cases were shown as pending at CESTAT (Annexure ST-2), for less than one year against the actual 224 cases pending.
- In Kochi Commissionerate, number of cases pending in CESTAT as depicted in MPR (933) was different from the figure maintained by Review Cell (1,461).
- In Delhi South Commissionerate, four cases involving amount of ₹ 1,515.02 crore shown as pending in Supreme Court (Annexure CE-6) were not available in the data maintained by Legal Cell.
- In Hyderabad Commissionerate, there was variation in the closing balance of number and amount of High Court cases in the statement CE-1 (23 cases, ₹ 9.60 Cr.), CE-2 (7 cases, ₹ 9.19 Cr.), CE-6 (0, ₹ 54.93 Cr.), ST-1 (4 cases, ₹ 61.71 Cr.), ST-2 (14 cases, ₹ 4.20 Cr.), ST-6 (1 case, ₹ 60.80 Cr.)
- In Hyderabad Commissionerate, similar variation was noticed in CESTAT cases in CE-2 (1 case, ₹ 0.65 Cr.), ST-1 (211 cases, ₹ 799.38 Cr.), ST-2 (452 cases, ₹ 2,830.04 Cr.) and ST-6 (59 cases, ₹ 2,133.91 Cr.)

The Ministry stated (October 2018) that in all the Commissionerates, discrepancy had been reconciled.

(ii) We also observed discrepancy in figures provided by the Department to Audit and figures shown in their MPRs in five Commissionerates[21] as mentioned below:

[20] Ahmedabad, Kochi, Delhi South, Hyderabad

[21] Chennai Outer, Bengaluru South, Ahmedabad, Surat, Kolkata South

- In Chennai Outer Commissionerate, total number of pending High Court (209 cases) and CESTAT (126 cases) were different from the figures shown in MPR High Court (211 cases) and CESTAT (18 cases). Also, number of cases disposed during FY18 in High Court (24 cases) and CESTAT (94 cases) were different from the figures shown in MPR High Court (0) CESTAT (1 case).
- In Bengaluru South Commissionerate, number of cases decided in favour of assessees during FY16 (16 cases), FY17 (22 cases), FY18 (28 cases) were different from figures in MPR FY16 (33 cases), FY17 (67 cases), FY18 (93 cases).
- In Ahmedabad Commissionerate, number of Appeal cases disposed in CESTAT during FY16 (30 cases), FY17 (42 cases) and FY18 (84 cases) were different from the figures available in MPR for FY16 (184 cases), FY17 (247 cases) and FY18 (85 cases).
- In Surat Commissionerate, number of cases disposed in CESTAT during FY18 (352 cases) were different from the figures in MPR for FY18 (285 cases).
- In Kolkata South Commissionerate, figures of pending Appeal cases for FY18 at the Commissionerate for CE (344 cases) and ST (481 cases) were different from the figures available with Chief Commissionerate Office CE (403 cases) and ST (490 cases).

The Ministry admitted the observation (October 2018) and stated that in Chennai Outer Commissionerate, certified copies of disposed High Court cases were not received during FY18 and the issue is being addressed. In Ahmedabad Commissionerate, data was not provided by erstwhile Ahmedabad ST Commissionerate to new CGST and CX Ahmedabad south Commissionerate. There is also difference in treatment of multiple cases disposed by CESTAT in composite orders. Discrepancy, however, had been rectified. In Surat Commissionerate, discrepancy arose due to inclusion of only Central Excise cases in MPR. In Kolkata Commissionerate, efforts were being made to rectify the discrepancy. Reply in respect of Bengaluru South Commissionerate was awaited.

Reply indicates that there was lack of due care while compiling the data at field and submission of the same to the higher authority. As data furnished by the field formations to higher authorities is the basis of proper monitoring and policy formulation for disposal of Appeal cases, improper maintenance of data and submission of the same to higher authorities adversely affects the effectiveness of monitoring of Appeal cases. The Department/Ministry needs to ensure accuracy of the data maintained by the field formation.

3.5.4.2 Pendency of Appeal cases in field formations

We observed that in 28 Commissionerates, 19,721 cases involving ₹ 69,362 crore were pending in various fora at the end of FY18. Out of 19,721 cases, 880 cases had revenue of more than ₹ 10 crore each, involving total revenue of ₹ 46,451 crore. Also, 721 cases were pending for more than 10 years. 20 Commissionerates, where amount involved in cases pending in Appeals was more than ₹ 1,000 crore, are depicted in the table below:

Table 3.8: Commissionerates where Appeal cases involving more than ₹ 1,000 crore were pending

(₹ in crore)

Commissionerate	Cases pending at the end of the year 2017-18		Age-wise breakup of pending cases				Cases where amount involved is more than ₹10 cr.	
	No.	Amount	1-3 years	3-5 years	5-10 years	>10 years	No.	Amount
Delhi South	548	8,516.02	325	148	68	7	71	8,913.61
Bengaluru North	819	6,896.68	411	213	188	7	74	5,814.59
Hyderabad	1,004	6,271.75	636	127	204	37	124	**5,860.32**
Delhi North	264	4,489.79	181	35	43	5	12	4,251.43
Kolkata North	1,101	4,421.84	559	150	290	102	77	2,615.88
Siliguri	1,058	4,092.91	570	185	246	57	5	78.90
Daman	1,633	4,053.97	1,228	260	132	13	28	2,462.72
Kolkata South	740	3,665.24	353	115	215	57	74	2,088.13
Surat	1,291	3,330.50	569	413	268	41	47	2,355.35
Bengaluru South	918	2,906.17	257	249	391	21	53	1,885.53
Bolpur	781	2,814.63	486	141	121	33	59	1,554.53
Howrah	788	2,255.33	539	123	53	73	43	140.27
Kochi	1,977	1,894.99	1,441	348	177	11	18	361.05
Bengaluru East	970	1,727.33	459	220	247	44	35	795.42
Haldia	409	1,711.27	193	17	183	16	21	1,312.40
Mangalore	968	1,492.60	469	246	229	24	19	1,002.52
Delhi East	286	1,480.16	191	45	38	6	14	591.23
Ahmedabad	1,063	1,336.34	687	148	214	14	15	891.32
Bengaluru North West	606	1,112.62	211	209	177	9	12	581.62
Trichy	659	1,017.61	273	179	188	19	19	546.53
Total	**17,883**	**65,487.74**	**10,038**	**3,571**	**3,672**	**596**	**820**	**44,103.36**

It is observed that in 20 Commissionerates, 17,883 cases involving revenue of ₹ 65,488 crore were pending in Appeals at the end of FY18. Out of 17,883 cases, 3,672 cases were pending for five to ten years while 596 cases were pending for more than 10 years. Further, there were 820 cases involving total amount of ₹ 44,103 crore where amount involved in each cases was more than ₹ 10 crore.

The Ministry did not comment on huge pendency at macro level and only forwarded (October 2018) replies received from the Commissionerates as under:

- In Hyderabad, Siliguri, Surat and Mangalore Commissionerates, early hearing applications were being filed wherever required and efforts were being made to reduce pendency.
- In Kolkata North and Kolkata South Commissionerates, Appeals were being monitored by the Commissionerates.
- In respect of Haldia Commissionerate, only statistics of Appeal cases has been provided.
- In Trichy Commissionerate, status of 19 cases of more than 10 crore, had been intimated.
- In Bolpur and Bengaluru East Commissionerates, it was intimated that 392 and 177 cases were disposed respectively during April 2018 to August 2018.
- Reply in respect of Bengaluru South, Ahmedabad and seven[22] other Commissionerates was awaited

Blocking of large amount in Appeals is a matter of concern. The Ministry needs to monitor and ensure that its instructions for making efforts for early disposal of high revenue cases, are being complied with by the field formations.

3.5.5 Non-compliance with Act/Rules/Procedures by field formations resulting in dismissal of Appeals

To ensure proper monitoring and compliance of Act/Rules/Procedures and instructions of the Board by the field formation, in 28 Commissionerates, out of total 4,286 Appeal cases disposed, we examined 1,833 cases and observed that in 60 cases (3 per cent) pertaining to 13 Commissionerates, involving revenue of ₹ 126.33 crore, Appeals were dismissed by CESTAT/High Court due to lapses on part of the Department as detailed in table 3.9:

[22] Delhi South, Bengaluru North, Delhi North, Daman, Howrah, Kochi and Delhi East.

Table 3.9: Appeals dismissed in CESTAT/High Court due to departmental lapses

(₹ in Crore)

Sl. No.	Name of the Commissionerate	No. of Appeals dismissed	Amount	Lapse of the Department
1	Daman	37	51.75	Non-removal of office objections
2	Bengaluru North	1	0.04	Issuing fresh SCN without filing an Appeal against the refund sanctioned initially
3	Six Commissionerates[23]	8	65.81	SCN being time-barred
4	Bengaluru South	1	0.08	Not providing adequate opportunity and basic documents to the assessee during adjudication
5	Mangalore	2	0.78	Not filing the Appeal in appropriate forum
6	Belgaum	1	2.18	Not demanding penalty in SCN but confirming the same at the adjudication stage
7	Five Commissionerates[24]	9	5.64	Incorrect or insufficient information in the SCN
8	Hyderabad	1	0.05	Not issuing a separate SCN, proposing for rejected amount of refund and not affording any opportunity to the appellant
Total		**60**	**126.33**	

One case is illustrated below:

We observed that in case of an assessee falling under Daman Commissionerate (revenue involved ₹ 2.15 crore), the Department filed (February 2004) an Appeal in Gujarat High Court against CEGAT order. Petition of the Department was disposed on 26 April 2004 for non-removal of office objections[25]. However, this fact of disposal of the case became known to the Department in October 2016 when the status of the case was updated in the website of the High Court in August, 2016 (till then its status was shown as pending by the Department). Further, we noticed that an application for early hearing was also filed for the case (Stamp No. 350/2004) on 27 August 2004 although the case had already been disposed of in April 2004.

Thus, the Department failed in ascertaining the status of the said Appeal through Government Standing Counsel. This indicates poor follow-up and monitoring of Appeal cases.

[23] Bengaluru East, Bengaluru South, Belgaum, Haldia, Kolkata North, kolkata South

[24] Bolpur, Guwahati, Haldia, Hawra, shillong

[25] Minor objections relating to procedural lapses in the paperwork

The other 36 similar Appeals (revenue involved ₹ 49.60 crore) filed by the Department between 2012 to 2016 in respect of assessees pertaining to Daman Commissionerate were dismissed by the Gujarat High Court on similar grounds. Out of these 36 cases, the Department became aware of disposal of 16 cases, after a period of more than 2 years of their disposal by the Court. This implies that there is a serious lacuna in the follow up and monitoring mechanism of Appeal cases.

When we pointed this out (August 2018), the Ministry stated (October 2018) that out of 37 Appeals, 18 Appeals have been withdrawn/under process of withdrawal due to revised norms of monetary limit for Appeal. In remaining cases, restoration Appeals have been filed in the High Court. The Ministry stated various reasons like accumulation of Appeal cases, filing of Appeals in Mumbai High Court due to jurisdictional change, restructuring of the Department, non-intimation of status by Government Counsels and non-updation of High Court website for the delay in monitoring the case.

In respect of remaining 23 cases, the Ministry in 12 cases replied as follows while reply was awaited in 11 cases:

Out of eight cases (Sl. No. 3), in four cases, the Ministry provided the details which indicated that invocation of extended period in SCN was not accepted by Tribunal/Courts. In four cases, reply was awaited.

In two cases (Sl. No. 5), it was stated that cases were dismissed as same were filed with CESTAT though they were to be filed with Revision Application (RA).

In one case (Sl. No. 6), it was stated that penalty was imposed under inappropriate section in the SCN and Department's Appeal for imposition of penalty under appropriate section was dismissed. Departmental lapse, resulted in loss of revenue of ₹ 2.18 core.

Out of nine cases (Sl. No. 7), in five cases, it was stated that cases were disposed on merit but details has not been provided. In four cases, reply was awaited.

In three more cases (Sl. Nos. 2, 4 and 8), reply was awaited.

3.5.6 Other issues of non-compliance by field formations

Along with the non-compliance with the rules and procedures resulting in the dismissal of cases due to departmental lapse as discussed in the para 3.5.5, we also observed other issues of non-compliance of Act/Rules/Procedures and Board's instructions by field formations as discussed below:

3.5.6.1 Delay in receipt and review of CESTAT/High Court final orders

As per section 35G of the Central Excise Act 1944, an Appeal shall lie to the High Court from every order passed in Appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of Excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law. The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an Appeal to the High Court and such Appeal under this sub-section shall be filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner or the other party. The High Court may admit an Appeal after the expiry of the period of one hundred and eighty days, if it is satisfied that there was sufficient cause for not filing the same within that period. 'Standard Operating Procedures on Litigation in Appellate Forums' issued by DLA, CBIC, New Delhi, stipulates a time period of 90 days for filing an Appeal in Supreme Court against High Court.

Out of total 813 cases in four Commissionerates[26], we examined 163 cases and observed that in Chennai Outer Commissionerate, in 11 cases (9 per cent) involving revenue of ₹ 2.27 crore, orders of CESTAT and High Court were reviewed with delay while 4 cases involving revenue of ₹ 5.13 crore were yet to be reviewed**,** as detailed below:

Table 3.10: Delay in Review of orders

Name of Commissionerate	Court	No. of Cases	Amount (₹ in crore)	Range of Delay (in Days)
Chennai Outer	CESTAT	7	1.18	23-222
	High court	4	1.09	90-300
	High Court	4	5.13	90-450 (Yet to be reviewed)

One case is illustrated below:

The Order of the High Court of Madras dated 30 August 2017 in respect of CMA No. 2704/2017 relating to an assessee (involving an amount of ₹ 1.24 crore) was received by the Department on 27 December 2017. The Assistant Commissioner (Legal) addressed the AC, Gummidipoondi Division on 25 January 2018 seeking comments and opinion with regard to acceptability of the impugned High Court Order and also sent a reminder to the Division for the same purpose on 27 February 2018. Further, it was observed that even after a lapse of 90 days from the date of receipt of the Orders of the High Court, the review was still pending and also the opportunity for the

[26] Chennai Outer, Trichy, Hyderabad and Siliguri.

Department to prefer an Appeal, if any, was lost due to limitation of time of 90 days. The comments of the Division were communicated to the Commissioner, Chennai Outer Commissionerate vide letter dated 09 March 2018 which was received by the Legal Section on 12 March 2018. Even after a lapse of more than 4 months the review was still pending (August 2018).

Thus, the time limit fixed by the Board was not adhered to by the Department and absence of intra-departmental coordination was also one of the factors responsible for delay in review of court orders. Such delay defeats the very objective of Review by the Department, specifically, in cases where the decision is made against the Department and there is no possibility of appealing against the order as the cases become time-barred.

When we pointed this out (August 2018), the Ministry admitted the audit observations (October 2018) and stated that the delay is due to the transfer of offices and files during GST transition period.

Board needs to establish robust mechanism to ensure business continuity during transitional phase and to ensure that legacy issues are not neglected after implementation of GST.

3.5.6.2 Non-filing of applications for Early Hearing

The Board vide Circular No.746/62/2003-CX dated 22 September 2003, had directed that the Commissionerates should file Miscellaneous Applications, for out-of-turn early hearings of the cases with high revenue stakes, indicating clearly the grounds for such prayer before Supreme Court/High Court/CESTAT.

Out of 3,422 total cases in 17 Commissionerates[27], we examined 852 cases and observed that in seven Commissionerates, in 41 cases (5 per cent) involving revenue of ₹ 1,109.56 crore**,** miscellaneous early hearing petitions were not filed as detailed below:

Table 3.11: Cases where early hearing applications were not filed

Sl. No.	Name of the Commissionerate	No. of cases	Amount in (₹ In crore)	Pending at
1	Delhi East	2	242.97	Supreme Court
2	Delhi South	7	345.94	Supreme Court and High Court
3	Delhi West	1	26.26	High Court
4	Chennai Outer	11	449.90	High Court
5	Kochi	6	2.47	High Court and CESTAT
6	Ahmedabad	13	41.49	High Court
7	Belagavi	1	0.53	CESTAT
	Total	**41**	**1,109.56**	

[27] Ahmedabad North, Belagavi, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Chennai Outer, Delhi East, Delhi North, Delhi South, Delhi West, Hyderabad, Kochi, Mangalore, Mysore, and Trichy.

One case is illustrated below:

An SCN was issued (July 2014) to an assessee in Chennai Outer (erstwhile Chennai III) Commissionerate, proposing a demand of ₹ 32.12 crore under proviso to Section 73 of Finance Act, 1994 along with interest and penalty under Sections 77 and 78, respectively. Aggrieved by the Order-in-Original, the assessee filed Writ Petition No. 26122 and 26123/2014 before High Court of Madras challenging the order passed by the Commissioner. Though the case is in Appeal for more than four years, no action has been taken by the Department for accelerating its disposal through filing of early hearing petition.

Thus, the Board's instructions were not followed by the Department resulting in long pendency of Appeal cases involving huge revenue.

When we pointed this out (August 2018), the Ministry replied (October 2018) that in case of the assessee, instructions had been issued to the standing counsel for filing of application of early hearing and filing of Appeal was under process.

In respect of Delhi East Commissionerate, application for early hearing has since been filed. In four Commissionerates[28], instructions had been issued to the standing counsel for filing of application of early hearing.

In respect of Delhi West Commissionerate, the Ministry stated that the actual value of Revenue was ₹ 4.38 crore only but indicated inadvertently as ₹ 26.25 crore in the Monthly Technical Report. As the amount involved is less than ₹ 10 crore, application for early hearing was not required to be filed as per Board's Circular No. 416/62/2003-CX dated 22 September 2003.

Reply in respect of Delhi South Commissionerate was awaited (October 2018).

The Ministry's reply in Delhi West Commissionerate is not acceptable as there is no prescribed monetary limit in the said circular and it was instructed that early hearing should be filed in those cases where significant revenue is involved. Further, in four Commissionerates instructions had been issued to the Standing Counsel to file an application for early hearing in 23 cases where amount is less than 10 crore. This shows that there is no uniformity among the field formations regarding the applications of early hearing.

The Ministry may issue appropriate instructions with monetary limit for filing of early hearing so that there is uniformity among the field formations in this regard. The Ministry may also sensitize its field formations for effective monitoring of the pending cases.

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[28] Chennai Outer, Kochi, Ahmedabad, Belagavi

3.5.6.3 Bunching of cases

Board, vide Circular No. 296/34/2004-CX.9(Pt), dated 11 August 2004, stipulated that the Jurisdictional Commissioner should also organise bunching of cases on similar issues involving substantial revenue and request the Tribunal for common hearing for their early clearance.

Out of total 2,635 cases in four Commissionerates[29], we examined 300 cases and observed in three Commissionerates that 145 cases (48 per cent) involving revenue of ₹ 211.85 crore, were fit for bunching under 21 similar issues, as detailed below:

Table 3.12: Cases where bunching was not done

Sl. No.	Name of the Commissionerate	No. of cases	Amount in (₹ in crore)	No. of similar issues involved
1	Chennai outer	24	71.51	5
2	Trichy	104	137.66	11
3	Kochi	17	2.68	5
	Total	**145**	**211.85**	**21**

However, no action for bunching of these cases and requesting tribunal for common hearing was taken.

When we pointed this out (August 2018), the Ministry stated (October 2018) that in Chennai Outer and Trichy Commissionerate instructions had been issued to the Standing Counsel to file a petition for bunching of cases involving similar issues. In respect of Kochi Commissionerate, the Ministry stated that out of 17 cases, in 11 cases the amount involved is less than 20 lakhs and therefore these cases have to be withdrawn on the basis of Board's instructions. In remaining six cases reply not furnished.

Though, the Ministry admitted the audit observation in these three Commissionerates and issued instructions to the Standing Counsels, the fact remains that the required action has been taken only after being pointed out by the audit. Audit had raised this issue earlier also vide para No. 2.8.4 of the CAG Audit Report No. 3 of 2017 and Para No. 2.8.4 of CAG Audit Report No. 41 of 2016 for which, the Ministry had assured that bunching was being done.

In view of the huge pendency of Appeal cases, the Ministry may sensitize its field formations for effective monitoring of the pending Appeal cases.

[29] Chennai Outer, Trichy, Kochi, Hyderabad

3.5.6.4 Delay in filing of Appeal

'Standard Operating Procedures on Litigation in Appellate Forums' issued by DLA, CBIC, New Delhi, stipulates a time period of 90 days for filing an Appeal in Supreme Court against High Court and period of 180 days for filing Appeal in High Court against CESTAT order.

Out of 7,331 total cases in 28 Commissionerates, we examined 1,969 cases and observed in four Commissionerates that in 12 cases (0.6 per cent) involving revenue of ₹ 25.33 crore, Appeals were filed with delay ranging from 10 days to 577 days as detailed below:

Table 3.13: Cases where Appeals were filed with delay

Sl. No.	Name of the Commissionerate	No. of cases	Amount (in ₹ Crore)	Forum of Appeal	Range of Delay (in days)
1	Surat	4	1.83	Supreme Court	33
2	Ahmedabad	4	5.56	High Court	10
3	Delhi West	3	11.47	Supreme Court	59-363 (Appeals yet to be filed)
4	Delhi North	1	6.47	High Court	577
	Total	**12**	**25.33**		

One case is illustrated below:

In Delhi North Commissionerate, scrutiny of files related to Appeal case of an assessee involving revenue of ₹ 6.47 crore revealed that the Department had filed application for condonation of delay on the ground that the certified copy of impugned CESTAT final order dated 14 February 2013 was received by the Department on 24 September 2014. There was inordinate delay of 577 days in filing the Appeal challenging the final order of CESTAT dated 14 February 2013. In this case, the High Court dismissed (July 2015) the application on the grounds of delay and merit of the case. Thus, non-adherence of the time limit for filing the Appeals by the Department resulted in dismissal of the Appeal.

When we pointed this out (August 2018), the Ministry admitted the delay in three Commissionerates[30] and stated that in two cases High Court and Supreme Court condoned the delay. Reply in respect of remaining Commissionerates was awaited.

The Ministry may take appropriate action and ensure adherence to prescribed time limit by field formations in the interest of revenue.

[30] Surat, Ahmedabad, Delhi West

3.5.6.5 Non-maintenance of pre-deposit information

Section 35F of the Central Excise Act, 1944 provides for mandatory pre-deposit of duty confirmed or penalty imposed for filing Appeal before Commissioner (Appeals) or CESTAT in Central Excise cases which is also applicable for Service Tax vide Section 83 of the Finance Act, 1994 and Section 129E of the Customs Act, 1962.

Section 35FF of the Central Excise Act, 1944 read with Section 129 EE of the Customs Act, 1962 with respect to refund of pre-deposit stipulates "Where the Appellate Authority has decided the matter in favour of the appellant, amount pre-deposited is to be refunded with interest within 15 days of the receipt of the letter of the appellant seeking refund irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not".

Further, Procedure and Manner of making the pre-deposits stipulates that "Record of deposits made under Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 are to be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority".

Out of 3,735 total cases in 21 Commissionerates[31], we examined 1,822 cases and observed in Kolkata South Commissionerate, that stay orders were issued in 20 cases (1 per cent) wherein pre-deposits of ₹ 2.74 crore were to be deposited by the applicants/assessee for the period from October 2014 to July 2015. However, no document evidencing pre-deposits was found in records. Non-maintenance of pre-deposit records indicates non-compliance of codal provisions which may result in delayed/erroneous refund claims, if any.

When we pointed this out (August 2018), the Ministry stated (October 2018) that the action has been taken to update the record.

[31] Belagavi, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Bolpur, Chennai Outer, Dibrugarh, Guwahati, Haldia, Howrah, Hyderabad, Kochi, Kolkata North, Kolkata South, Mangalore, Mysore, Shillong, Siliguri and Trichy.

3.5.6.6 Improper maintenance of database/Appeal registers in field formations

Out of 10 test checked Commissionerates[32], we observed in two Commissionerates that the database and Appeal registers were not maintained properly as detailed below:

(i) In Delhi East Commissionerate, Audit observed that there was no centralised database with detail of assessee i.e. name of the party, case number, year, issue involved etc. for Appeal cases pending at CESTAT.

(ii) During verification of CESTAT Register for Appeal filed by the Department for FY16 to FY18 at Ahmedabad Commissionerate, it was observed that same was not maintained properly as the requisite columns were found blank and incomplete. Information/entries related to 'last date of review', 'details of filing of Appeal', 'whether accepted by the Department' etc., were not entered in the register.

Thus, the Department did not ensure maintenance of important details in respect of Appeal cases which affect the proper monitoring of Appeal cases.

When we pointed this out (August 2018), the Ministry admitted the audit observations (October 2018) in respect of both the Commissionerates and stated that the remedial action has been initiated/taken and the officers have been sensitized.

3.6 Conclusion

Despite large amount of revenue blocked in Appeals, monitoring mechanism of Appeal cases at Board as well as field level is inadequate as evidenced by the instances of improper data maintenance, non-follow up of Board's instructions such as filing application for early hearing, bunching of cases, and lapses by the Department resulting in dismissal of Appeals. The Ministry needs to strengthen the mechanism for proper monitoring and disposal of Appeal cases.

[32] Delhi East, Delhi South, Delhi North, Delhi West, Ahmedabad North, Chennai Outer, Trichy, Hyderabad, Kolkata South and Shillong.

Chapter IV

Monitoring mechanism for Recovery of Arrears in CBIC

4.1 Introduction

Any amount recoverable from the assessee due to confirmation of demands in favour of the Department by virtue of Orders-in-Original (OIO) or further Department favourable Orders-in-Appeal (OIA), Tribunal orders, Courts' orders or grant of stay applications with condition of pre-deposits, are treated as arrears.

The process of recovery of arrears starts with confirmation of demand against the defaulter assessee and includes a number of appellate fora wherein assessee as well as Department can go for appeal.

The main statutory provisions dealing with recovery of arrears in Central Excise and Service Tax are section 11 of the Central Excise Act, 1944 (empowers Central Excise officers to take action for recovery of arrears), section 142 of the Customs Act, 1962 (which have been made applicable in Central Excise cases, vide *Notification No. 68/63-Central Excise dated 4 May 1963),* and Section 87 of the Finance Act, 1994 (which empowers the Department to take action for recovery of arrears of Service Tax).

4.2 Classification of Arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are irrecoverable. The recoverable arrears are further classified as restrained (Board for Industrial and Financial Reconstruction (BIFR)/ Debt Recovery Tribunal/Official Liquidator cases, pending applications for stay/ stay extension etc.), unrestrained (Cases where action under section 11 of Central Excise Act, 1944/section 87 of Finance Act, 1994/section 142 of Customs Act, 1962 has been initiated, Certificates sent to District Collector/other Customs-CE formations etc.), and fit for write-off (viz., units closed/defaulters not traceable/assets of company not available etc.).

4.3 Responsibilities for Recovery and Monitoring of Arrears

The Board monitors the overall functions and performance of the field formations in recovery of arrears and fixes targets for the same. It also issues periodical instructions to the field formations to tone up the recovery process.

Chief Commissioners bear the overall responsibility of monitoring and supervising the recovery process under the respective zone.

Commissionerates, having the overall responsibility for recovery of arrears, are required to review and monitor the functions of Divisional and Range officers in this regard. Besides, they should exercise the functions for vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in BIFR/DRT/OL etc. and watch progress and performance of Recovery Cells through monthly progress reports and take follow up action.

Divisional Officers (Assistant/Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are performing their duties in accordance with the prescribed rules/regulations/instructions.

Ranges are the lowest level field formations entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.

In addition, Recovery Cell operates under the supervision and control of the jurisdictional Commissioner. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulters' property by public auction. It is also required to send a monthly progress report to the Commissionerate regarding arrears.

4.4 Audit Methodology and Sample Selection

We had examined the records related to Recovery of Arrears of Central Excise/Service Tax in FY16 to assess the level of compliance with the prescribed rules and regulations and effectiveness of monitoring and control mechanism of the department in this area. We found instances of inordinate delay in various steps involved in recovery of arrears viz. communication of OIOs to Range offices, initiation of recovery proceedings, transfer of cases to Recovery Cell and updating the status of arrear cases. We also observed absence of mechanism to know status of cases, as well as relevant records/data in Tax Arrear Recovery cell (TAR), non-formulation of strategy by zonal TAR, etc. as reported in Chapter-II of Report No. 41 of 2016 (Service Tax) and 3 of 2017 (Central Excise).

The Ministry in its action taken note had stated (May 2017) that the Board had been requested to issue clear instructions on all the issues to the field formations.

To check the current status of monitoring mechanism for Recovery of Arrears in the Department, we verified the records in Director General of Performance Management (DGPM) under CBIC and Monthly Performance

Reports (MPRs) of selected 20 Commissionerates[33] alongwith other relevant records. Further, in the selected Commissionerates, out of total pending 5,672 cases involving money value of ₹ 6,816.77 crore in Central Excise as on 31 March 2018, we examined 119 case files (2 per cent) involving money value of ₹ 1,217.29 crore. Similarly, in selected Commissionerates, out of total pending 12,046 cases involving money value of ₹ 13,549.19 crore in Service Tax as on 31 March 2018, we examined 154 case files (1 per cent) involving money value of ₹ 6,317.34 crore. The pending cases of arrears were generally selected on the basis of high money value and long pendency of the case.

4.5 Audit Findings

We observed instances of discrepancy in data maintained at Board level and non-compliance of Board's instructions by field formations i.e. delay in communication of Orders-in-Original, non/delayed initiation of recovery proceedings, inadequate/non-pursuance of the case with Official Liquidator, non-transfer of cases to Recovery Cell etc. The observations are discussed in succeeding paragraphs.

4.5.1 Performance of the Department in Recovery of Arrears

The law provides for various methods of recovery of revenues raised but not realised. These include adjusting dues against amounts, if any, payable to the person from whom revenue is recoverable, recovery by attachment, sale of excisable goods and recovery through the district revenue authority.

4.5.1.1 Table 4.1 depicts the performance of the Department in respect of recovery of arrears of Service Tax.

Table 4.1 Arrears realisation – Service Tax

(₹ in crore)

	FY17		FY18	
	Gross Arrears	Recoverable Arrears[34]	Gross Arrears	Recoverable Arrears
Opening Balance	90,170	2,658	1,17,935	3,766
Addition during the year	68,634	6,176	1,01,016	11,338
Total Arrears	1,58,804	8,834	2,18,951	15,104
Disposal of Demands	39,006	4,285	50,172	9,013
Arrears Realised	1,894	783	2,226	1,164
Arrears Realised as % of Total Arrears	1.19	8.86	1.02	7.71
Closing Balance	1,17,904	3,766	1,66,553	4,927

Source: Figures furnished by the Ministry.

[33] Ahmedabad North, Aurangabad, Belagavi, Bhubaneshwar, Delhi North, Faridabad, Guwahati, Hyderabad, Jodhpur, Kochi, Lucknow, Ludhiana, Madurai, Patna-I, Pune-I, Ranchi, Siliguri, Surat, Thane Rural and Visakhapatnam.

[34] Recoverable Arrears include cases in which appeal period is over but no appeal is filed by the party against confirmation of demand, cases decided in Settlement Commission, Units closed/assessees not traceable, cases pending for action under section 11/Section 142 of the Central Excise Act, 1944 and Customs Act, 1962 respectively etc.

It can be seen that recovery from the recoverable arrears has decreased from 8.86 per cent in FY17 to 7.71 per cent in FY18 in respect of Service Tax. Further, recovery as per cent of gross arrears had reduced from 1.19 per cent in FY17 to 1.02 per cent in FY18.

Table 4.2 depicts the performance of the Department in respect of recovery of arrears of Central Excise.

Table 4.2: Arrears Realisation – Central Excise

(₹ in crore)

	FY17		FY18	
	Gross Arrears	Recoverable Arrears	Gross Arrears	Recoverable Arrears
Opening Balance	74,940	7,751	84,122	9,075
Addition during the year	37,591	5,314	56,457	9,123
Total Arrears	1,12,531	13,065	1,40,579	18,198
Disposal of Demands	26,252	2,756	42,293	5,762
Arrears Realised	2,079	1,234	1,790	1,124
Arrears Realised as % of Total Arrears	1.85	9.44	1.27	6.18
Closing Balance	84,200	9,075	96,496	11,313

Source: Figures furnished by the Ministry.

It can be seen that recovery from the recoverable arrears has decreased from 9.44 per cent in FY17 to 6.18 per cent in FY18 in respect of Central Excise. Further, recovery as per cent of gross arrears had reduced from 1.85 per cent in FY17 to 1.27 per cent in FY18.

Given the significant amount of arrears to be recovered, it is essential that the Board specifically focuses on legacy issues after transition to the GST regime.

Further, we worked out the gross arrears figures of Service Tax and Central Excise from the TAR monthly reports received from the Department. The closing balance of gross arrears was ₹ 1,66,553 crore and ₹ 96,496 crore for Service Tax and Central Excise, respectively, as on 31 March 2018. However, the closing balance of arrears as per TAR reports for March 2018 was ₹ 1,27,809 crore and ₹ 85,158 crore for Service Tax and Central Excise, respectively. One of the reasons for difference was that closing balance of TAR reports of June 2017 was not taken correctly in the opening balance of July 2017. The difference between closing balance of June 2017 and opening balance of July 2017 in respect of arrear in litigation was 3,534 cases involving money value of ₹ 7,059 crore for Central Excise and 3,887 cases involving ₹ 18,752 crore for Service Tax. The Ministry was asked to examine and intimate the reasons for the same.

The Ministry stated (October 2018) that significant increase in arrears is due to increased thrust of the Department in curbing evasion of duty/tax, faster adjudication of pending cases, arrears being locked up in litigation and untraceable defaulters/units. Further, regarding difference in closing balance of June 2017 and opening balance of July 2017, the matter had been taken up with the DDM.

The reply of the Ministry shows the major shortcoming in the up-keeping of the data by the Department due to which even after more than one year of the discrepancy, the Department could not locate even the Zones responsible for filing incorrect reports.

4.5.1.2 Discrepancy in figures of Arrear amount in litigation as reported by DLA and TAR Report

The demand confirmed in adjudication becomes arrears of revenue. If the assessee against whom the demand is confirmed is not satisfied with the adjudication order, he can appeal against the order in appellate fora. If an assessee files an appeal, the demand involved in the case becomes Arrear in Litigation. The TAR maintains the figures of arrears amount on all India basis. Similarly, the Directorate of Legal Affairs (DLA) maintains the figures of litigation in appellate fora by the assessee as well as the Department on all India basis. As only the confirmed demand becomes arrear of revenue and only an assessee would go in appeal against the confirmed demands, it can be concluded that arrear in litigation as maintained by TAR and appeals filed by party as maintained by DLA should match but there was difference in both the sets of figures as detailed in Table 4.3.

Table 4.3 : Mis-match in respect of pendency of Arrear cases in Litigation

(₹ in crore)

Year	Central Excise				Service Tax			
	Pending Arrear in Litigation as on 31 March as per TAR Report		Party's Appeals in Litigation as on 31 March as per DLA Report		Pending Arrear in Litigation as on 31 March as per TAR Report		Party's Appeals in Litigation as on 31 March as per DLA Report	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
FY16	34,472	58,589	45,473	69,987	29,378	78,769	35,977	75,327
FY17	36,836	65,925	47,092	80,156	34,636	97,136	41,301	96,822
FY18	32,100	66,604	35,199	74,406	36,367	1,11,851	35,163	94,825

The Ministry was asked to explain the reasons for mis-match in both of these figures.

The Ministry in its reply stated (October 2018) that it was due to the fact that in TAR reports only confirmed demands are included whereas in DLA figures, party's appeals as well as Department's appeals against adjudication orders

are included. The Ministry further stated that the DDM had been requested to examine the mismatch and take the corrective action.

The reply of the Ministry is not acceptable as the figures in respect of DLA reported above includes only party's appeals which is compared to TAR figures of arrears in litigation. Hence, both should have tallied. The Ministry may reconcile these figures and report the correct position as the difference in these figures is ₹ 24,828 crore which cannot be taken lightly.

4.5.1.3 Department's performance in Recovery of Arrear vis-à-vis the targets set for recovery

The target for recovery of arrears was fixed by the Board vide letter No. CC(TAR)63/TECH/BUDGET/2015 dated 19 May 2016 for FY17 and vide letter No.CC(TAR)43/TECH/BUDGET/2016 dated 09 May 2017 for FY18. The Department had set combined target for Central Excise, Service Tax and Customs of ₹ 5,000 crore and ₹ 6,000 crore for FY17 and FY18, respectively, which was 48 percent and 47 percent of the recoverable arrears for FY17 and FY18, respectively, of Central Excise and Service Tax only.

The Department achieved the monetary target set in FY17 and achieved 86.93 per cent of the monetary target in FY18. Though 86.93 per cent of target was achieved in FY18, we observed that out of 21 Zones, 16 Zones[35] could not achieve their targets. The targets achieved by six Zones[36] were less than 50 per cent.

The Ministry accepted the facts (October 2018) in respect of 14 zones. In respect of Chennai and Mumbai zones it was stated that targets were achieved. The Ministry further stated that all efforts would be taken to improve the performance.

4.5.2 Inordinate delay in Communication of Orders-in-Original (OIO)

The Board, in its circular dated 24 December 2008 stipulated that the details of Adjudication Orders shall be entered in the Confirmed Demand Register and action taken for recovery as laid down in Chapter 18 of Part III of the CBEC's Central Excise Manual. However, the circular did not prescribe any time limit for communication of OIO to Range Office.

During our previous audit we noticed 212 cases in which there was delay in communication of OIO to the Range offices as reported in Chapter-II of CAG's Report No. 41 of 2016 (Service Tax) and Report No. 3 of 2017 (Central Excise).

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[35] Jaipur, Ranchi, Bengaluru, Ahmedabad, Hyderabad, Vadodara, Bhubaneshwar, Visakhapatnam, Meerut, Nagpur, Chandigarh, Panchkula, Guwahati, Kolkata, Lucknow and Delhi Zone

[36] Chandigarh, Panchkula, Guwahati, Kolkata, Lucknow and Delhi Zone

The Ministry in its action taken note had stated (May 2017) that a recommendation had been forwarded to the Board for considering a time limit for communication of OIO to the Range offices.

We noticed that the Board did not respond to recommendation of the Ministry and did not prescribe a time limit for communication of OIO to the range office.

In 17 Commissionerates[37]**,** we test checked 262 OIOs involving money value of ₹ 7,229.16 crore out of which in nine Commissionerates[38], in 89 OIOs (34 per cent) involving money value of ₹ 764.18 crore, the time taken beyond seven days to communicate OIOs to the Range Officers/assessees, ranged between 1 Day to 20 Months considering, in absence of any prescribed time limit for this, one week time limit as acceptable for this communication.

This was brought to the notice of the Department/Ministry in July-August 2018. The Ministry accepted (October 2018) the facts in respect of six Commissionerates. For Belagavi Commissionerate, it was stated that there was no delay in communication of O-I-Os and for Kochi Commissionerate, it was stated that reply would follow.

Two cases are illustrated below:

(i) Copy of the OIO passed (March 2017) in case of an assessee in Surat Commissionerate, involving revenue of ₹ 6.62 crore, was sent (March 2018) to the assessee after 12 months when the assessee made a request for it.

The Ministry accepted the fact and stated (October 2018) that the delay was due to restructuring after implementation of GST.

(ii) In Kochi Commissionerate, in 62 cases involving revenue of ₹ 52.28 crore there was delay of 14 to 111 days in communicating the OIOs. Further, in 59 cases there was delay in passing the OIOs after the conclusion of personal hearing. The delay ranged from 10 to 543 days.

The Ministry stated (October 2018) that reply would follow.

4.5.3 Non/delayed initiation of Recovery Proceedings

The Officers of the Central Excise and Service Tax were empowered under section 11 of Central Excise Act, 1944 and section 73/section 87 of the Finance Act, 1994 to recover the arrears of revenue of Central Excise and Service Tax respectively.

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[37] Ahmedabad North, Surat, Jodhpur, Madurai, Kochi, Faridabad, Ludhiana, Aurangabad, Lucknow, Patna-I, Ranchi, Hyderabad, Visakhapatnam, Belagavi, Siliguri, Guwahati and Delhi North.

[38] Aurangabad, Belagavi, Faridabad, Jodhpur, Kochi, Madurai, Lucknow, Siliguri and Surat.

If no recovery of Central Excise dues is made by the action stipulated under section 11 of the Central Excise Act, 1944, action is to be taken under the provision of section 142 of the Customs Act, 1962, (made applicable to Central Excise cases also) which empowers the Department to deduct the amount so payable from any money owing to the defaulter, to sell the goods belonging to the defaulter which are under the control of the proper officer and to take action to distrain and sell any movable or immovable property belonging to such person.

Similarly, Section 73 of the Finance Act, 1994, empowers the Central Excise Officer to serve notice to the person, chargeable with Service Tax, which has not been levied or paid or short-levied or short-paid or erroneously refunded and Section 87 empowers Central Excise officer to recover amount payable by an assessee from a third party who holds money on account thereof.

During our previous audit we noticed 86 cases in which there was delay in initiation of recovery proceedings as reported in Chapter-II of CAG's Report No. 41 of 2016 (Service Tax) and 3 of 2017 (Central Excise).

The Ministry in its action taken note had stated (May 2017) that a recommendation had been forwarded to the Board for issuing instructions to the field offices to initiate timely action for recovery of arrears and to take early recourse for coercive action.

In 18 Commissionerates[39], we test checked 246 cases involving money value of ₹ 7,141.72 crore out of which in 115 cases (47 per cent) involving money value of ₹ 1,202.33 crore in 16 Commissionerates[40], action for recovery under section 11 of Central Excise Act, 1944/section 142 of Customs Act, 1962 and section 73 and 87 of the Finance Act 1994, was not initiated in time. The delay was ranging between five months to 12 years.

These cases were brought to notice of the Department/Ministry in July-August 2018. The Ministry in its reply accepted the facts (October 2018) in respect of 14 Commissionerates and for Jodhpur, Belagavi and Ranchi Commissionerate stated that reply would follow. The Ministry further stated that keeping in view of the seriousness of the matter, the Board had issued two circulars (December 2017 and June 2018) whereby it had directed/instructed all field formations that more emphasis and better monitoring of tax arrears recovery is required at the Zone and Commissionerate level.

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[39] Ahmedabad North, Belagavi, Bhubaneshwar, Delhi North, Faridabad, Guwahati, Hyderabad, Jodhpur, Kochi, Lucknow, Ludhiana, Madurai, Patna-I, Pune-I, Ranchi, Siliguri, Surat and Visakhapatnam.

[40] Ahmedabad North, Belagavi, Bhubaneshwar, Delhi North, Guwahati, Hyderabad, Jodhpur, Kochi, Lucknow, Ludhiana, Madurai, Pune-I, Ranchi, Siliguri, Surat and Visakhapatnam.

Some cases are illustrated below:

i) In Surat Commissionerate, an Alert Circular was issued by the Commissioner(June 2005) mentioning that two assessees were fraudulently passing CENVAT Credit and the said firms or their proprietors never existed in their declared registered premises/residences. However, demands of ₹ 11.81 crore and ₹ 10.53 crore respectively were confirmed (July and August 2010) by the Department after passage of more than five years from the said alert. Further, Department started issuing (September 2015 onwards) letters to the various Government authorities to ascertain whereabouts/properties of these assessees after a further passage of more than 5 years from the demand confirmation.

Similarly, a demand of ₹ 5.03 crore was confirmed (March 2009) against another assessee in Surat Commissionerate after passage of around four years since the unit was declared (May 2005) fake/non-existent by Alert Circular, while letter was written (December 2012) by the Department to other government authorities for knowing whereabouts/particulars of the assessee after a period of more than 44 months since demand confirmation.

It may be pertinent to note that similar 43 units were identified as fake by the Department, but demands of ₹ 127.41 crore were confirmed after the gap ranging from 3 to 5 years from the date of alert which resulted in assessees becoming untraceable and amount remained unrecovered.

Thus, it is apparent that the Department did not initiate timely necessary actions to protect the Government revenue.

ii) A demand of Central Excise duty of ₹ 6.79 crore was confirmed (June 2015) alongwith equal penalty against an assessee in Ahmedabad North Commissionerate.

After the demand was confirmed, neither any concrete action, under section 11 or section 142 of Acts stipulated above, was initiated by the Department for recovery of Government dues nor the case was transferred to Tax Recovery Cell of the Commissionerate for further proceedings in the matter. The Department though contemplated (December 2016) prosecution process against the assessee, no such action was initiated in this regard.

Thus, the Department is yet to initiate the recovery proceedings under section 11 and section 142 of the Acts stipulated above despite passage of more than 3 years.

iii) A demand of ₹ 9.46 crore and equal penalty was confirmed (September 2015) against an assessee in Surat Commissionerate. The order sent by post to the assessee returned undelivered (September 2015) and the

party was not traceable. However, Department is yet to initiate any concrete action, under section 11 or section 142 of Acts stipulated above, for recovery of Government dues.

iv) Service Tax demand of ₹ 98.26 lakh and equal penalty and interest was confirmed (October 2015) by the Department against an assessee under Guwahati CGST Commissionerate.

However, the Department neither initiated any action under section 87 of the Finance Act, 1994 nor pursued it for recovery of arrears after May 2016 despite the fact that the assessee did not file any stay application with CESTAT.

v) A demand of Central Excise duty of ₹ 5.85 crore and equal penalty was confirmed (August 2015) against an assessee in Jodhpur Commissionerate and penalty of ₹ 5.00 lakh was also imposed upon its Director.

Appeal filed by the assessee was marked for removal of defects (January 2016) and was subsequently returned by the CESTAT for non-furnishing of mandatory pre-deposit but the Department showed it as pending in CESTAT. Subsequently, Department noticed (December 2017) the fact of returning of appeal by CESTAT and then the Department contemplated (February 2018) initiation of action under Section 142 of Customs Act, 1962. However, no such action was initiated by the Department till date (August 2018).

Thus, Department was unaware of the disposal of the case for a period of more than 22 months due to lack of timely follow up of the case and yet to initiate the contemplated action, resulting in avoidable pendency.

vi) A demand of ₹ 3.69 crore was confirmed (July 2015) against an assessee in Kochi Commissionerate. The department could not serve the said OIO to the assessee till October 2015 as the whereabouts of the assessee were not available and drew (January 2016) a Mahazar (Panchnama) at the premises of the assessee after which no further recovery proceedings were initiated.

Audit verified and found that the EASIEST (departmental website) showed that the assessee was still 'active' under Ernakulam-5 Range under Kochi Commissionerate. Similar basic exercise was not carried out by the Department for tracking the assessee out.

Thus, lack of proper monitoring and follow up action for the last three years by the Department is apparent, despite involving substantial amount of revenue in this case.

The Ministry confirmed the facts in all the above cases (October 2018) and reported the efforts made by the field formations. The fact remains that significant amount of revenue could not be recovered due to slack action taken by the Department.

4.5.4 Inadequate/non pursuance of the case with Official Liquidator (OL)

The Official Liquidators (OL) are officers appointed by the Central Government under Section 448 of the Companies Act, 1956 and are attached to various High Courts. OL is appointed from the date of the order of the winding up of a company and after taking "custody" of the company's property, plays a major role to realise and distribute the assets of the company (which is about to wind up) among the creditors and debenture holders.

(i) Department filed claim of ₹ 10.51 crore of pending dues against an assessee in Ahmedabad-North Commissionerate with OL appointed (April 2001) by Gujarat High Court. Audit noticed lack of follow up by the Department with the OL as no correspondence took place for a period of more than seven years (April 2001 to November 2008) and more than three years (September 2014 to October 2017), despite involvement of significant amount of revenue.

It is pertinent to mention that the Department was required to pursue the matter more vigorously as the Department received (August 2011) the last correspondence seven years back in which it was mentioned by the OL that the payment of Department's dues would be made on *pro-rata basis* alongwith other creditors, depending upon fund availability and intimation would be given in due course. A note submitted (December 2017) by a Superintendent after visit to OL indicated that only ₹ 15-16 crore was available now with OL which would be disbursed among remaining creditors.

Thus, it is apparent that the matter was required to be pursued vigorously for early realization of Government dues.

This was brought to notice of the Department/Ministry in August 2018. The Ministry confirmed (October 2018) the facts and reported the action taken by the field formation.

(ii) An amount of ₹ 5.10 crore and interest was pending for realization from an assessee in Surat Commissionerate, which was declared a sick unit by the BIFR and this opinion was forwarded (July 2002) by BIFR to Kolkata High Court for winding up & liquidation.

Audit noticed that in this case there was no evidence of any follow up action by the Department for a period more than 10 years (August 2002 to March 2013) seeking and registering its claim of dues with High Court or

Official Liquidator (OL), if any, appointed by the High Court. Subsequently, several correspondence and follow up action was made (April 2013 to June 2017) by the Department with the Standing Counsel at Kolkata High Court, BIFR and Kolkata Excise authority, but it was unaware whether its claim of dues had been lodged with the High Court or the Official Liquidator, if any appointed by High Court.

This was brought to notice of the Department/Ministry in August 2018. The Ministry confirmed (October 2018) the facts and reported the action taken by the field formation.

Internal Control

4.5.5 Non follow up of Board's instructions issued for arrears recovery process

The Board had issued instructions for speeding up and tune up the arrears recovery process. However, we noticed that these were not properly/timely followed up by the field formations resulting in rendering these instructions/exercise infructuous. Some instances are detailed below:

(i) The Central Excise Officers have been empowered to attach and sell movable and/or immovable properties of any person who has failed to pay any sum due to Government vide Notification No. 48/97-CE (NT) dated 2 September 1997 issued under section 12 of the Central Excise Act, 1944 which made section 142 (1)(c)(ii) of the Customs Act, 1962 applicable to like matters in Central Excise. If no recovery is made by Departmental efforts, cases need to be transferred to the Recovery Cells which have empowered to take action for recovery by attachment and sale of property of the defaulter.

During our previous audit we noticed 86 cases in which there was delay in initiation of recovery proceedings as reported in Chapter-II of Report No. 41 of 2016 (Service Tax) and 3 of 2017 (Central Excise).

The Ministry in its action taken note had stated (May 2017) that a recommendation had been forwarded to the Board for issuing instructions to the field officer to initiate timely action for recovery of arrears and to take early recourse for coercive action.

During the test check of the records of 10 Commissionerates[41], we observed that no arrear cases were transferred to Recovery Cell during FY17 and FY18. On further examination we noticed that out of 10 Commissionerates, in five Commissionerates[42], 473 cases involving money value of ₹ 331.19 crore were

[41] Ahmedabad North, Bhubaneshwar, Delhi North, Faridabad, Guwahati, Jodhpur, Kochi, Ludhiana, Madurai and Surat.

[42] Bhubaneswar, Faridabad, Guwahati, Kochi and Ludhiana.

pending for recovery for too long in MPRs and fit to be transferred to Recovery Cell as per the Board's instruction cited above but were not transferred to Recovery Cell.

This was brought to the notice of the Department/Ministry in July-August 2018. The Ministry accepted (October 2018) the facts in respect of six Commissionerates[43] and furnished details of the action taken by its field formations. In respect of Madurai Commissionerate, it was stated that Recovery Cell was functional in the Commissionerate. For Cochin and Delhi-North Commissionerates it was stated that reply would follow.

(ii) The Board instructed (August 2004) for constitution of a Centralized Task Force (CTF) under Chief Commissioner (TAR) consisting of Commissioners (TAR) as its nodal officers to coordinate, facilitate, monitor and oversee the efforts of Customs and Central Excise field formations, in recovery of arrears. These functions and responsibilities of Chief Commissioner (TAR) were later assigned (2015) to Directorate General of Performance Management (DGPM).

Audit noticed that the following vital functions prescribed by Board for the Task Force (now to be done by DGPM) had not been performed:

- Co-ordination between the field formations and concerned departmental representatives for out-of-turn hearing and early decisions in suitable arrears cases.
- Follow up of arrear cases passed by Tribunals favouring revenue for arrear realisation **.**
- Checking compliance of fulfilment of conditions where conditional stay orders were granted by competent authorities **.**

When we pointed this out (August 2018), the Ministry stated (October 2018) that details of Commissionerates had not been furnished.

The reply of the Ministry is not relevant to the audit observation as the observation was on functioning of DGPM.

(iii) Commissioner (TAR), New Delhi recommended (August 2017) handing over of cases of "Units closed/Defaulters not traceable" for more than 5 years to a 'Selected Preventive Team' to make all out efforts for recovery within three months and considering them for write off by March 2018, if the team gives negative response for such cases after three months after exhausting all avenues.

[43] Ahmedabad North, Bhubaneswar, Faridabad, Guwahati, Jodhpur and Ludhiana.

We noticed in nine Commissionerates[44] that 'Selected Preventive Teams' had either not been constituted or were constituted after March 2018, the deadline prescribed for handing over suitable cases.

This was brought to notice of the Department/Ministry in July-August 2018. The Ministry accepted the facts (October 2018) and stated that corrective action would be taken.

(iv) Board's circular No. 946/2011, dated 1 June 2011 stipulates that a three member committee of Chief Commissioners and Commissioners shall be constituted to examine the proposals for write-off of irrecoverable arrears and to recommend deserving cases to the authority competent to order such write-off in terms of the Board's circular, dated 21 September 1990. Further, in the action plan for FY16, the Zonal Chief Commissioners were requested to identify all cases fit for write-off and complete the required action so that such cases could be written-off expeditiously. These instructions were reiterated in August 2016.

During our previous audit, we noticed 177 cases in which no action was taken for writing off the arrears although they have become clearly irrecoverable and were pending for long period. The Ministry in its reply stated (May 2017) that a system was already in place and cases are being recommended and considered for write-off by the Commissionerates as per the set procedure.

During our examination, we observed that in none of the selected Commissionerates any special drive to write-off the irrecoverable arrear cases was undertaken during the audit period despite the claims of the Ministry of expediting the process of writing off the arrears.

When we pointed this out (August 2018), the Ministry stated (October 2018) that details of Commissionerates had not been furnished.

The reply of the Ministry is not acceptable as we have clearly mentioned that in none of the 20 test check Commissionerates any action was taken to write off the arrears.

4.5.6 Incorrect depiction in TAR Monthly Performance Report (MPR)

We observed 11 instances in five Commissionerates[45] wherein lack of monitoring of the recovery cases, resulted in improper categorization/incorrect depiction of the cases i.e. difference in figures furnished to TAR and Legal Cell, non-updation of status of cases in TAR

[44] Ahmedabad North, Aurangabad, Pune-I, Kochi, Patna-I, Jodhpur, Bhubaneswar, Surat and Thane Rural.

[45] Bhubaneshwar, Jodhpur, Kochi, Patna-I and Surat.

(MPR), difference in figures of pendency of cases by the different formations of the Commissionerate etc.

These were brought to notice of the Department/Ministry in July-August, 2018. The Ministry accepted (October 2018) the facts in nine cases and in two cases it stated that there was no discrepancy.

Four cases are illustrated below:

(i) The Department confirmed an amount of ₹ 3.25 crore against an assessee in Kochi Commissionerate. CESTAT rejected the appeal (February 2007) of the assessee on non-compliance of its earlier order in October 2006. The assessee filed restoration application in 2015 and CESTAT website showed that the restoration appeal filed by the assessee was 'Dismissed' (December 2017). However, the Review Cell of the Commissionerate included this case in the list of 'CESTAT cases' and no action for recovery of Government dues had been initiated.

The Ministry stated (October 2018) that action for recovery of Government dues had been initiated now.

(ii) An assessee in Surat Commissionerate had filed (June 2017) an appeal in CESTAT against the demand of ₹ 6.62 crore confirmed by the Department. However, the case was still shown as 'recoverable arrears' as the Commissioner (Appeals) had not delivered copy of appeal to the concerned Range/Division/ Commissionerate which shows lack of intra departmental co-ordination.

The Ministry stated (October 2018) that the mistake is corrected now and maximum care would be taken to update such type of cases in the MPR in future.

(iii) Department confirmed (2007 to 2014) an amount of ₹ 9.72 crore against an assessee in Kochi Commissionerate vide seven OIOs for which orders were issued (March 2015) for attachment of movable and immovable property.

However, Department considered (January 2016) only two OIOs issued in 2013 for calculating total liability of the assessee demanding only ₹ 7.17 crore and overlooked other five OIOs involving amount of ₹ 2.55 crore and applicable interest.

This resulted in short demand of recoverable arrears to the tune of ₹ 2.55 crore and interest thereon. As recovery action by way of attachment of movable/immovable properties of the assessee has not been completed, omission of the amount would tantamount to short recovery to the tune of ₹ 2.55 crore.

The Ministry stated (October 2018) that the omitted amount had been included in the arrear report and action was being taken to include the amount in the order of attachment.

4.5.7 Use of Software application by the Department to monitor Recovery of Arrears

Audit, vide Paragraph 2.10.3 of CAG's Audit Report No. 3 of 2017 and Paragraph 2.10.2 of CAG's Audit Report No. 41 of 2016, had pointed out requirement of IT system/computers software/program as an effective tool for recovery of arrears. In response, the Ministry had replied (December 2016) that the Board has devised a Management Information System (MIS) and Stage-I of the system involving web-based utility for uploading the Monthly Progress Reports by the field formations operational from June 2015. The Ministry added that a Working Committee for implementation of second stage had been constituted wherein manual registers were to be replaced by digital registers.

However, we noticed that in none of the selected Commissionerates, the second stage of the project had been implemented even after lapse of three years from the implementation of its first stage.

The Ministry had accepted (October 2018) the facts.

4.6 Conclusion

Significant quantum of revenue is stuck in continuously mounting arrears. We had earlier highlighted (Chapter-II of CAG's Report No. 41 of 2016 and Chapter II of CAG's Report No. 3 of 2017) serious lapses in attending the same. Despite this, our concerns have not yet been attended which is apparent from the instances of shortcomings and irregularities included in this Report. Further, concerns regarding ineffectiveness of special purpose vehicles viz. Recovery Cell, Special Preventive Team etc. prescribed by the Board for toning up the recovery process and exploring potential of Information Technology as monitoring tool are also yet to be attended.

Chapter V

Effectiveness of Tax Administration and Internal Controls

(Service Tax)

5.1 Introduction

Internal controls in an organisation are designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives[46] are being achieved:

- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.

In the era of self-assessment, recognizing the need for a strong compliance verification mechanism, the Board has put in place systems of internal control by way of two functions i.e. Scrutiny of Returns and Internal Audit. With increasing reliance on voluntary compliance and new services regularly brought under the tax net, there were also instructions in place to identify persons who were liable to pay tax, but had avoided to pay, so as to bring them into the tax net thereby broadening the tax base.

5.2 Results of Audit

During the course of examination of 18,000 ST-3 returns submitted by the assessees in audited 744 ranges, we came across several shortcomings in compliance to the Act/Rule provisions, instructions etc. in place. As discussed in paragraph 2.3 and 2.4 of this report regarding audit universe, sample and findings, out of 263 draft paragraphs issued to the Ministry, 168 DAPs pertain to Service Tax on the issues of widening of tax base, scrutiny of returns, internal audit of assessees, anti-evasion cell, disposal of refund claims, adjudication of SCNs and functioning of jurisdictional officers are discussed in this chapter.

Out of above 168 Draft Audit Paragraphs, we communicated our observations to the Ministry through 104 draft audit paragraphs having financial implication of ₹ 206.54 crore in which the lapses of the departmental officials of 43 Commissionerates were pointed out. Out of the above, in 51 cases the Ministry accepted the audit observations, in 42 cases the Ministry partly accepted the audit observations, for revenue loss and taking remedial action for recovery of revenue. In 11 cases, the Ministry did

[46] INTOSAI GOV 9100 – Guidelines for Internal Control Standards for the Public Sector.

not accept the audit observations (September 2018). These cases are included in Appendix-I.

Out of above 168 DAPs, we have also issued 63 draft audit paragraphs having financial implication of ₹ 52.00 crore on the accounts of non/short payment of Service Tax/interest and irregular availing/utilization of CENVAT credit by the assessees in 36 Commissionerates. Out of the above, 55 cases have been accepted by the Ministry and recoveries made/recovery proceedings initiated, in eight cases the Ministry accepted the audit observations but rectificatory action was yet to be initiated (September 2018). These cases are included in Appendix-II.

Apart from the above, during the audit of departmental units in FY18, we had also noticed systemic lapses related to scrutiny of returns, internal audit, adjudication of SCN, refunds etc. in 46 Commissionerates and ADG (Audit), Mumbai, issued to the Ministry through one draft audit paragraph containing 109 observations, out of which in some cases where we could calculate, the money value of audit observations, was ₹ 31.71 crore.

The observations are discussed in the following paragraphs under eight major headings:

- Widening of Tax base
- Scrutiny of Returns
- Internal Audit – Non-furnishing of Information
- Internal Audit – Non-detection of lapse
- Investigation by the Anti-Evasion Cell
- Disposal of Refund claims
- Issuance and Adjudication of SCNs
- Other lapses

5.3 Widening of Tax Base

Widening of tax base and prevention of tax evasion are two important functions of tax administration for optimum tax realisation. With increasing reliance on voluntary compliance by tax payers at large, it becomes important for Department to put in place an effective mechanism for collecting information from various sources in order to bring unscrupulous assessees into tax net. Further, the Board directed its field formations in November 2011 that a Special Cell be created in each Commissionerate to focus on widening of tax base by bringing in potential assessees.

5.3.1 Non Verification of third party data

Scrutiny of records in Mumbai Zone and two Commissionerates revealed that out of 19,168 assessees allotted by the Chief Commissioner Office to the Commissionerates for verification from the CBDT data, the Department did not conduct verification of 17,113 assessees. In 2,055 cases (11 per cent) verified by the Department during FY13 to FY15, revenue liability of ₹ 239.75 crore was detected in 836 cases. This indicates that there was huge revenue potential in the allotted cases and accordingly high priority should have been assigned to the task. However, in 89 per cent of the assessees, the verification was not done as given below:

Table 5.1: Non-verification of third party data

(₹ in crore)

Sl. No.	Field Formation	Total cases	Cases not verified	Cases verified	Duty evasion detected
1	Mumbai Zone	14,568	12,738	1,830	239.11
2	Division IV of Pune ST Commissionerate	3,013	2,842	171	NA
3	Tuticorin Division of Madurai Commissionerate	1,587	1,533	54	0.64
	Total	**19,168**	**17,113**	**2,055**	**239.75**

Considering the huge revenue potential in the cases, non-conducting of the verification would result in considerable escapement of revenue.

The Ministry forwarded (October 2018) replies of two Commissionerates. Bhiwandi Commissionerate (under Mumbai Zone) stated that the work was under process and Mumbai South Commissionerate (under Mumbai Zone) stated that cases pertaining to FY13 had been verified. Further, concrete efforts were being made to liquidate the pendency for FY14 and FY15 also.

Apart from above, we noticed seven other cases and issued two draft paragraphs involving revenue of ₹ 69.60 crore (included in Section A of *Appendix-I*), as detailed below:

5.3.2 Non-registration of local body and consequent non-payment of Service Tax

As per Clause (a) of Section 66D of the Finance Act, 1994, support services provided by the Government or local authority to business entities are liable for payment of Service Tax. Rule 4 of Service Tax Rules, 1994 stipulates that every person liable to pay Service Tax should get registered within 30 days from the date on which Service Tax becomes leviable on the services provided. The Board Circular No. 97/8/2007-ST dated 23 August 2007 specifies that the assessees applying for registration will be granted PAN based registration. Rule 7 of Service Tax Rules prescribes submission of ST-3 Returns by all registered assessees. Section 73A of the Act stipulates that any

amount collected towards Service Tax should be remitted into the Government account.

An assessee, which is an urban local body under the provisions of the relevant Act enacted by the State Legislature, is the local self-government for administering and providing basic civic amenities to the residents of the city. Thus, the assessee qualifies for both as local authority and governmental authority under the provisions of the Finance Act, 1994.

In addition to carrying out the functions entrusted under Article 243W of the Constitution, the assessee provides various taxable services like leasing out the buildings and land owned by it for commercial usage, permitting shooting of films in public parks, allowing telecom companies to use the roads for cable lying work etc. to the business entities located under its jurisdictional area. The assessee disclosed ₹ 10.24 crore as Service Tax under Current Liabilities in the Financial Statements for FY15 and FY16, indicating that said amount was collected as Service Tax by the assessee from its clients but did not remit to the Government account. Verification of the financial records of the assessee revealed that the assessee is liable to pay Service Tax of ₹ 90.07 crore, inclusive of ₹ 10.24 crore referred to above, on consideration received towards the services provided by it during FY14 to FY16.

Verification also revealed that some of the Zonal Offices/Divisions of the assessee were registered under Service Tax authorities and were having temporary registration numbers while other Divisions/Zonal Offices, which also provide taxable services, were not registered. Further, the registered Divisions/Zonal Offices of the assessee had not filed any ST-3 Returns till date (October 2017). The assessee should have taken registration for itself as a whole or for all its Divisions separately from Service Tax authorities within 30 days for the services provided by them becoming taxable with effect from July 2012. Though the Department was aware that the Negative List based taxation regime brought services provided by Government /Local Bodies to business entities in the Service Tax net, it did not take any action either to get the entire units of the assessee registered under Service Tax or to convert the temporary registrations, obtained by some of the Zones/Divisions into PAN-based registrations. The Department also did not take any action for ensuring regular filing of returns by the registered Zonal Offices/Divisions of the assessee.

When we pointed this out (October 2017), the Ministry stated (August 2018) that an SCN had been issued for ₹ 68.81 crore under renting of immovable property service and further stated that other issues regarding non taking permanent registration number or not registering all its divisional units would be taken care by the adjudication proceedings.

The reply of the Ministry is silent on the failure of the departmental officers.

5.3.3 Absence of Provision

According to Section 69 of Finance Act, 1994, as amended, read with Rule 4 of Service Tax Rules 1994, every person liable for paying the Service Tax shall make an application in form ST-1 for registration within a period of 30 days from the date on which the Service Tax under Section 66 (b) of the Finance Act, 1994, is levied. The ST-1 form does not have any column for filling the date of commencement of business or details of financial results of prior-registration period. The Rules also do not provide any checks for gathering this information.

Verification of Service Tax registration status of eight works contractors registered with the State VAT Department during audit of Service Tax Range Kottayam (September 2015) in Cochin Commissionerate, revealed that they took Service Tax registration much later than their date of VAT registration. Further, Audit observed from VAT returns and records available in State Commercial Taxes Department that six works contractors had taxable income prior to date of Service Tax registration (registered between June 2011 to February 2014), which was not disclosed by them. This had resulted in non-payment of Service Tax of ₹ 60.30 lakh for the period FY11 to FY13.

No checks have been provided in the Act/Rules to capture date of commencement of business for Service Tax registration. Thus, absence of a system for verification of financial records at the time of registration/filing of first ST-3 return, resulted in non-detection of non-payment of Service Tax by these assessees.

When we pointed this out (September 2015), the Ministry replied (July 2018) that there was short-payment of Service Tax only in four out of the six cases. The rectificatory action was taken in three out of four cases and investigation was going on the fourth case.

The reply of the Ministry is silent on the absence of provisions for checking income of pre-registration period while granting ST registration to the service providers.

The Ministry may consider that at the time of granting of registration details regarding commencement of the business and financial statements of that period may be called for by the Department to check Service Tax liability of the prior period.

5.4 Scrutiny of Service Tax Returns

The Board introduced self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the Department also provided for a

strong compliance verification mechanism with scrutiny of returns. Assessment was the primary function of Tax officers who were to scrutinise the Service Tax returns to ensure correctness of tax payment. As per the Manual for the Scrutiny of Service Tax Returns, 2009, a monthly report was to be submitted by the Range Officer to the jurisdictional Assistant/Deputy Commissioner of the Division regarding the number of returns received and scrutinised. Scrutiny was done in two stages i.e. preliminary scrutiny by Automation in Central Excise and Service Tax (ACES) and detailed scrutiny, which was carried out manually on the returns marked by ACES or otherwise.

As per para 1.2B of Manual ibid, preliminary scrutiny of returns was to be conducted on all returns. As per para 4.2A of Manual ibid, only two per cent of returns needed to be examined in detailed scrutiny.

5.5 Preliminary Scrutiny of Returns

The Board had issued revised checklist for scrutiny of Service Tax returns vide circular dated 30th June 2015. As per para 2.1 of the circular, on the basis of the validation checks incorporated in ACES by the Directorate General of Systems & Data Management (DGS&DM), preliminary scrutiny of all returns was to be done online in ACES and the returns having certain errors were marked for Review and Correction (RnC)[47]. These had to be processed accordingly by the Range Officers. The purpose of preliminary scrutiny of returns was to ensure completeness of information, timely submission of return, payment of duty, arithmetical accuracy of the amount computed and identification of non-filers/stop filers. In case any discrepancy was found by the ACES, all such returns were marked for RnC. The returns marked for RnC by ACES should be validated in consultation with the assessee and re-entered into the system. The preliminary scrutiny of returns and RnC was to be completed within three months from the date of receiving the returns.

Despite our best pursuance, the Ministry/Department did not provide data relating to scrutiny of Service Tax returns for FY17 and FY18. Although the preliminary scrutiny of returns and marking the returns for RnC was done online by the ACES still the Department was not able to furnish this information to Audit. The Ministry in its reply stated (May 2018) that all the Chief Commissionerates had been asked to furnish this information to the Board. In self-assessment regime, scrutiny of the returns is one of the tools available with the Department to ensure correctness of tax assessment. Non-maintaining and non-furnishing of the data points towards poor record keeping by the Department.

[47] The process of resolving discrepancies in respect of marked returns is called RnC.

During the test check of scrutiny of records at departmental units during FY18, we noticed 45 instances of non-conducting/non-clearance of returns marked for RnC/detailed scrutiny in 20 Commissionerates[48]. Further, we noticed 420 returns being filed late or not filed in seven Commissionerates[49] on which late fee of ₹ 56 lakh was not levied by the Commissionerates.

Apart from the above, we issued 26 draft paragraphs (included in Section B of *Appendix-I*) involving revenue of ₹ 22.55 crore where due to inadequacies in the system of preliminary scrutiny, short/non-payment of tax liability exhibited in the ST-3 return, non-payment of interest on delayed payment of tax or non/delayed filing of ST-3 returns were not detected by the Department. In 19 cases, the Ministry accepted the audit observations and attributed these lapses to non-availability/shortcomings of the facility in the ACES in 13 cases. In four cases, the Ministry accepted the revenue loss but did not accept the departmental failure while in three cases, the Ministry did not accept the audit observations.

Few illustrative cases are discussed below:

5.5.1 No action taken by the Department on ST-3 Returns marked for RnC by the ACES

5.5.1.1 It was observed in Bengaluru-IV Commissionerate, that the ACES marked the ST-3 Returns filed by an assessee for RnC due to the difference of ₹ 63.82 lakh in the CENVAT account between the closing balance for the month of March 2016 and opening balance for the month of April 2016. The difference occurred as the assessee adopted the closing balance as per the original ST-3 Returns filed for the period from September 2015 to March 2016 instead of the revised ST-3 Returns. Due to non-conducting of RnC, the excess CENVAT credit of ₹ 63.82 lakh could not be recovered.

When we pointed this out (May 2017), the Ministry accepted the facts (October 2018).

5.5.1.2 An assessee in Salem Commissionerate had declared ₹ 3.58 crore as Service Tax payable in the returns filed for FY15 to FY17, whereas no details of payment of tax were shown in the returns. Audit verification revealed that as on 31 December 2017, the assessee had made tax payment of ₹ 2.52 crore beyond the prescribed period but had not paid the interest, which worked

[48] Ahmedabad ST, Ahmedabad-I, Agra, Belapur, Bengaluru-IV, Delhi ST-I, Delhi ST-II, Hyderabad, Kolkata North, Kolkata South, Medchal, Mumbai East, Mumbai West, Nagpur-I, Navi Mumbai, Pune ST, Rajkot, Salem, Tirupati and Visakhapatnam

[49] Bengaluru-I, Bengaluru-IV, Hyderabad, Managalore, Meerut, Secundrabad and Visakhapatnam.

out to ₹ 34.07 lakh. Further, the outstanding dues of ₹ 90.47 lakh, along with interest of ₹ 17.46 lakh (up to the dates of audit) also remained unpaid.

Though the assessee persistently defaulted in payments and ACES had also marked the ST-returns filed for RnC, no action was taken by the jurisdictional officers, resulting in tax dues and interest remaining uncollected until pointed out by Audit.

When we pointed this out (January 2018), the Ministry stated (July 2018) that the audit observation was not accepted as the Department was already aware of the issue and a letter dated January 2016 had been issued to the assessee seeking payment of the dues and the assessee had made part payment of the dues and sought further time till May 2016 for full payment. Now the assessee had paid objected amount of ₹ 1.10 crore alongwith interest of ₹ 5.00 lakh.

The reply of the Ministry is not acceptable as the assessee was a repeat defaulter since 2014 who had short paid the Service Tax in each year. Further, the time limit sought for full payment by the assessee was also upto May 2016 but no coercive action was initiated by the Department even after that. After being pointed out by Audit, a notice for recovery under section 87 (issued to a third party-service recipient) was issued in February 2018. Further, the Department had not taken any action to levy penalty on the repeated short payment of Service Tax by the assessee.

5.5.1.3 An assessee, in Bengaluru ST-II Commissionerate, is a provider of Information Technology Software Services. Verification of the ST-3 returns filed by the assessee revealed that the assessee had declared an opening balance of ₹ 19.96 crore for the month of April 2016 against the closing balance of ₹ 18.85 crore for the month of March 2016 in the CENVAT Account. This resulted in availing of excess CENVAT credit of ₹ 1.11 crore. Even though ACES marked the ST-3 Return for RnC highlighting this error, the Department did not take any action to recover the irregular credit.

When we pointed this out (December 2016), the Ministry stated (May 2018) that the assessee reversed ₹ 1.11 crore in the CENVAT account in April 2017 on the basis of the audit observation. The Ministry admitted that there were certain glitches in the ACES functioning in the pre-GST era. The huge pendency of returns marked for RnC is a matter of concern for the Ministry. The Board had issued D.O. letter (April 2018) to all the field formations for speeding up the disposal of returns marked for RnC to address the huge pendency.

5.5.2 Non-detection of non/stop filer and non-payment of Service Tax

Rule 7 of Service Tax Rules, 1994 envisages that every person liable to pay Service Tax has to submit half-yearly return in Form ST-3 electronically within 25 days of the end of the half-year.

An assessee in Bengaluru ST-I Commissionerate, provides event management services to various clients and collects Service Tax from them. Verification of the Service Tax payment details at the Range Office revealed that the assessee neither paid Service Tax nor filed ST-3 Returns for the period from FY13 onwards. Audit obtained (February 2017) the Financial Statements of the assessee for the period from FY13 to FY15 which revealed that the assessee was liable to pay Service Tax of ₹ 1.04 crore on these services during the said period. The Commissionerate did not initiate any action for best-judgment assessment in this case as per section 72 of the Finance Act, 1994.

When we pointed this out (February 2017), the Ministry stated (June 2018) that an SCN demanding Service Tax of ₹ 1.40 crore had been issued. The Ministry further stated that the large number of assessees registered in the Commissionerate makes it difficult to take up every return for scrutiny. However, with the implementation of GST regime, the GST portal was accordingly being modified to capture details of the defaulters/non-filers.

5.6 Detailed Scrutiny of Returns

Revised checklists for detailed scrutiny of Service Tax returns were issued by the Board vide Circular dated 30 June 2015. As per the circular, the purpose of detailed scrutiny of returns is to ensure the correctness of the assessment made by the assessee. This includes checking the taxability of the service, the correctness of the value of taxable services in terms of Section 67 of the Finance Act, 1994, read with the Service Tax (Determination of Value) Rules, 2006 and the effective rate of tax after taking into account the admissibility of an exemption notification, abatement, or exports, if any; ensuring the correct availment/utilization of CENVAT credit on inputs, capital goods, and input services in terms of the CENVAT Credit Rules, 2004, etc. As per para 6.3 of the circular ibid, the Zonal Chief Commissionerates were to submit monthly reports in the format given in Annexure VI to the Directorate General of Service Tax till facilities are developed to enable the Commissionerate to upload the data in the MIS of CBIC.

Despite our best pursuance, the Ministry/Department did not provide data relating to scrutiny of returns for FY16 to FY18. The Ministry in its reply stated (May 2018) that all the Chief Commissionerates had been asked to furnish this information to the Board. In self-assessment regime, scrutiny of the returns is one of the tools available with the Department to ensure

correctness of tax assessment. Non-maintaining and non-furnishing of the data points towards poor record keeping by the Department.

During the test check of records related to detailed scrutiny in departmental units during FY18, we observed six instances of non-conducting of detailed scrutiny in six Commissionerates[50]. Further, we noticed 16 instances of non-clearance of 704 returns marked for detailed scrutiny in seven Commissionerates[51].

Apart from the above, we also issued 10 draft paragraphs (included in Section B of *Appendix-I*) involving revenue of ₹ 6.88 crore where due to non-conducting/ineffective detailed scrutiny of returns, short/non-payment of tax, non-payment of interest on delayed payment of tax etc. were not detected by the Department. In five cases, the Ministry accepted the audit observations, in four cases the Ministry accepted the revenue loss but did not accept the departmental failure and in one case, the Ministry did not accept the audit observation.

A few illustrative cases are given below:

5.6.1 Non-detection of non-levy of Service Tax in Detailed Scrutiny of Returns

As per Serial number 10 of Notification No. 30/2012-ST dated 20 June 2012 (effective from 1 July 2012), when the service provider is in non-taxable territory and service receiver is in taxable territory, Service Tax is payable by the service receiver.

An assessee, in Kutch Commissionerate, was selected for detailed scrutiny of Central Excise returns by the Department. On scrutiny of the relevant documents, we noticed that the assessee had debited ₹ 1.84 crore towards 'royalty payment' (services received from non-taxable territory) during the period FY14 and FY15, on which total Service Tax of ₹ 22.71 lakh was payable but not paid by the assessee.

This information was available in the records submitted to the Range by the assessee for detailed scrutiny of returns but no action was taken by the Jurisdictional Range Officer on this information.

When we pointed this out (August 2016), the Ministry accepted (June 2018) the audit observation and informed that the Department had recovered ₹ 22.71 lakh alongwith interest of ₹ 8.04 lakh. Further, the Ministry stated that the unit was selected only for detailed manual scrutiny of Central Excise returns/records and the same was conducted (March 2016) by the Range

[50] Agra, Delhi ST-I, Mumbai West, Nagpur-I, Navi Mumbai and Salem.

[51] Belapur, Delhi ST-II, Kolkata North, Kolkata South, Mumbai East, Pune ST and Tirupati.

office. Hence, there was no failure/lapse on the part of the Jurisdictional Range Officer.

The reply of the Ministry is not acceptable as the Range Officer should have examined the information available with it prudently to protect the revenue in respect of Service Tax also and not mechanically for the purpose of Central Excise duty only.

5.6.2 Short payment of Service Tax not detected as no detailed scrutiny was conducted

5.6.2.1 Section 65(105)(zo) of the Finance Act, 1994 provides that any service provided or to be provided in relation to any service for repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler, scooter, auto-rickshaw and motor vehicle meant for goods carriage, is a taxable service.

Audit examination (October 2016) of Annual Financial Statements, Form 26AS and ST-3 returns of an assessee, of Hajipur Range in Patna-II Commissionerate, revealed that the assessee had received amount of ₹ 1.90 crore during FY14 to FY16, which was received by them from various sources like Hero Motocorp (for free service charge), IndusInd Bank Ltd. (for professional and others) ICICI Lombard General Insurance (for insurance commission) and others. The assessee showed only amount of ₹ 80.17 lakh in ST-3 returns during FY14 to FY16. This resulted in short payment of Service Tax and Cess to the tune of ₹ 14.53 lakh, along with applicable interest thereon, during the said period.

When we pointed this out (October 2016), the Ministry accepted the audit observation and stated (July 2018) that an SCN of ₹ 39.17 lakh (including the objected amount of ₹ 14.53 lakh) had been issued (February 2018) to the assessee covering the period from FY14 to FY17.

The Ministry further stated that the assessee suppressed the actual taxable value in the ST-3 returns filed during the period by them. Non-payment of Service Tax could not have been detected on the basis of scrutiny of returns.

The reply of the Ministry is not acceptable because as per Annexure-III of Circular dated 30 June 2015, the revenue shown in ST-3 returns should be verified with reference to the revenue shown in the financial records i.e. Profit and Loss Account, relevant ITR etc., hence, the shortcoming would have been detected if the scrutiny of returns were conducted by the Department.

5.6.2.2 Section 68(2) of Finance Act, 1994, provides that a person liable to pay tax shall pay the same in prescribed manner. The Service Tax was

payable by an assessee (other than an individual, proprietary firm or partnership firm) by 5th of the month following the month in which payments are received towards value of taxable services (by 6th in case of e-payment) except in March [rule 6(1) of Service Tax Rules]. If the assessee was an individual or proprietary firm or partnership firm, the tax was payable on quarterly basis within 5 days at the end of quarter (within 6 days of e-payment) except in March.

An assessee, in Jaipur Commissionerate, had made payments of Service Tax for the period October 2012 to March 2015 (Audit Period April 2012 to March 2016) with a delay ranging from 1 to 151 days, however interest leviable thereon was not paid/short paid. This resulted in non/short payment of interest ₹ 27.35 lakh on delayed payment of Service Tax.

The ACES had not marked the returns of the assessee for RnC. Further, the Department intimated that Internal Audit of the assessee was not conducted for the period covered in audit observation as detailed scrutiny of the returns was done by the Range Officer, but belated payment of Service Tax was not pointed out in the detailed scrutiny.

When we pointed this out (October 2016), the Ministry stated (July 2018) that the assessee had deposited the interest of ₹ 27.35 lakh. Further, the Ministry stated that as per available records detailed scrutiny of returns was not conducted.

The reply of the Ministry is contradictory as the Commissionerate in its reply to the audit observation had stated (August 2018) that the unit was not covered in internal audit as detailed scrutiny of returns was conducted by the Range.

5.6.2.3 Rule 4(7) of the CENVAT Credit Rules 2004, provides that CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or as the case may be, challan was received provided that in respect of input service where whole or part of the Service Tax was liable to be paid by the recipient of the Service, credit of Service Tax payable by the recipient shall be allowed after such Service Tax was paid.

Audit examination (May 2017) of ST-3 returns and GAR-7 Challan of an assessee during audit of Service Tax Range III in Agra Commissionerate, for the period of FY15 to September 2017, revealed that the assessee availed and utilized CENVAT credit of input amounting to ₹ 1.29 crore prior to making payment of Service Tax under Reverse Charge Mechanism (RCM) contrary to the provision of Rule 4(7) of the CENVAT Credit Rules 2004.

When we pointed this out (June 2017), the Ministry accepted the audit observation (August 2018) and intimated that the assessee had reversed the

inadmissible CENVAT credit amounting to ₹ 1.29 crore. The Ministry further stated that the main reason for non-scrutiny of ST-3 returns was reorganisation of the departmental formation.

5.7 Internal Audit

Internal Audit helps to measure the level of compliance by the assessees in light of the provisions of the Central Excise Act and rules made thereunder. The Board had issued detailed procedure of Internal Audit in the form of Central Excise and Service Tax Audit Manual, 2015 (CESTAM, 2015).

After restructuring of the Department in October 2014, the auditable units have been re-organised, into three categories i.e. Large, Medium and Small Units based on centralized risk assessment carried out by DG (Audit). The manpower available with the Audit Commissionerate is allocated in the ratio 40:25:15 among Large, Medium and Small Units and remaining 20 per cent manpower is to be utilised for planning, coordination and follow up.

As per procedure, a list of units will be communicated to the Audit Commissionerates by the DG (Audit) for the purpose of conducting audit for the audit year. The Audit Commissionerate may select the units to be audited in a particular year after reviewing the list forwarded by the DG (Audit), in the context of local risk perceptions and parameters. The Audit Commissionerate may also select an assessee with low risk score but reasons for such selection should be indicated which would be used as feedback by the DG (Audit).

The information related to internal audit is contained in monthly performance reports (MPR) and is maintained in the Directorate of Data Management's (DDM) website. The MPRs are uploaded by field formations and contain information on Audits, Revenue, Adjudication, Refunds, Arrears, Appeals etc.

Despite our best pursuance, the Ministry/Department did not provide data related to units due for internal audit during FY18.

When we asked reasons for the non-furnishing of this information, the DG (Audit) stated (September 2018) that figures of units change every month for the reason that Audit Commissionerates change the scheduling of audits as per manpower available and the spillover of units remains to be audited.

The DG (Audit) further stated that DDM had been requested to provide for a facility in the system to enable generating information for the selected period and they are working on it.

The failure of the Department to furnish this data reveals major shortcoming in data keeping of the Department.

The result of the audit conducted by the Department is shown in table 5.2.

Table 5.2: Total detection made vis-à-vis units audited by Internal Audit

(₹ in crore)

Year	Category	Total units audited	Short levy detected	Total recovery	Recovery as % of Total detection
FY18	Large Units	2,521	2,441	581	23.80
	Medium Units	4,473	994	319	32.09
	Small Units	9,173	643	302	46.97
	Total	**16,167**	**4,078**	**1,202**	**29.48**

Source: Figures furnished by the Ministry.

It is observed that amount of short levy detected and recovered in Large units is significantly higher than other units but the total amount recovered in comparison to detected amount is higher in the Small and Medium units. The Department may look into the reasons for less recovery in Large units.

During the test check of records in departmental units during FY18, we noticed 16 instances of non-coverage of due units for audit, non-preparation of assessee master file, delay in issuance of Quality Assurance Report (QAR), delay in follow-up action etc. in eight Commissionerates[52] and Office of the Additional Director General of Audit, Mumbai. The revenue involved in these cases was ₹ 22.33 crore.

Apart from the above, we also issued 51 draft paragraphs (included in Section C of *Appendix-I*) involving revenue of ₹ 94.17 crore where due to inadequacies in the system of internal audit, short/non-payment of tax, non-payment of interest on delayed payment of tax etc. were not detected. In 19 cases, the Ministry accepted the audit observations, in 26 cases the Ministry accepted the revenue loss but did not accept the departmental failure and in six cases, the Ministry did not accept the audit observations.

A few illustrative cases are given below:

5.7.1 Non Coverage by Internal Audit

During scrutiny of records relating to Internal Audit of the Department we observed, in five Commissionerates[53] that out of 4,540 units planned for audit during FY16, FY17 and FY18, 3,641 units (80 per cent) were not audited by the Department.

When we pointed this out (May 2017), the Ministry stated (October 2018) that the observations of audit had been noted and the audit officers had been sensitized in this regard.

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[52] Hyderabad Audit, Mumbai Audit-I, Pune ST Audit, Lucknow Audit, Chennai Audit-I, Kolkata Audit-I, Kolkata Audit-II and Mumbai West.

[53] Chennai Audit-I, Coimbatore Audit, Kolkata Audit-I, Kolkata Audit-II and Pune ST Audit.

5.7.2 The failure to audit may also be due to lack of proper execution of audit planning and monitoring. On scrutiny of records of Pune ST Audit Commissionerate it was observed (May 2017) that in respect of audit of Large and Medium category units, the Department took 18 days to 9 months for audit which is in violation of para no. 4.3.1 of Central Excise and Service Tax Audit Manual (CESTAM), 2015 which provided duration of six to eight, four to six and two to four working days for audit of units under the Large, Medium, and Small categories, respectively.

When we pointed this out (May 2017), the Pune ST Audit Commissionerate stated (May 2018) that more number of days than time framed were taken because the assessees did not submit the required information in time.

The reply is not acceptable as the number of days taken were abnormally high which indicates inadequacy in the functioning of the Department.

5.7.3 During the test check of records we observed, in four Commissionerates, one Division and DG (Audit) Mumbai that

- Quality Assurance Review Reports of DG Audit were communicated to the higher authorities with delay ranging from 12 days to 131 days in the ADG (DG Audit) Mumbai.
- No monthly scoring for audit reports was done in 24 cases in the Mumbai Audit-I Commissionerate.
- The Assessee Master Files were not being prepared/updated in two Commissionerates which would result in selection of assessees for audit without applying the norms.
- In Mumbai Audit-I Commissionerate, in 13 cases the audit was pending even though the intimations were sent to the assessees before one year. Out of these, in two cases audit plan was approved and in five cases records were already received by the audit groups.
- In 13 cases of Mumbai Audit-I Commissionerate and eight cases in Lucknow Audit Commissionerate, there was delay in finalization of Final Audit Report (FAR) beyond 15 days of Monitoring Committee Meeting (MCM). In three Commissionerates, there was delay ranging from 14 days to 148 days in issuance of FAR and Draft Audit Report (DAR).
- On scrutiny of FAR of Mumbai Audit-I Commissionerate, it was observed that in 52 cases there were no verification reports as required in the Para 4.6.1 and Para 7.6.2 Central Excise and Service Tax Audit Manuals respectively and thus, there was non-monitoring of

submission or receipts of the information required for the evaluation of the performance of the audit groups.

- It was observed in Mumbai Audit-I Commissionerate that 45 Paras involving revenue of ₹ 22.33 crore were pending for further action as prescribed in the CESTAM after finalisation of internal audit and acceptance in the MCM. The delay ranged from two to six months in 28 cases and more than six months in 17 cases.
- In Division–VI of Mumbai West Commissionerate, we observed that internal audit detected that an assessee had provided Business Support service to a related company but Service Tax of ₹ 4.92 lakh was not paid. This observation was incorrectly dropped stating that there was no service provider-receiver relationship though both were legally different entities. This indicates that no proper follow up action was taken despite the fact that the objection was accepted in MCM and SCN was issued.
- Scrutiny of QAR files of Additional Director General (ADG Audit) Mumbai Zone revealed that revenue profile of the Commissionerates was not available.

It appears from the audit observations that the various provisions of Service Tax Audit Manual 2011 and CESTAM 2015 were not being followed by various field formations. Since internal audit is one of the main functions of the Department to ensure compliance to various provisions and procedures, its effectiveness needs to be ensured.

The Ministry in its reply stated (October 2018) that concerned Commissionerate had already been informed to take necessary steps in future.

5.7.4 Ineffective Mechanism to keep records related to Internal Audit Reports

As per Para No. 8.2.2 of CESTAM 2015, Monitoring Committee Meeting (MCM) should be convened by the Audit Commissionerate, to which the Executive Commissioner or his representative shall be invited to attend. The decision taken by the Audit Commissioner, with regard to settlement of audit observations after recovery of all dues or dropping of the unsustainable audit observations, shall be final. Approved audit observations, including those in which show cause notices are proposed to be issued, should be conveyed to the Executive Commissioner in the form of Minutes of the MCMs, who shall respond to these objections conveying his agreement/disagreement within 15 days of the receipt of the minutes of the MCM.

In view of the above, the Executive Commissionerates should have full information regarding the internal audit of the units falling under its jurisdiction.

We noticed that in case of 21 assessee units, the Executive Commissionerate could not furnish the information whether the assessees were audited by the Department or not. Of these, in 20 cases the Ministry accepted the audit observations for revenue involved but regarding information pertaining to internal audit, it stated that the same may be collected from the Audit Commissionerates and in one case the Ministry's reply was silent on information regarding internal audit of the unit.

One illustrative case is given below:

5.7.4.1 As per Section 67(3) of the Finance Act, 1994 the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such services. Further, as per Rule 3(b) of Point of Taxation Rules, 2011 with regard to the receipt of payment for the taxable services provided or advance payment received towards taxable services to be provided in future, the point of taxation is date of receipt of payments. In terms of Section 75 of the Act, delay in payment of Service Tax, including a part thereof, attracts simple interest.

An assessee in Hyderabad GST Commissionerate (erstwhile Hyderabad II Commissionerate), received advances amounting to ₹ 6.01 crore at the rate of 25 per cent of the total sanction fee for setting up Wind Power Projects at various sites in Andhra Pradesh from different firms during FY15 and FY16. However, the assessee had not paid Service Tax on such advances received which was in contravention of the Rules mentioned above. This had resulted in non-payment of Service Tax of ₹ 74.24 lakh which was required to be recovered along with interest.

When we pointed this out (March 2017), the Ministry accepted (July 2018) the audit observation and intimated that the assessee paid Service Tax of ₹ 74.24 lakh along with interest of ₹ 42.02 lakh in September 2017. The Ministry further stated that the CAG Audit may seek details of internal audit from the concerned Audit Commissionerate.

The reply of the Ministry regarding furnishing of details of internal audit is not acceptable in view of the provisions cited above regarding sharing of the information regarding result of internal audit with Executive Commissionerate by the Audit Commissionerate as per the mechanism provided in CESTAM 2015. Thus, the inability of Executive Commissionerates to furnish the information about internal audit shows improper maintenance

of important data by the Department and ineffectiveness of monitoring mechanism.

5.7.5 Non-detection of lapses by Internal Audit Parties (IAP)

The IAPs carry out the audit of assessee units in accordance with the Audit Plan and as per the procedures outlined in the Service Tax Audit Manual, 2011 replaced with Central Excise and Service Tax Audit Manual, 2015 (CESTAM 2015).

During the course of audit, we examined the quality of audits undertaken by the IAPs by auditing a sample of assessees audited by the IAP. Of the 30 instances (Section C of *Appendix-I)* involving revenue of ₹ 86.20 crore where we pointed out omission of IAPs to detect certain significant issues of non-compliance by assessees, the Ministry accepted 19 cases. Of the remaining 11 cases, the Ministry accepted the revenue loss in five cases but did not accept the departmental failure and in six cases, it did not accept the audit observations.

A few instances are illustrated below:

5.7.5.1 Non-payment of Service Tax

As per section 66B of The Finance Act 1994, there shall be levied a tax (hereinafter referred to as the Service Tax) at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. Further, as per Section 66E(e) of Finance Act 1994,'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' is a declared service.

An assessee in Mumbai South Commissionerate, has been in the business of providing finance to the customers purchasing vehicles manufactured by its parent company. With regard to this business activity, the assessee had entered into an agreement with its parent company. For seamless financing to the customers purchasing vehicles manufactured by it, the parent company had agreed to compensate the losses which might arise out of default of loan repayment by its customers to the assessee and other expenses. Since the assessee was not providing any loan to the parent company directly, the compensation received from it could not be treated as interest income. Instead, this was a business income directly related to its business activity pertained to the service provided in accordance with the agreement with the parent company. During FY16 and FY17, the assessee received an amount of ₹ 295.81 crore and ₹ 148.28 crore respectively as

as shown in the Profit and Loss Account. No Service Tax was paid by the assessee on this amount. This resulted in non-payment of Service Tax of ₹ 62.91 crore.

When we pointed this out (October 2017), the Ministry stated (August 2018) that no service was provided by the assessee and the transaction is merely a monetary transaction. No nexus of service provided and consideration received exists in the transaction. Terms and nomenclature of the agreement is not the conclusive factor to be considered in determining the nature of the transaction. No toleration of any act is involved in the issue. The amount received is principal and interest, which was not paid by the customers. Hence, this amount is not liable to Service Tax. The reply of the Ministry is not acceptable due to the fact that the assessee had provided the loans to the customers of the parent company on agreed terms in lieu of compensation for its loss. This activity is covered under the declared service as per the provision cited above.

5.7.5.2 Non-payment of Service Tax on recovery of liquidated damages

As per clause (e) of Section 66E of the Finance Act, 1994 (inserted with effect from 01 July 2012), 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' will constitute a declared service.

An assessee in Kochi Commissionerate had recovered/claimed liquidated damages amounting to ₹ 10.07 crore, ₹ 33.46 lakh and ₹ 20.66 lakh in FY14, FY15 and FY16 respectively, from various works/supply contractors. Even though the assessee had recognized the liquidated damages as income in accounts, no Service Tax was paid. This had resulted in non-payment of Service Tax ₹ 1.32 crore during FY14 to FY16.

When we pointed this out in consecutive audits (September 2015 and September 2016), the Ministry stated (July 2018) that the audit observation was acceptable and SCN demanding Service Tax of ₹ 1.32 crore was being issued.

5.7.5.3 Short-reversal of CENVAT credit

The provider of service, opting not to maintain separate accounts for receipt and use of inputs/input services utilised for provision of both taxable and exempted services, has to reverse the CENVAT credit pertaining to the input services utilised for provision of exempted services by opting any one of the methods under Rule 6(3) or 6(3A) of CENVAT Credit Rules, 2004.

An assessee in Bengaluru North Commissionerate, is engaged in provision of taxable services of maintenance and repair services and information technology software services. The assessee was engaged in providing certain exempted services under both the categories and was also in trading activity, which was also an exempted service. The assessee availed CENVAT credit in full on all the input services utilised for providing both the exempted and taxable services. Verification of the Service Tax records revealed that the assessee short-reversed CENVAT credit under Rule 6 ibid to the extent of ₹ 2.43 crore for FY15 to FY16 due to error in calculation.

Two internal audits carried out by the Department covering the period from April 2014 to June 2017 failed to detect this short-reversal resulting in error remaining undetected until pointed out by CAG Audit.

When we pointed this out (December 2017), the Ministry stated (August 2018) that the CAG Audit had not furnished the documents along with the objection.

The reply of the Ministry is not acceptable as we mentioned the source of information[54] in respect of each of the figures adopted for calculation of objected amount alongwith audit observation. The Department could have collected these documents from the assessee.

5.7.5.4 Short-payment of Service Tax

Section 67 of the Finance Act, 1994 provides that Service Tax has to be paid on the gross amount charged by the Service Tax provider.

An assessee in Bengaluru South Commissionerate, a statutory corporation owned by the Government of Karnataka, is engaged in operation of the public transportation system in Bengaluru. In addition to providing transportation to the public, the assessee earns income by leasing out the buses and the buildings owned by it and also by allowing its premises and buses for displaying advertisements of various entities. The assessee was paying Service Tax on these services. A verification of the Service Tax records of the assessee revealed that the assessable value of these services declared by the assessee in the ST-3 Returns was less than the service charges collected as per the ledger accounts during the period from April 2014 to September 2016. This resulted in short-payment of Service Tax of ₹ 1.26 crore during the said period.

The internal audit carried out (January 2015) by the Department detected the non/short-payment of Service Tax in respect of renting of immovable

[54] Financial Statements and ST-3 returns of the assessee.

properties for the period upto September 2014. Even though the assessee paid the amounts as per the internal audit observation, similar short-payment persisted for the subsequent period from October 2014 onwards. However, the Department did not issue any SCN for the subsequent period as part of the follow-up action. Subsequent internal audit carried out (March 2017) by the Department also failed to detect this short-payment. Further, the short-payment of Service Tax on renting of motor vehicles and allowing space for advertisements was not detected during both the internal audits.

When we pointed this out (July 2017), the Ministry accepted the audit observation and stated (August 2018) that the assessee had paid Service Tax of ₹ 0.52 crore in respect of renting of immovable property.

For the failure of IAP, the Ministry stated that the Commissionerate had been requested to call for an explanation from the concerned audit officers and take appropriate action accordingly.

5.7.5.5 Irregular availing of CENVAT credit

Rule 9(1) of CENVAT Credit Rules, 2004, prescribes the documents on the basis of which CENVAT credit can be taken by a provider of output service. As per clause (bb) of the said rule, CENVAT credit is not allowed on the basis of a supplementary invoice, bill or challan issued by a provider of output service, where the additional amount of tax became recoverable from the provider of output service, on account of non-levy or non-payment or short-levy by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of Service Tax.

Audit of Range-III (erstwhile Range-II of BBD Bag-II Division) of BBD Bag II Division under Kolkata North GST Commissionerate (erstwhile Kolkata ST-I Commissionerate) was conducted in January 2017. During audit of accounts relating to Service Tax of the said Range and subsequent verification of documents of an assessee, we found that the assessee had taken CENVAT credit on input services on the basis of supplementary invoices issued by two service providers who had not discharged their Service Tax liability from FY11 to FY15 in contravention of the provisions of the Finance Act, 1994 and discharged their Service Tax liability only after the pursuance of an investigation by anti-evasion unit of Kolkata ST-I Commissionerate in February 2016. Subsequently the said two service providers issued supplementary invoices for passing the CENVAT credit and the assessee

availed the same. This had resulted in irregular availing of CENVAT credit of ₹ 94.61 lakh during FY16.

The internal audit party had audited the assessee in January 2017 for the period upto FY16 but this lapse was not detected, resulting in error remaining undetected until pointed out by CAG audit.

When we pointed this out (June 2017), the Ministry admitted the audit observation (August 2018) and reported that the demand had been confirmed alongwith penalty.

5.8 Investigation by the Anti-Evasion Cell

As per the provisions under Preventive & Investigation Manual, senior officials are required to be involved in the investigations and review the cases for their focused, effective and expeditious completion. Though no specific time limit was prescribed for the completion, it is expected that even a complicated case should not take more than six to nine months to investigate. Section 11 of Central Excise Act, 1944 and Section 87 Finance Act, 1994 provides for various modes of recovery of duty/tax and any other sums of any kind payable to the Central Government under any of the provisions of the Act or of the Rules made there under.

During the test check of records in FY18, we noticed 36 instances of tardy investigation in anti-evasion cases in four Commissionerates[55] due to which investigation of routine verification of data was not completed even after lapse of more than one year. The revenue involved in these cases was ₹ 2.50 crore. Some illustrative cases are as follows:

5.8.1 During the course of audit of Anti Evasion Cell in Mumbai ST-IV Commissionerate, it was noticed that an investigation in case of an assessee was initiated in November 2013. However, till August 2016 no action was taken. It was further seen that the investigation had not been concluded till date (July 2018).

Similarly, during the course of audit of Anti Evasion Cell in Mumbai ST-V Commissionerate, an investigation was initiated against an assessee for the period FY14 to FY17 for non/stop filing of returns in December 2016. Documents submitted by the assessee revealed Service Tax liability of ₹ 46.58 lakh and interest liability of ₹ 35.62 lakh. However, investigation was not completed even after one year.

The Ministry stated (October 2018) that the reply would follow.

[55] Mumbai East, Mumbai ST-II, Mumbai ST-IV and Mumbai ST-V.

5.9 Disposal of Refund Claims

Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months of the date of application of refund. The Central Excise Manual prescribed that the Department should accept refund claims only when accompanied with all supporting documents as refund claims without requisite documents may lead to delay in sanction of refunds. The Central Excise Act provisions regarding refund claims apply to Service Tax also.

Table 5.3 depicts the status of disposal of refund claims by the Department. The delay depicted is in terms of time taken from the date of receipt of refund application till the final processing of the claims.

Table 5.3: Disposal of refund claims in Service Tax

(₹ in crore)

Year	Opening Balance		Receipt (during the year)		Disposal (during the year)				Cases where interest has been paid		No. of Cases Disposed within 3 Months
					Sanctioned		Rejected				
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Interest paid	
FY16	20,740	12,370	26,230	10,633	23,860	6,598	7,973	6,302	0	0	1,131
FY17	12,243	8,319	33,343	14,792	28,154	9,953	7,165	5,954	4	6	1,632
FY18	10,089	6,904	22,065	10,469	16,412	5,567	4,014	3,485	11	0.01	13,020

Source: Figures furnished by the Ministry.

It is observed that both number of refund cases disposed-off as well as amount sanctioned had decreased substantially in FY18 as compared to FY17. Out of a total of 20,426 cases disposed in FY18, 13,020 cases *(63.74 per cent) were processed within the stipulated three months period.* This is a steep increase as compared to disposal of 5.80 per cent cases within three months in FY17. The Department had paid interest only in 11 cases for delay in sanctioning the refund. Though there was a delay in around 36 per cent of disposals but interest was not paid in almost all the cases of delayed refunds, both of which were in violation of provisions of the Act.

Table 5.4 depicts an age-wise analysis of pendency of refund claims during last three years.

Table 5.4: Age-wise pendency of Service Tax refund cases as on 31 March

(₹ in crore)

Year	OB plus claims received in the year	Total number of refund claims pending as on 31 March		Refund claims pending for			
				Less than one year		Over 1 year	
		Number	Amount	Number	Amount	Number	Amount
FY16	46,970	12,243	8,319	9,403	5,146	2,840	3,173
FY17	45,586	10,089	6,994	9,063	6,035	1,026	959
FY18	32,154	9,266	7,207	8,266	5,674	1,000	1,533

Source: Figures furnished by the Ministry.

It is observed that the number of refund claims pending, including those pending for over one year had decreased slightly, but amount involved had increased substantially in FY18 as compared to FY17. Closing balance figure of FY18 does not appears to be correct. The correct figure, arrived by opening balance plus addition during the year minus disposal during the year, as provided by the Ministry, should be 11,728. But the closing balance furnished by the Ministry is 9,266. The Ministry may look into the reasons for this discrepancy.

The Department did not maintain the age-wise breakup of the cases pending for more than one year. These details would help the Department to keep watch on cases pending for too long. The Ministry may revise its MPRs format to capture the age-wise break up.

During the test check of records in departmental units in FY18, we noticed seven instances of delay in sanctioning of refunds, irregular sanctioning of refunds etc. in six Commissionerates[56]. The revenue involved in these cases was ₹ 87.39 crore.

Apart from the above, we also issued two draft paragraphs (included in Section D of *Appendix-I*) where shortcomings in disposal of refund claims by departmental officers were noticed that would have remained undetected if not pointed out by CAG Audit. The Ministry accepted the revenue loss in both cases but did not accept the departmental failure.

A few illustrative cases are given below:

5.9.1 We observed (April 2017) during scrutiny of refunds sanctioned by the Division-II of Ahmedabad-I Commissionerate during FY13 to FY17 that in one case, the claim was rejected due to unjust enrichment. The refund of ₹ 7.76 lakh claimed by an assessee was ordered to be credited to the Consumer Welfare Fund by the Assistant Commissioner vide OIO dated 30 October 2013 and a copy of the OIO was also marked to the PAO, Ahmedabad for credit of refund amount in Consumer Welfare Fund.

Commissioner (Appeals) Ahmedabad remanded the case back to the adjudicating authority on appeal filed by the refund claimant against which Department filed appeal (challenging remand authority of Commissioner-Appeals) in CESTAT and entered the case in Call Book which was subsequently withdrawn by the Department. Accordingly, the refund claim was retrieved from the Call Book and the Assistant Commissioner again ordered the claim of ₹ 7.76 lakh to be credited to the Consumer Welfare

[56] Delhi ST-II, Mumbai Central, Mumbai South, Ahmedabad-I, Ahmedabad ST and Bengaluru ST-II

Fund vide OIO dated 10 November 2016 and a copy of the OIO was again marked to the PAO, Ahmedabad. Thus, it was noticed that through two different OIOs (October 2013 and November 2016), refund of ₹ 7.76 lakh were ordered to be credited in Consumer Welfare Fund. The PAO, Ahmedabad also confirmed (April 2017) the double credit of refund amount.

When we pointed this out (April 2017), the Ministry stated (October 2018) that PAO, Ahmedabad had requested (July 2017) Principal CCA, the Board, New Delhi to revert the duplicate sanction of refund.

5.9.2 As per Paragraph 2.2 of the Board's Circular No.869/07/2008-CX, dated 16 May 2008, all refund/rebate claims involving an amount of ₹ 5 lakh or above should be subjected to pre-audit at the level of Deputy/Assistant Commissioner (Audit) in the Commissionerate Headquarters Office.

During test check of the refund claims sanctioned in the Division-II of Ahmedabad ST Commissionerate (now GST Division.-VI, Ahmedabad-South), it was noticed that one refund claim of an assessee of ₹ 69.05 lakh was sent by the Division office for pre-audit to Commissionerate Audit, Service Tax. This was returned (January 2017) by the Assistant Commissioner (Audit), Service Tax without conducting pre-audit stating that the claimant was not registered with Service Tax Ahmedabad Commissionerate. It was noticed that the refund of ₹ 69.05 lakh was sanctioned (February 2017) by the Department without pre-audit which was in violation of the Board's instructions above.

When we pointed this out (January 2018), the Ministry stated (October 2018) that the adjudicating authority sanctioned the refund as time limit for it was elapsing immediately.

Reply of the Ministry is not acceptable as the Commissionerate where the assessee was registered should have been identified to follow the procedure before sanctioning the refund. Thus, sanctioning of refund without conducting pre-audit was in violation of the Board's instructions above.

5.9.3 Ineffective follow up action on refund order

Rule 5 of CENVAT Credit Rules, 2004, allows an exporter of service to avail refund of CENVAT credit of input or input services utilized towards the output services exported where such credit remains unutilized. Such refunds were subject to the conditions prescribed vide Notification No. 5/2006-CE(NT) dated 14 March 2006 and the sanctioning authority should ensure reversal of the said amount in the CENVAT Account after sanction of refund.

5.9.3.1 An assessee in Bengaluru ST-II Commissionerate, filed (March 2012) a refund claim of unutilized CENVAT credit for the period from April 2011 to September 2011 in terms of the above notification. The Divisional Officer, while sanctioning (March 2016) the refund of ₹ 6.05 crore, ordered the assessee to reverse the said amount in the CENVAT Credit Account and submit documentary evidence of such reversal within one week from the date of receipt of the refund. However, the assessee did not carry out reversals in the CENVAT Credit Account. Although the assessee filed ST-3 Returns to the Range Officer without making such reversal in the CEVNAT Credit Account, the Department did not take any action thereon.

When we pointed this out (December 2016), the Ministry stated (June 2018) that the assessee had reversed (May 2017) ₹ 6.05 crore and exhibited the same in the ST-3 Returns for the period April 2017 to June 2017. The reply of the Ministry was silent on the failure of the jurisdictional officers.

5.9.3.2 An assessee in Bengaluru ST-II Commissionerate, filed (September 2012) a refund claim of unutilized CENVAT credit of ₹ 47.88 lakh covering the period from October 2011 to December 2011 in terms of the above notification. Refund of ₹ 40.85 lakh was sanctioned (June 2015) while the claim of ₹ 7.03 lakh was rejected as ineligible CENVAT credit by the Divisional Officer. The sanctioning authority ordered the assessee to reverse the entire amount of the refund claim in the CENVAT Credit Account and submit documentary evidence of such reversal within one week from the date of receipt of the refund. However, the assessee did not reverse the said amount in the CEVNAT account even after receipt of the refund. Although the assessee filed ST-3 Returns to the Range Officer exhibiting the refunded amount as part of the closing balance of CENVAT credit, the Commissionerate did not take any action to ensure the said reversal.

When we pointed this out (December 2016), the Ministry admitted (June 2018) the audit observation and stated that the assessee had reversed (March 2017) ₹ 47.88 lakh. The reply of the Ministry was silent on the failure of the jurisdictional officers.

5.10 SCN and Adjudication

Adjudication is the process through which departmental officers determine issues relating to tax liability of the assessees. Such process may involve consideration of aspects relating to, inter-alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

Table 5.5: Disposal of SCN in Service Tax

(₹ in crore)

Year	Opening Balance		Receipt (during the year)		Disposal (during the year)		Closing Balance		Cases pending for more than 1 year
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	
FY16	33,136	78,529	34,613	76,592	37,296	78,997	30,453	76,124	8,587
FY17	30,453	76,124	54,310	67,413	65,710	74,596	19,053	68,941	6,919
FY18	19,053	68,941	35,173	70,918	34,180	57,220	22,208	81,280	5,789

Source: Figures furnished by the Ministry.

The total cases pending for adjudication increased by 16.56 per cent in FY18 as compared to FY17. However, the cases pending for more than one year decreased by 16.33 per cent. The total closing balance involved in these cases increased by 17.90 per cent in FY18 as compared to FY17. Closing balance figure (No. of cases) of FY18 does not appear to be correct. The correct figure should be total cases of the year minus total disposal which, as per the figures provided by the Ministry, works out to 20,046 but the figure furnished by the Ministry is 22,208. The Ministry may look into the reasons for this discrepancy.

During the scrutiny of records related to SCN and adjudication during FY18, we noticed delay in adjudication of 2,500 SCNs out of which 1,783 SCNs (71 per cent) were pending for more than one year, six instances of non-issuance of SCN and one instance of short demand in 15 Commissionerates[57]. The revenue involved in these cases was ₹ 8,295.98 crore.

Apart from the above, we also issued two draft paragraphs (included in Section E of *Appendix-I*) where late issuance of SCN by the departmental officers had resulted in demands being declared time-barred in adjudication order. The Ministry accepted the audit observation in one case and did not accept the audit observation in the other case although the issue involved and Commissionerate were same in both the cases.

A few illustrative cases are given below:

5.10.1 Division III of Mumbai East Commissionerate had issued SCN to an assessee for ₹ 57.72 crore for the period FY11 to FY12 and for ₹ 46.60 crore for the period FY13 on non-payment of Service Tax on service provided for the upkeep and maintenance of three 747-400 Aircrafts for VVIP operations. The Department did not issue periodical SCN for the subsequent period i.e. for FY14 on the ground that the assessee had made payment.

It was noticed (April 2018) from the records that budgetary provision of ₹ 84.06 crore had been made by Ministry of Defence, of ₹ 56.04 crore by

[57] Ahmedabad ST, Bharuch, Bolpur, Chandigarh-II, Gurugram, Haldia, Jamshedpur, Mumbai Audit-I, Mumbai Central, Mumbai West, Mumbai East, Navi Mumbai, Panchkula, Salem and Sonepat.

Ministry of External Affairs and of ₹ 196.14 crore by Ministry of Home Affairs for the maintenance cost to be paid to the assessee for FY14. Out of this, the assessee had received the entire amount from Ministry of Defence, whereas Ministry of Home Affairs had made part payment of ₹ 163.14 crore as against ₹ 196.14 crore and Ministry of External Affairs had not paid any amount. Thus, the assessee had received reimbursement of ₹ 247.20 crore for FY14 and paid Service Tax of ₹ 30.55 crore as against the Service Tax of ₹ 44.03 crore payable on ₹ 336.24 crore.

Thus, the assessee had not paid Service Tax of ₹ 13.48 crore on balance maintenance cost of ₹ 109.04 crore for FY14. However, the Department had neither issued periodical SCN for the same nor the assessee had clarified on non-payment of Service Tax on balance maintenance cost. This resulted in loss of revenue of ₹ 13.48 crore due to non-issue of periodical SCN within the prescribed time limit of 18 months.

The Ministry stated (October 2018) that the reply would follow.

5.10.2 Adjudication records of Division IV of Mumbai East Commissionerate revealed that an assessee was issued two SCNs in October 2011 and October 2012 for non-payment of Service Tax of ₹ 12.16 crore and ₹ 2.70 crore for the period upto FY11 and FY12 respectively on the various services. The same were adjudicated and demand was confirmed (May 2014) against which the assessee filed an appeal in the Tribunal. However, for the subsequent period the assessee paid the tax finally in all services except Business Auxiliary Service (BAS), which was made under protest. Thus, the assessee had paid Service Tax of ₹ 6.49 crore for the period FY14 & FY15 and out of this, payment against BAS was still disputed by the assessee. Service Tax payment details for FY13 were not available on record. As such, Department should have continued to issue SCN for further period on BAS in order to protect the Government revenue. However, the Department had discontinued issuing SCNs from FY13 onwards in respect of all the services including BAS, which was not in order as the revenue to the extent of ₹ 6.49 crore (for FY14 & FY15) remained legally unprotected.

The Ministry stated (October 2018) that the reply would follow.

5.10.3 During the scrutiny of records of Division-V of Navi Mumbai Commissionerate, it was observed that an assessee was issued SCN for the period from 2007 to 2011 in 2012 and for FY12 in 2013 on differential amount between Financial Accounts and ST-3 returns. Thereafter, periodical SCN was issued on 27 September 2017 for FY14. However, periodical SCN for FY13 could not be issued due to elapse of last date of issue of periodical SCN.

It was observed (April 2018) in audit that as per the Profit and Loss Accounts for FY13 the total revenue was ₹ 8.96 crore (including sale of services of ₹ 8.75 crore), against which the assessee had declared ₹ 6.45 crore in the ST-3 return, resulting in undischarged liability of Service Tax on differential amount of ₹ 2.51 crore (₹ 8.96 crore – ₹ 6.45 crore). The Service Tax liability on this amount works out to ₹ 30.17 lakh. Thus, non-issue of periodical SCN resulted in loss of revenue of ₹ 30.17 lakh besides penalty and interest.

The Ministry stated (October 2018) that the reply would follow.

5.10.4 During the test check of records of Division-III of Mumbai East Commissionerate, it was observed that an assessee was issued SCN of ₹ 11.83 Crore for the period from April 2009 to June 2012. Subsequently, periodical SCNs were issued for the period from July 2012 to March 2015. However, for FY15, Department had incorrectly worked out non-payment of Service Tax of ₹ 7.15 crore instead of ₹ 7.58 crore, which resulted in short demand of ₹ 43.60 lakh.

The Ministry stated (October 2018) that the reply would follow.

5.10.5 Section 73 (I) of the Finance Act, 1994 states, inter alia, that where Service Tax has not been paid or short paid, SCN is to be served within one year from the relevant date in normal case (with effect from 28 May 2012, within eighteen months) and within five years from the relevant date in case of fraud, collusion, wilful suppression of facts etc. with the intent to evade payment or to get erroneous refund.

5.10.5.1 During audit of the Dibrugarh Commissionerate, in February 2018, it was observed that Department had issued SCN to an assessee on 28 September 2015 showing demand of ₹ 32.86 lakh (alongwith interest and penalty) for the period FY12 to FY15 (upto November 2014) invoking extended period of time limit for issue of non-payment of Service Tax under "Supply of Tangible Goods" service and the said demand was confirmed by the Adjudicating Authority vide his order dated 18 March 2016. Subsequently, the Appellate Authority vide his order dated 15 February 2017 had dropped the demand partially (demand pertaining to period prior to 24 October 2013) on the ground that the portion of the demand in SCN was barred by limitation of time. Thus, non-issue of SCN in time had resulted in loss of revenue of ₹ 14.76 lakh.

Similar irregularities were also observed in the same Commissionerate in respect of three assessees for which loss of revenue of ₹ 13.71 lakh, ₹ 12.45 lakh and ₹ 15.45 lakh respectively had occurred. Total revenue loss due to delay in issue of SCN was of ₹ 56.37 lakh.

Thus, incorrect invocation of extended period of time for issuance of SCN by the Commissionerate resulted in demand being held time barred by the Appellate Authority resulting in loss of revenue.

When we pointed this out (February 2018), the Ministry stated (August 2018) that the issue was already in the knowledge of the Department.

The reply of the Ministry is not relevant to the audit observation regarding failure to issue SCN within time by the Department due to which demands had been declared time barred in adjudication.

5.10.5.2 The same Commissionerate (Dibrugarh Commissionerate) had issued (April 2014) an SCN to an assessee showing demand of ₹ 21.70 lakh for the period FY11 and FY12 invoking extended period of time limit for issue. The SCN was issued on the basis of the observation raised by the Internal Audit in February 2013.

The Adjudicating Authority vide order dated 27 November 2014 had dropped the said demand on the ground that earlier SCN covering period October 2008 to June 2010 on the same issue and same contract was issued to the assessee on 14 March 2013 invoking extended period of time and the Department was quite aware of the activities performed by the assessee since 2008. Hence, the allegation of suppression of fact by the assessee in the second SCN was not sustainable as the activity performed by the assessee was a continuous process and the Department could have issued the SCN periodically within normal time limit. Thus, non-issue of SCN within time limit had resulted in loss of revenue of ₹ 21.70 lakh.

When we pointed this out (February 2018), the Ministry accepted (August 2018) the audit observation and stated that responsibility was being fixed on the concerned officers for such lapse.

5.11 Other Lapses

We noticed 11 cases (included in Section F of *Appendix-I*) involving revenue of ₹ 6.10 crore indicating shortcomings in functioning of jurisdictional Commissionerates. The Ministry accepted the audit observations in seven cases and in four cases, the Ministry accepted the revenue loss but did not accept the departmental lapse.

A few instances are illustrated below:

5.11.1 Shortcomings in follow-up action

The internal control mechanisms in the Department like scrutiny of returns or Internal Audit would have the required impact only if the jurisdictional officers take proper follow up action on the lapses noticed earlier.

An assessee in Ahmedabad North Commissionerate, had persistently delayed the payment of Service Tax due during the period covered by Audit i.e. FY13 to FY17, without paying any interest under Section 75 of the Finance Act, 1994. Preventive wing of the Department had commented upon (July 2016) the interest liability and penalty of the assessee upto December 2015 despite which the assessee kept on delaying payment of Service Tax for the further period without discharging its interest liability. Interest payable on delayed payment of Service Tax for the period January 2016 to February 2017 amounted to ₹ 33.31 lakh.

When we pointed this out (May 2017), the Ministry accepted (October 2017) the audit observation and informed that the assessee had paid (May to October 2017) the objected interest amount of ₹ 33.31 lakh. Further, the Ministry stated that as the assessee had been penalized to pay the interest as per the law, no action was warranted against the Range Officer.

The reply of the Ministry is not acceptable as despite being a habitual offender and pointed out by the Preventive Wing, no coercive measure was taken by the Range Officer against the assessee until pointed out by CAG Audit.

5.11.2 Persistent Irregular availing of CENVAT credit on the basis of invalid documents

According to Rule 9(I) of CENVAT Credit Rules, 2004, CENVAT credit shall be taken on the basis of an invoice/bill/challan issued by a provider of output service. As per rule 4(A1) of Service Tax Rules, 1994, every person providing taxable service shall issue an invoice/bill/challan duly signed, serially numbered and containing name, address and the registration number of such person; the name and address of the person receiving taxable service; description, classification and value of taxable service provided or to be provided; and the Service Tax payable thereon. As per proviso to this sub-rule, in the case of banking company, invoice/bill/challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information as required under Rule 4 (A)(1).

A Service Tax assessee under Calicut Commissionerate, providing banking and other financial services, availed and utilized CENVAT credit of ₹ 38.75 lakh without invoices, during the period May 2013 to March 2014. The credit was availed based on e-statements of transactions in relation to National Financial Switch (NFS) operations, a shared Automated Teller Machine (ATM) network which inter-connected different Bank's ATM switches and was operated by a service provider as authorized by Reserve Bank of India.

In September 2010, same issue was pointed out vide para no. 6.1 of the CAG's Audit Report No. 4 of 2015 in respect of another assessee in the same Commissionerate, on which the Department issued SCN in the year 2012. But action was not taken to identify similar irregular availing of credit on NFS operations by the assessee.

When we pointed this out (January 2015), the Ministry accepted the audit observation and stated (August 2018) that SCN dated 11 April 2016 was issued to the assessee demanding ineligible CENVAT credit of ₹ 1.66 crore taken and utilized during the period April 2011 to March 2015 alongwith interest and penalty. The Ministry further stated that the concerned Commissioner had been asked to sensitize the jurisdictional and internal audit officers to be more careful in dealing with potential revenue risk cases.

5.11.3 No action taken by the Range Officer regarding belated filing of revised ST-3 return

Rule 7B of the Service Tax Rules, 1994, stipulated that an assessee may submit a revised return, in Form ST-3, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under Rule 7 (i.e. the date of filing of original return).

An assessee falling under the jurisdiction of Range-II, Division-Anjar (Bhachau), Kutch Commissionerate (Gandhidham) had made short payment of Service Tax amounting to ₹ 11.75 lakh during the period October 2013 to March 2014, which was revealed from its ST-3 return of the given period.

The assessee, subsequently, submitted revised ST-3 return for the half year April 2013 to September 2013 (i.e. period prior to the given period of default) on 27 May 2015 in which it showed that it had made excess payment of duty against the Service Tax actually due. It appeared from the departmental correspondence that the assessee intended to adjust the excess payment (shown in revised return) of the prior period to cover the short payment made during the subsequent half year (i.e. October 2013 to March 2014).

However, since the assessee had filed the revised return for the period April-September 2013 on 27 May 2015 (i.e. after 19 months from the date of original return filed on 23 October 2013) after the period of 90 days allowed under Rule 7B ibid, it had become time-barred and no amount claimed under revised return could be allowed to be adjusted in the subsequent return.

No action was taken by the range officer to disallow the belated filing of ST-3 returns to adjust the excess Service Tax paid earlier.

This resulted in short-payment of Service Tax amounting to ₹ 11.75 lakh which was required to be recovered along with applicable interest.

When we pointed this out (September 2016), the Ministry accepted (June 2018) the audit observation and stated that the assessee had deposited ₹ 11.75 lakh. The Ministry further stated that the assessee had not filed revised return online for the period April 2013 to September 2013 which was mandated by the law. Therefore, there was no lapse on the part of the jurisdictional range officer.

The reply of the Ministry is not acceptable as if the revised return was not filed by the assessee then the Range Officer should have taken rectificatory action to recover the short paid amount which was apparent from the original returns filed by the assessee for the relevant period.

Chapter VI

Effectiveness of Tax Administration and Internal Controls (Central Excise)

6.1 Introduction

Internal controls in an organisation are designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives are being achieved:

- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.

6.2 Results of Audit

During the course of examination of 51,610 Central Excise returns submitted by the assessees in the audited 744 ranges, we came across several shortcomings in compliance to the Act, Rules, provisions, instructions etc. in place. As discussed in paragraph 2.3 and 2.4 of the this report regarding audit universe, sample and findings, out of 263 draft paragraphs issued to the Ministry, 93 paragraphs pertaining to Central Excise on the issues of return scrutiny, internal audit of assessees and functioning of jurisdictional officers are included in this chapter.

Out of 93 draft audit paragraphs, we communicated audit observations indicating lapses of Departmental officials of 42 Commissionerates, to the Ministry through 67 draft audit paragraphs (Appendix III) having financial implication of ₹ 45.65 crore. The Ministry admitted the lapses in 27 cases. In 22 cases, the Ministry admitted the issues partly, for revenue lapses and taking remedial action for recovery of revenue. The Ministry did not admit audit observations in 18 cases.

We also issued 26 draft audit paragraphs (Appendix IV) having financial implication of ₹ 129.65 crore on account of non/short payment of Central Excise duty/interest and irregular availing/utilization of CENVAT credit by the assessees in 18 Commissionerates. In 25 cases, observations have been admitted by the Ministry/Department and recoveries made/recovery proceedings have been initiated/completed. The Ministry did not admit observation in one case.

The observations are discussed in the following paragraphs under four major headings:

- Scrutiny of Returns
- Non-conduct of Internal Audit
- Non-detection of lapse by Internal Audit
- Other lapses

6.3 Scrutiny of Central Excise Returns

The Board introduced self-assessment in respect of Central Excise in 1996. With the introduction of self-assessment, the Department also provided for a strong compliance verification mechanism with scrutiny of returns. Assessment is the primary function of Central Excise officers who are to scrutinise the Central Excise returns to ensure correctness of duty payment. As per the manual for the Scrutiny of Central Excise Returns, a monthly report is to be submitted by the Range Officer to the jurisdictional Assistant/Deputy Commissioner of the Division regarding the number of returns received and scrutinised. Scrutiny is done in two stages i.e. preliminary scrutiny by Automation of Central Excise and Service Tax (ACES) and detailed scrutiny, which is carried out manually on the returns marked by ACES or otherwise.

6.3.1 Preliminary Scrutiny of Returns

Preliminary scrutiny of all returns is to be done online in ACES and the returns having certain errors are marked for Review and Correction (RnC). These have to be processed accordingly by the Range Officers. The purpose of preliminary scrutiny of returns was to ensure completeness of information, timely submission of return, payment of duty, arithmetical accuracy of the amount computed and identification of non-filers/stop filers. In case any discrepancy was found by the ACES, all such returns were marked for RnC. The returns marked for RnC by ACES should be validated in consultation with the assessee and re-entered into the system. The preliminary scrutiny of returns and RnC was to be completed within three months from the date of receiving the returns.

Table 6.1 depicts the performance of Department in respect of preliminary scrutiny of Central Excise returns.

Table 6.1: Preliminary scrutiny of Central Excise returns

Year	No of returns filed in ACES	No. of returns marked for RnC*	% of returns marked for RnC	No. of returns cleared after RnC	No. of returns pending for RnC	% of marked returns pending correction
FY16	20,59,541[58]	16,28,408	79.07	9,17,264	7,11,144	43.67
FY17	17,66,749	15,95,570	90.31	9,92,952	6,02,618	37.77
FY18	7,16,016	6,35,182	88.71	2,69,494	3,65,688	57.57

Source: Figures furnished by the Ministry

It is observed that a very high percentage (88.71 per cent) of returns, scrutinised by ACES were marked for RnC in FY18. Marking of high percentage of returns for RnC and resultant high number of returns pending corrective action, are indicative of deficiencies in the ACES system. The Department could not rectify the errors despite being pointed out continuously by us.

It is also observed that though the number of returns filed in ACES has come down drastically in FY18 (7.16 lakh) compared to FY17 (17.66 lakh), the Department could only clear 42.43 per cent returns, leaving 57.57 per cent returns pending for RnC in comparison to 37.77 per cent returns pending in FY17.

During the test check of scrutiny of records at departmental units during FY18, we came across instances of non-conducting/non-clearance of returns marked for RnC/detailed scrutiny, etc. One instance (included in section A of Appendix-III), where due to inadequacies in the system of preliminary scrutiny, irregular availing/utilisation of CENVAT credit was not detected, is illustrated below.

6.3.1.1 Non-detection of Irregular utilization of CENVAT credit during Preliminary Scrutiny

As per Section 35 F of the Central Excise Act, 1944, as amended with effect from 06 August 2014, the Tribunal shall not entertain any appeal under sub-section (1) of section 35, unless the appellant has deposited seven and half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute in pursuance of a decision or an order passed by an officer of Central Excise. CESTAT in its Circular F.No.15/CESTAT/general/2013-14 dated 28 August, 2014 clarified that pre-deposit of the amount of Excise duty, Service Tax or Customs duty can be made through reversal of CENVAT credit apart from payment made in cash

[58] Data furnished (November 2018) by the Ministry for FY16 does not match with data furnished earlier (2016) for the same year.

but pre-deposit of the penalty amount to be made in cash before registering appeal. Further, Sub-rule 4 of rule 3 of CENVAT Credit Rules, 2004 indicates the kinds of duty that can be paid through CENVAT credit account, where pre-deposit of penalty is not one of them. Therefore, pre-deposit of penalty is to be made through cash.

During audit of accounts of Range Rupnarayanpur of Asansol-II Division under Bolpur Commissionerate and subsequent verification of documents relating to Central Excise in respect of an assessee, we observed that a demand as being a penalty of ₹ 39.51 crore was confirmed in December 2015 against the said assessee. The assessee filed an appeal against the said O-I-O before CESTAT, Kolkata in April 2016 and paid pre-deposit of ₹ 2.96 crore being 7.50 per cent of penalty amount in March 2016 utilizing the CENVAT credit, violating rule 3(4) of CENVAT Credit Rules, 2004. This has resulted in irregular utilization of CENVAT credit of ₹ 2.96 crore for FY16 and thereby non-deposit of cash in Government exchequer to that extent.

The utilization of CENVAT credit was apparent from the return submitted by the assessee. The assessee had made a remark in the return regarding utilization of CENVAT credit towards payment of said pre-deposit and the return was marked for RnC by the ACES. Although the said return was checked by the Range, the irregularity remained undetected even after special mention made by the assessee in this regard.

When we pointed this out (February 2017), the Ministry admitted the observation (August 2018) and stated that SCN for ₹ 2.96 crore had been issued to the assessee. For lapse of Range Officers it stated that clarification was being sought from erring officer.

6.3.2 Detailed Scrutiny of Returns

Board vide circular No. 1004/11/2015-CX, dated 21 July 2015 stipulated that Detailed Scrutiny of a minimum of two per cent and maximum of five per cent of the total Central Excise returns received in a month should be conducted regularly by the proper officers in the field following the procedure already prescribed. Selection of assessees by the Commissionerates for detailed scrutiny shall be based on risk score and procedure for using it, as forwarded by DG (Audit) vide letter F. No. 381/20/2015 dated 18 May 2015. Chief Commissioners and Commissioners shall also have powers to manually select returns for detailed scrutiny using such criteria as deemed fit to further complement the list of assesses selected on the basis of risk.

Despite our best pursuance, the Ministry/Department did not provide data relating to detailed scrutiny of returns for FY16 to FY18. We also observed that like Service Tax returns, there is no system established by the Board to submit details of scrutiny of the Central Excise returns by field formations to the Board and same is not being monitored by the Board.

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure correctness of valuation, availing of CENVAT credit, classification and effective rate of duty applied after taking into consideration the admissibility of exemption availed etc. Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.

As, in self-assessment regime, scrutiny is the main tool and also the function of the Department to ensure correctness of tax assessment, non-maintaining data of scrutiny and monitoring of the same reflect a significant weakness in the system of assessment and collection of Revenue.

Apart from the instances of non-conducting of detailed scrutiny as mentioned in para 5.6 of this report, one instance (included in section A of Appendix-III), where excess availing of CENVAT credit was not detected, though detailed scrutiny of the returns was conducted, is illustrated below.

6.3.2.1 Non-detection of Excess availment of CENVAT credit in detailed scrutiny

Rule 14 of CENVAT Credit Rules, 2004 states that where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same alongwith interest at the rate of 15 per cent per annum (Notification No. 15/2016-CE(NT) dated 1 March 2016) shall be recovered from the manufacturer or the provider of the output service under the provisions of Sections 11A and 11AA of the Central Excise Act.

During the Audit of Central Excise Range-II of Hazaribagh Division under Ranchi Commissionerate and subsequent examination of Central Excise records and returns of an assessee, who is a manufacturer of sponge iron, non-alloys steel ingots etc., we observed that the assessee purchased 45,530.98 MT of imported coal during FY16 and availed the credit of additional duty amounting to ₹ 33.03 lakh on it. Further, it was noticed that out of 45,530.98 MT of the said coal, the assessee removed 19,369.56 MT of coal as such without reversal of CENVAT credit amounting to ₹ 14.05 lakh.

Hence, amount of CENVAT credit of ₹ 14.05 lakh with applicable interest of ₹ 1.67 lakh (upto January 2017) was recoverable from the assessee.

The Department carried out (January 2016) the detailed scrutiny of the returns pertaining to November 2015 but could not detect the lapse.

When we pointed this out (August 2016), the Ministry admitted the observation (August 2018) and intimated that the assessee had reversed credit of ₹ 14.05 lakh with interest of ₹ 3.04 lakh. It was also stated that explanation was being called for from the officers responsible for scrutiny.

6.4 Internal Audit

Internal Audit helps to measure level of compliance by the assessees in light of the provisions of the Central Excise Act and Rules made thereunder. Board issued detailed procedure of Internal Audit in the form of Central Excise and Service Tax Audit Manual, 2015 (CESTAM 2015).

As detailed in para 5.7 of this report, despite our best pursuance, the Ministry/Department did not provide data related to units due for audit during FY18 for the reasons mentioned in the para.

The failure to furnish this data reveals major shortcoming in data keeping of the Department.

The results of the audit, conducted by the Department during FY18, all depicted in table 6.2 below:

Table 6.2: Amount objected and recovered during FY18

(₹ in crore)

Year	Category	Total units audited	Short levy detected	Total recovery	Recovery as % of Total detection
FY18	Large Units	2,836	1,760	380	21.57
	Medium Units	5,467	328	162	49.46
	Small Units	7,382	134	90	66.95
	Total	**15,685**	**2,222**	632	**28.42**

Source: Figures furnished by the Ministry

It is observed that amount of short levy detected and recovered in large units is significantly higher than other units but the total amount recovered in comparison to detected amount is higher in the Small and Medium units. The Department may look into the reasons for less recovery in large units.

6.4.1 Non-conduct of Internal Audit

During the course of audit, we attempted to check the adequacy of coverage of assessees and the likely impact of non-conduct of Internal Audit by the Department in case of assessee units due for audit. We detected lapses

involving money value of ₹ 7.04 crore in case of nine assessees (included in Section B of *Appendix-III*), which were due for audit as per departmental norms but not audited by Internal Audit Parties (IAPs) in nine Commissionerates. Of these, seven cases were admitted/partly admitted by the Ministry. In two cases, observations were not admitted by the Ministry. Two instances are illustrated below:

6.4.1.1 Non-detection of irregular availing of CENVAT credit

Rule 2(l) of CENVAT Credit Rules, 2004, defines input service inter alia, as any service used by a provider of taxable service for providing an output service; or used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal and includes services viz., modernisation, renovation, advertisement, market research, accounting, auditing etc., but excludes services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness center, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

As per Para 3.1.2 of the extant Audit Manual, mandatory units (paying revenue more than ₹ 3 crore) were to be audited annually.

During the Audit of Range II of Division VII (Shirur) under Pune-I Commissionerate and subsequent verification of records of an assessee, who was engaged in manufacturing excisable goods under Chapter 87 of CETA 1985, we observed that the assessee had availed CENVAT credit amounting to ₹ 1.22 crore in respect of outdoor catering services during the period for FY15 to FY17, which was not admissible and required to be reversed along with interest.

Though assessee was a mandatory unit for Internal Audit as per existing norms but it was not audited for the period since April 2010. This resulted in non-detection of the lapse.

When we pointed this out (June 2017), the Ministry admitted the observation (August 2017) and stated that SCN for ₹ 1.22 crore had been issued to the assessee. For not conducting Internal Audit, the Ministry regretted the lapse and stated that Internal Audit could not be conducted due to manpower constraints.

6.4.1.2 Non-detection of Irregular Availment of CENVAT credit on time barred invoices

According to Rule 4(1) of CENVAT Credit Rules, 2004, as effective during the period from 1 September 2014 to 28 February 2015, manufacturer or provider of output service is not eligible to take CENVAT credit on invoices issued more than six months (one year with effect from 01 March 2015) back.

As per Para 3.1.2 of the extant Audit Manual, mandatory units (paying revenue more than ₹ 3 crore) were to be audited annually.

During audit of accounts of Range-III of Durgapur-III division under Bolpur Commissionerate and subsequent verification of documents relating to Central Excise in respect of an assessee, we observed that the assessee had taken CENVAT credit of ₹ 43.49 lakh in September 2014 relating to the invoices pertaining to the period before August 2013 and of ₹ 5.20 lakh in February 2015 relating to the invoices pertaining to the period on or before 1 February 2014. The input invoices on which credit was taken were more than one year old. This had resulted in irregular availing of CENVAT credit to the tune of ₹ 48.70 lakh for FY15.

The Department did not conduct audit of the assessee since March 2010 although the assessee was a mandatory unit as per the extant norms due to which the lapse remained undetected.

When we pointed this out (July 2016), the Ministry admitted the observation (July 2018) and intimated that SCN for ₹ 1.16 crore was under process of issuance. For not conducting Internal Audit since March 2010, it stated that Audit of the assessee was scheduled in August 2017 and the assessee was asked to provide the relevant documents but the assessee failed to comply and Department was in process of issuing summon under section 14 of the Central Excise Act, 1944.

The reply of the Ministry was silent regarding non-conducting of Internal Audit since March 2010.

6.4.2 Non-detection of lapses by IAPs

The IAPs carry out the audit of assessee units in accordance with the Audit Plan and as per the procedures outlined in the Central Excise Audit Manual, 2008 replaced with Central Excise and Service Tax Audit Manual, 2015 (CESTAM-2015) with effect from October 2015.

During the course of audit, we attempted to examine the quality of audits undertaken by the IAPs by auditing a sample of assessees already audited by IAP. Of the 43 instances in 30 Commissionerates, involving revenue of ₹ 31.38 crore, where we pointed out omission of IAPs to detect certain significant cases of non-compliance by assessees, the Ministry admitted/partially admitted 30 cases (Section C of *Appendix -III*). In 13 cases, the Ministry contested the audit observation. Three instances are illustrated below:

6.4.2.1 Incorrect availing and utilization of CENVAT credit

According to Rule 3(I) (ixb) of the CENVAT Credit Rules (CCR), 2004, credit of Service Tax paid on any input service received by a manufacturer of final products or a provider of output service shall be allowed to be taken. Input services such as those provided in relation to outdoor catering, beauty treatment, health services, health and fitness centre, life insurance, health insurance etc., however, was specifically excluded from definition of 'input service' vide Rule 2(I)(BA)(c) of CCR 2004.

During the audit of Petroleum Products Range of Ernakulam II Division under Kochi Commissionerate and subsequent verification of records of an assessee, we observed that the assessee availed (August 2015 and February 2016) CENVAT credit of ₹ 1.19 crore relating to payment of SBI Life Insurance premium, based on Input Service Distributor (ISD) invoices during FY16. This resulted in availing and utilization of ineligible credit of ₹ 1.19 crore which was required to be reversed with applicable interest.

Internal Audit of the assessee was conducted in June 2016, covering the period from March 2014 to March 2016, but it failed to detect the lapse.

When we pointed this out (February 2017), the Ministry admitted the observation (June 2018) and intimated that SCN for ₹ 1.19 crore lakh had been issued to the assessee. For the lapse of Internal Audit, it stated that clarification was being sought from IAP.

6.4.2.2 Short reversal of CENVAT credit under Rule 6(3) of CENVAT Credit Rules 2004

As per Rule 6 (2) of the CENVAT Credit Rules, 2004, where a manufacturer avails inputs and input services and manufacture taxable as well as exempted goods, shall maintain separate accounts for receipt, consumption and inventory of inputs used and receipt and consumption of input services in or in relation to the manufacture of exempted goods and take CENVAT credit

only on that quantity of input or input service, which are intended for use in the manufacture of taxable goods. Rule 6(3) states that the manufacturer of goods or provider of output service, opting not to maintain separate accounts, shall either pay an amount equal to six per cent of value of exempted goods and services; or pay an amount as determined under sub rule (3A). Further, explanation I below rule 6(3) envisages that if the manufacturer of goods or the provider of output service, avails any of the option under this sub rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

During the audit of Range V of Division IV under Pune-I CGST Commissionerate and subsequent verification of records of an assessee, who was engaged in manufacturing of dutiable goods, trading of manufactured goods and providing of taxable as well as exempted services, we observed that the assessee did not compute the amount to be reversed under Rule 6(3) of CENVAT Credit Rules, 2004 correctly for FY16. While calculating the exempted value of services, the assessee did not take into consideration the income from operating lease. Only 10 per cent of value of traded goods was considered for calculating the exempted value of services. Further, it was noticed that during the half year period from October 2015 to March 2016, no amount under Rule 6(3) had been reversed as verified from the ST-3 Return pertaining to that period. This resulted in short reversal of CENVAT credit of ₹ 33.21 lakh during FY16.

Internal audit of the assessee unit was conducted for the period March 2014 to June 2016. However, this issue was not pointed out in the internal audit.

When we pointed this out (July 2017), the Ministry admitted the observation (August 2018) and intimated that the assessee had paid ₹ 74.20 lakh including interest and penalty. For the lapse of Internal Audit, it stated that Commissioner had been asked to call for explanation from erring officers.

6.4.2.3 Non-payment of Central Excise duty in respect of goods found short

Section 3(1)(a) of the Central Excise Act, 1944, stipulates that Central Excise duty is payable on all excisable goods manufactured in India at the rates prescribed under Central Excise Tariff Act, 1985. According to Rule 10(1) of Central Excise Rules, 2002, every assessee shall maintain daily production

records (DPRs), indicating the particulars regarding the quantity of goods manufactured and removed.

Rule 3(5B) of CENVAT Credit Rules, 2004 stipulates that if the value of any input on which CENVAT credit has been taken, is written off fully or partially, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said inputs. The rule is equally applicable to semi-finished goods as clarified by the Board vide Circular No. 907/27/2009–CX dated 7 December 2009.

An assessee under the jurisdiction of Belagavi Commissionerate, is a manufacturer of articles of iron and steel falling under Chapter 72 of the First Schedule of Central Excise Tariff Act, 1985. Verification of the Central Excise records of the assessee revealed that the assessee identified certain shortage in the stock of semi-finished goods and finished goods during stock-taking conducted during FY15 and FY16. The assessee accounted the value of these goods found short in the expenditure side of the Profit and Loss Account (P&L) for the respective years as manufacturing expenses. Since the said goods have undergone the process of manufacture, the assessee was liable to pay Central Excise duty on the finished goods found short. However, the assessee did not pay ₹ 1.80 crore on the value of ₹ 14.46 crore of finished goods found short during the said period. Similarly, the assessee was liable to reverse the CENVAT credit on the semi-finished goods worth ₹ 636.85 crore found short during the same period. In the absence of the necessary details, audit could not quantify the value of CENVAT credit to be reversed.

The internal audit conducted by the Department in March-April 2016, covering the period from April 2012 to January 2016, failed to detect this non-payment of Central Excise duty and non-reversal of CENVAT credit.

When we pointed this out (August 2016), the Ministry stated (August 2018) that the assessee was accounting the estimated quantity in the software system and same was accounted for later by physical verification and any short/excess quantity was adjusted in ER returns in form of captive consumption and availing the exemption for the same under notification 67/95-CE dated 16 March 1995.

The Ministry's reply is not tenable because the procedure followed by the assessee is incorrect as material consumed captively needs to be recorded for claiming of exemption and goods found short should not be treated as captive consumption. Finished goods found short is subject to Central Excise duty. It also creates a possibility of clandestine removal of goods. The

procedure adopted by the assessee indicates a serious control weakness. The Ministry needs to examine the issue and take effective steps to plug the lacuna.

6.4.3 Cases where details of internal audit were not provided

After formation of separate Audit Commissionerates, conducting of internal audit has become the responsibility of Audit Commissionerates. The results of internal audit are communicated to Executive Commissionerates and they are required to have the information of the assessees audited. However, in five instances involving revenue of ₹ 1.47 crore (included in Section D of *Appendix -III*), the details of Internal Audit such as selection of these units for audit, conduct of audit, IAP Report etc. were not provided to us. Hence, we were unable to examine the efficacy of internal audit in these cases. Two such cases are illustrated below:

6.4.3.1 Excess availing of input service credit distributed by ISD – ineffective mechanism to deal with Internal Audit Report

As per Para No. 8.2.2 of CESTAM 2015, Monitoring Committee Meeting (MCM) should be convened by the Audit Commissionerate, to which the Executive Commissioner or his representative shall be invited to attend. The decision taken by the Audit Commissioner, with regard to settlement of audit observations after recovery of all dues or dropping of the unsustainable audit observations, shall be final. Approved audit observations, including those in which show cause notices are proposed to be issued, should be conveyed to the Executive Commissioner in the form of minutes of the MCMs, who shall respond to these observations conveying his agreement/disagreement within 15 days of the receipt of the minutes of the MCM. Further, Annexure X (CE & ST) of CESTAM 2015 provides the format in which the assessee will write to Executive Commissionerate regarding audit observation raised by the IAP which are acceptable to the assessee and objected amount had been paid so that Executive Commissionerate may not issue SCNs on those cases.

(i) Section 4(1) (a) of Central Excise Act, 1944 and Explanation thereunder provides that price-cum excise duty of the excisable goods sold by the assessee, in case the duty is chargeable with reference to their value, shall be the price actually paid to him for the goods sold and the money value for the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of goods.

Audit observed that an assessee falling under Range III, Division I, Gandhinagar Commissionerate, had sold 'CNG gas' to its dealers and also to its retail consumers through its "Mother CNG Station". We noticed that the assessee collected some 'other charges' (separately shown in its invoices) from its retail customers in addition to the price on which Excise duty was not paid. The differential Excise duty payable by the assessee on the amount of 'other charges' collected between 01 April 2012 to 15 June 2016 amounted to ₹ 12.69 lakh, which was required to be recovered alongwith applicable interest of ₹ 3.90 lakh (calculated upto June 2016).

When we pointed this out (July 2016), the Ministry admitted the observation (August 2018) and stated that SCN for ₹ 17.54 lakh has been issued to the assessee. For not furnishing Internal Audit report, it stated that audit report could not be located due to re-organisation of Commissionerate. The Ministry also furnished (August 2018) a copy of old report from which it had been observed that last Internal Audit was conducted for FY12 only.

Thus, no internal audit was conducted after March 2012 which resulted in non-detection of the lapse.

(ii) Rule 7 of CENVAT Credit Rules, 2004 stipulates manner of distribution of credit by input service distributor (ISD) with a condition that credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of turnover of such units to the total turnover of all its units during the relevant period.

During the audit of Range-IV, Division-XI, Vadodara-II Commissionerate and subsequent verification of records of an assessee, we observed that the assessee had received CENVAT credit of Service Tax attributable to common services distributed by its Mumbai Office and Mohali Office as ISD. Mumbai Head office of the assessee took sales turnover of the FY15 into consideration for distribution of credit for the FY16, proportion of which arrived at 5.74 per cent for the assessee (Panoli unit). Accordingly, Mohali office also issued ISD invoices for distribution of common credit attributing 5.74 per cent to the assessee. However, it was noticed that CENVAT credit was actually distributed to the assessee at 7.77 per cent. This resulted in incorrect distribution of credit by ISD and consequent excess availing of credit by the assessee to the tune of ₹ 59.56 lakh which was required to be recovered from the assessee.

Though, Internal Audit of the assessee was conducted by the Department, covering the period up to December 2016, despite our best pursuance, the details of internal audit were not furnished. Although the same should have been available with the Executive Commissionerate as per the provisions ibid.

When we pointed this out (May 2017), the Ministry admitted the observation (August 2018) and intimated that SCN was issued to the assessee. For not providing details of Internal Audit, it stated that Internal Audit was conducted during January to May 2017 and para was approved in MCM held in June 2017 and minutes of the MCM were also shared with Executive Commissionerate.

The fact remained that details of internal audit were not provided to Audit due to which effectiveness of internal audit could not be commented upon.

6.5 Disposal of Refund Claims

Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund. The term refund includes rebate of Excise duty paid on excisable goods exported out of India as well as of Excise duty paid on material used in the manufacture of goods exported out of India. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months from the date of application of refund. The Central Excise Manual prescribed that the Department should accept refund claims only when accompanied with all supporting documents as refund claims without requisite documents may lead to delay in sanction of refunds.

Table 6.3 depicts the status of disposal of refund claims by the Department. The delay depicted is in terms of time taken from the date of receipt of refund applications till the final processing of the claims.

Table 6.3: Disposal of refund claims in Central Excise

(₹ in crore)

Year	Opening Balance		Receipts (during the year)		Disposal (during the year)				No. of cases disposed within 3 months	Cases where interest has been paid	
					Refunds sanctioned		Refunds rejected				
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.		No.	Amt.
FY16	82,146	7,878	3,36,614	27,829	3,65,485	27,593	7,577	1,763	3,24,340	3	0.01
FY17	45,719	6,356	3,18,462	27,903	3,13,487	25,874	6,471	2,342	17,957	3	0.09
FY18	44,223	6,042	42,886	8,348	37,602	6,638	4,018	3,114	38,694	25	1.16

Source: Figures furnished by the Ministry.

It is observed that number of new cases of refund claims reduced substantially during FY18. However, the Department disposed only 41,620 cases in FY18 out of 87,109 cases. The Department also paid interest of ₹ 1.16 crore in 25 cases in FY18 in comparison to ₹ 9 lakh in three cases in FY17.

Table 6.4 depicts an age-wise analysis of pendency of refund claims during the last three years.

Table 6.4: Age-wise pendency of Central Excise refund cases as on 31 March

(₹ in crore)

Year	Total number of Refund claims pending as on 31 March		Refund claims pending for			
			Less than one year		Over one year	
	No.	Amt.	No.	Amt.	No.	Amt.
FY16	45,719	6,356	45,592	6,273	127	83
FY17	44,223	6,042	44,211	6,039	12	3
FY18	9,140	1,772	9,119	1,593	21	179

Source: Figures furnished by the Ministry.

Closing balance figure of FY18 does not appear to be correct. The correct figure as per the data provided by the Ministry, by calculating opening balance plus new refund cases minus total disposal should be 45,489 cases but the figure furnished by the Ministry is 9,140 cases. The Ministry may look into the reasons for this discrepancy.

6.6 Call Book

Board's Circular No. 162/73/95-CX.3, dated 14 December 1995 read with Circular Nos. 992/16/2014-CX, dated 26 December 2014 and 1023/11/2016–CX dated 08 April 2016, envisage that cases that cannot be adjudicated due to certain reasons such as the Department having gone in appeal, injunction from courts etc. may be entered into the Call Book. Member (CX), vide his D.O. F.No. 101/2/2003-CX-3, dated 3 January 2005, had emphasised that Call Book cases should be reviewed every month. Director General of Inspection (Customs and Central Excise) has reiterated the need for monthly review in his letter dated 29 December 2005 stating that review of Call Book may result in substantial reduction in the number of unconfirmed demands in Call Book.

Table 6.5 depicts the performance of the Department in respect of Call Book clearance in Central Excise during recent years.

Table 6.5: Call Book cases pending on 31 March

Year	Opening balance	New Cases transferred to Call Book during the year	Disposals during the year	Closing balance at the end of year (No.)	Revenue involved (₹ in Cr)	Age-wise break up of pendency at the end of the year			
						Less than 6 months	6-12 months	1-2 years	More than 2 years
FY16	36,587	7,437	7,994	36,030	64,260	5,157	2,479	6,262	22,132
FY17	36,030	13,418	19,768	29,682	58,648	5,601	2,457	4,244	17,380
FY18	29,682	9,196	10,460	25,649	62,483	4,951	1,789	3,901	15,008

Source : Figures furnished by the Ministry

It is observed that the number of cases pending in Call Book in FY18 were 25,649 involving revenue of 62,483 crore. Out of these, 15,008 cases were pending for more than two years. Closing balance figure of FY18 does not appear to be correct. The correct figure as per the data provided by the Ministry, by calculating opening balance plus new Call Book cases minus total disposal should be 28,418 but the figure furnished by the Ministry is 25,649. The Ministry may look into the reasons for this discrepancy.

During test check of records related to Call Book, we observed that in six Commissionerates[59] and five Divisions[60] Call book cases were not reviewed. In Mumbai zone and in three Divisions[61], 216 cases involving revenue of ₹ 284.64 crore were kept pending in Call Books irregularly. In Division III of Pune ST Commissionerate, Call Book Register was not maintained in the prescribed format and all the entries were not filled in. Monthly abstracts were also not prepared and no review was conducted. In Division IV of Ahmedabad Commissionerate, total 71 cases were pending in Call Book as on 31 March 2017. However, only 30 cases were entered in Call Book Register.

Three cases are illustrated below:

6.6.1 Irregular Retaining of SCN in Call Book

(i) During verification of Call Book in Division XII Umbergaon of Daman Commissionerate, we observed that SCN was issued in October 1991 to an assessee and the same was transferred to Call Book on the ground of filing of review petition by the Department in CESTAT. The review petition was disposed-off by CESTAT in October 1998 by remanding the matter back to the

[59] Belgaum, Bharuch, Daman, Kutch, Mumbai West and Vadodara-I

[60] Tirunelveli, Division I and Tutikorin (Salem), Division I (Vadodara) and Division V (Bharuch)

[61] Division I (Bengaluru ST-I), Udupi (Mangalore) and Division XII (Daman)

adjudicating authority. The case was required to be retrieved from Call Book and decided afresh in compliance to CESTAT orders. However, we noticed that the Department could not trace the case files and the SCN was kept in Call Book for more than 19 years. The non-retrieval of SCN from Call Book resulted in delay in adjudication and blockage of revenue. Moreover, it was not found to be reviewed by the Commissioner.

When we pointed this out (February 2018), the Ministry admitted the observation (October 2018) and stated that the SCN had been retrieved from the Call Book for further adjudication. The case file had been traced out and the same would be decided within a month.

Thus, non-review of Call Book resulted in irregular pendency of case in Call Book for 19 years. The Ministry need to examine the reasons and take rectificatory action to avoid such lapses.

(ii) During the audit of the office of the Commissioner of Central Excise, Belgaum, we noticed that 132 SCNs were pending in Call Book. Of these, we test checked 17 cases and found that an SCN issued to an assessee, was pending for want of instructions from the Board regarding appointment of common adjudicating authority. The SCN was issued to the assessee, a Clearing and Forwarding Agent (CFA) of a service recipient, in January 2012 demanding ₹ 21.04 lakh towards Central Excise duty. Since similar SCNs were issued to other CFAs of the service recipient, the Additional Director General (DGCEI), Chennai requested the Director General (DGCEI), New Delhi to take up the issue with the Board for appointing a common adjudicating authority on the basis of a plea made by the service recipient. Hence, the Commissioner of Central Excise, Belgaum Commissionerate decided to transfer the SCN to Call Book (March 2013) on the grounds that orders were awaited from the Board regarding appointment of common authority. Although the Board had appointed the Commissioner of Chennai III Commissionerate as the common adjudicating authority in July 2013 itself, the SCN was not taken out of Call Book for transferring to the common adjudicating authority till audit observed the same in February 2017. The Commissionerate did not detect this irregular retention of SCN in Call Book during the periodical reviews of Call Book cases carried out subsequently.

When we pointed this out (February 2017), the Ministry admitted the observation (July 2018) and stated that due to oversight, SCN was not transferred from Call Book to common adjudicating authority.

(iii) Scrutiny of the pending Call Book cases with Kutch (Gandhidham) Commissionerate revealed that five SCNs issued to two assessees involving total duty amount of ₹ 78.75 lakh were pending in Call book without adequate follow up/action for a period ranging from seven months to more than eight years as illustrated below:

a) Department issued (June 2007) four SCNs for recovery of rebate sanctioned by Appellate Authority vide its OIA (December 2005) to an assessee as Revision Application was filed (March 2006) by the Department before Revision Application Unit (RAU), Ministry of Finance, Dept. of Revenue, New Delhi and transferred (January 2008) these SCNs to Call Book.

Audit noticed (July 2016) that the Commissionerate was not having any information on the status of the Revision application filed for more than 10 years. Further, no documents were found on record of the Commissionerate evidencing any efforts made to obtain the status of the same from RAU, New Delhi although the 'Adjudication Section' of the Commissionerate wrote several letters to 'Review, Revision and Appeal (RRA) section' of the Commissionerate seeking status of the Review Application filed by the Department. Due to non-compliance to requests of 'Adjudication section' and non-follow up by the 'RRA Section', these SCNs were pending in Call Book till date of audit. We also noticed that even the 'Adjudication section' had followed up the case only 5 times with 'RRA section' in 10 years with a period of 4 months to more than 3 years between two follow up letters. Last follow-up was made in December 2015.

Inadequate efforts by the Department and lack of co-ordination within the different sections of the Commissionerate resulted into pendency of these SCNs in Call Book for more than 8 years.

b) Show-Cause-Notice issued (September 2010) to an assessee was transferred to Call Book (March 2014) after the assessee filed (February 2014) an application with Settlement Commission.

Audit noticed that after receiving intimation (November 2014) of the final Order passed by the Settlement Commission, the Commissionerate requested (December 2014) the assessee to pay the penalty imposed by the Commission. However, we noticed that although the assessee provided (December 2014) the details of

payment of the said penalty amount, the Commissionerate did not initiate any action to retrieve the case from the Call Book and dispose-off the SCN till July 2016.

When we pointed this out (July 2016), the Ministry admitted (August 2018) the observation and stated that delay in retrieval of Call Book cases was due to bifurcation of Commissionerates and transfer of files. Cases have been retrieved from Call Book and have been disposed-off accordingly.

The Ministry needs to ensure proper monitoring of review of Call Book cases and compliance of instructions by field formations.

6.7 SCN and Adjudication

Section 11A(4) of Central Excise Act, 1944 stipulates that where any Excise duty has not been levied or paid or has been short levied or short-paid or erroneously refunded, by reasons of fraud; or collusion; or any wilful mis-statement; or suppression of facts; or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

Adjudication is the process through which departmental officers determine issues relating to tax liability of assessees. Such process may involve consideration of aspects relating to, inter alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

Table 6.6 depicts an age-wise analysis of Central Excise adjudications.

Table 6.6: Cases pending for adjudication with departmental authorities

(₹ in crore)

Year	Opening Balance		Receipt (during the year)		Disposal (during the year)		Closing Balance		Age-wise breakup of pendency		
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	3-6 months	6-12 months	Above 1 year
FY16	27,674	25,107	46,551	44,599	51,211	40,352	23,014	29,355	14,649	4,728	3,637
FY17	23,014	29,355	55,520	50,219	68,166	59,098	10,347	20,474	6,320	1,934	2,093
FY18	10,347	20,474	28,876	50,513	30,321	53,776	8,534	17,402	5,909	1,424	1,201

Source: Figures furnished by the Ministry

It is observed that 8,534 cases involving duty of ₹ 17,402 crore were pending as on 31 March 2018 for adjudication. It was also observed that 1,201 cases were pending for more than one year. Closing balance figures do not appear to be correct and need to be reconciled. The Ministry may initiate measures for adjudication of pending cases as after implementation of GST, pendency of adjudication of legacy cases may lose priority.

During our audit we observed three instances in three Commissionerates (included in section F of Appendix-III) where lapses in issuance of SCNs were noticed. The Ministry did not admit any of the observations. Two instances are illustrated below:

6.7.1 Non-issue of SCN resulting in demand being time-barred

During the course of audit of Range-III of Haldia-II Division under Haldia Commissionerate, we observed that Department issued an SCN in September 2015 to an assessee covering period upto March 2014 invoking extended period for issue of SCN in respect of irregular availing of Input Service Credit on the bills raised by its Job Worker for carrying out different processes like packing/repacking, printing of labels etc. Such SCN was issued on the basis of the CAG observation raised in March 2015. Scrutiny of records of the assessee revealed that the Job Worker had continued the same job from April 2014 to March 2016 as per the agreement with the assessee and the assessee was found to have availed Input Service Credit of ₹ 26.80 lakh on the bills raised by the Job Worker during the period from April 2014 to September 2014. It was also observed that no SCNs covering the period subsequent to March 2014 had been issued to the assessee till the date of audit (December 2016) although the assessee had continued availing Input Service Credit on job charge bills raised by Job-Worker as earlier and filed ER-1 returns within due dates. Non-issue of SCN for the period

subsequent to March 2014 till the date of Audit (16 November 2016) has resulted in loss of revenue of ₹ 26.80 lakh being ineligible Input Service Credit as issuance of SCN for the period from April 2014 to September 2014 was time barred in terms of the judicial decision mentioned above.

When we pointed this out (December 2016), the Ministry did not admit the observation and stated (July 2018) that there are number of judgments on the issue and it was held that when a job worker/manufacturer has paid Central Excise duty or Service Tax when it was not legally payable as per law and credit was availed by the recipient manufacturer then, payment of duty is sufficient and no further reversal is required. It was further stated that job worker was continuously paying Service Tax and the same was accepted by the Department hence, credit reversal was not required.

The Ministry's reply is not tenable as audit observation is not on technicality of duty payment but on non-issuance of SCN for subsequent period when the Department had already issued SCN for a lapse. The Ministry's reply is silent on timely issuance of SCN and the reasons for delay in SCN and action taken for the lapse.

6.7.2 Delay in levy of duty resulting in loss of revenue to Government

Section 11A of Central Excise Act, 1944 stipulates that a show cause notice shall be issued within one year in normal course and in case of fraud, collusion, wilful, mis-statement suppression of facts etc. with intent to evade duty within a period of five years from the relevant date.

During the audit of the office of Chief Commissioner of Central Excise and Service Tax Zone, Chandigarh, we observed that an assessee, who was manufacturing pencils under Chapter heading 96091000 of the Central Excise Act, 1944, was also manufacturing pencil slats falling under Chapter Heading 44219040 and the same were being cleared without payment of Central Excise duty since 2003. Accordingly, the assessee was issued two show cause notices for ₹ 1.17 crore.

The noticee replied that the impugned SCN dated 6 February 2014 pertaining to the period from 1 December 2009 to 31 March 2012 was barred by limitation, as the noticee had informed the Department (February 2010) that it was not paying duty in view of the fact that pencil slats were exempt and charge of alleging suppression of facts and the extended period was not sustainable. In view of reply and personal hearing of the noticee, the

Adjudicating Authority adjudicated the SCN vide order dated 19 March 2015 with the remarks that it was in the notice of the Department (February 2010) so the charge of suppression or mis-statement with intention to evade payment of duty cannot be made against noticee. In view of this position, demand would not sustain for extended period of limitation. However, the noticee was liable to pay duty alongwith interest for the period of demand i.e. one year. So, out of demand of ₹ 1.17 crore, only demand of ₹ 28.45 lakh for the period January 2013 to December 2013 was confirmed and demand of ₹ 88.64 lakh on account of demand beyond one year was dropped. Since the Department failed to take timely action to decide that item was dutiable, it failed to recover ₹ 88.64 lakh. Had the Department been vigilant to raise the demand within the time frame as per the extant statute, loss of ₹ 88.64 lakh to the Government exchequer could have been avoided.

When we pointed this out (May 2017), the Ministry contested the observation (August 2018) stating that the Department was of the view that pencil slat is not dutiable due to the process not being manufacture. Also there were divergent practices in other states about dutiability of pencil slat. Therefore, extended period was not invokable in the case.

The Ministry's reply is not tenable as despite being informed by the assessee in February 2010 that it was not paying duty due to pencil slats being exempted, no proper cognizance was taken by the Department to examine the dutiablity of pencil slats. The Ministry's reply also indicates that there were divergent practices on the issue across the country. However, it is not mentioned whether any action had been taken by the Ministry to clarify the ambiguity. The fact remained that due to improper examination of assessee claims about dutiablity of the products, no action was taken to issue the demand and revenue became time barred.

6.8 Other lapses

We noticed three observations involving revenue of ₹ 1.41 crore, indicating shortcomings in functioning of jurisdictional Commissionerates (Section G of Appendix-III). The Ministry admitted/partially admitted two observations while one observation has not been admitted. Two cases are illustrated below:

6.8.1 Non-initiation of action in Central Excise duty evasion case and consequent non-registration and non-payment of Central Excise duty

According to Section 6 of the Central Excise Act, 1944 read with Rule 9 of Central Excise Rules, 2002, as amended, every person who manufactures excisable goods shall get registered. As per Rule 4 of Central Excise Rules, 2002, every person who manufactures excisable goods shall pay the duty leviable on such goods in the manner provided in Rule 8 and no excisable goods on which duty is payable shall be removed without payment of duty from any place, where they are manufactured. Rule 6 stipulates that the assessee shall himself assess the duty payable on any excisable goods, except in the case of cigarettes.

Central Excise Scrutiny Manual provides, inter alia, that the three important prongs of compliance verification system in a self-assessment regime of tax administration are scrutiny of returns, audit and anti-evasion. The Preventive and Investigation Manual stipulates that the Preventive Wings of the Central Excise and Service Tax Commissionerates have to take measures for combating evasion of duty by collection of intelligence about evasion, keeping secret track of duty payment records of individual assessees, engaging informers, making surprise visit to the factories, whether registered or not and taking effective steps to thwart any attempt for evasion.

During the audit of Kochi Commissionerate, Audit observed that based on information passed on by Trivandrum Commissionerate regarding evasion of Service Tax, Kochi Commissionerate booked an offence case against an assessee and issued (August 2016) summons. After verification of the relevant documents substantiating the evasion of Service Tax produced by the entity, the proceedings were completed by issuing SCN (January 2017).

However, during the verification the Department failed to notice that the unit was engaged in manufacture of excisable goods viz. text books, ledger books, cash books, diaries, file folders etc. classified under Chapter 48 & 49 of Central Excise Tariff Act, 1985. The unit was engaged in the manufacture and removal of excisable goods from the year 1978, without taking Central Excise registration and payment of duty. During the period FY13 to FY15, goods with an assessable value of ₹ 3.66 crore were cleared without payment of duty. Details of clearance of goods for FY16 were not furnished and in FY17, the assessable value of goods cleared was ₹ 2.90 crore. This resulted in non-

payment of Central Excise duty of ₹ 62.76 lakh during the period FY13 to FY15 and FY17. The Commissionerate not only failed to take action for registration of a manufacturing unit since 1978 but also failed to take proper cognizance of information passed on by Trivandrum Commissionerate and detection of non-payment of duty.

When we pointed this out (September 2017), the Ministry admitted the observation partially. For non-payment of Central Excise duty, it stated that SCN for ₹ 74.91 lakh had been issued to the assessee. For lapse of the Department, it stated that Preventive wing investigated evasion of Service Tax for which SCN was issued in January 2017. During the course of scrutiny, receipts of printing material were noticed and detailed records were called for. These records were examined by CAG Audit. After detailed examination, SCN was issued for recovery of Central Excise duty. Further, the assessee was not registered with the Department, hence departmental officers had no opportunity to examine the activity of the unit.

The Ministry's reply is not tenable as though records regarding printing activities were called for by the Department and even investigation of evasion of Service Tax was concluded in January 2017, Department failed to take any action for evasion of Central Excise duty till Audit pointed this out in September 2017. The Department also failed to take cognizance of the facts that assessee was the biggest multi color offset printing unit in Kerala and involved in printing since 1978, and was not registered with the Department.

6.8.2 Avoidable Excess expenditure towards payment of Government duty on electricity charges

According to Article 287 of the Constitution of India, unless the Parliament so decides, no law of a State shall impose or authorize the imposition of a tax on consumption or sale of electricity (whether provided by a Government or other persons) which is consumed by the Government of India or sold to the Government of India for consumption by that Government. Further, as per sub-section 3 of Section 3 of the Bengal Electricity duty Act, 1935, electricity duty shall not be leviable on the net charge for energy consumed or the units of energy consumed as recorded in the meter by any Government except in respect of premises used for residential purposes.

During the audit of accounts of Kolkata-I Commissionerate (presently Kolkata North Commissionerate), scrutiny of records revealed that the monthly electricity bills as preferred by Calcutta Electric Supply Corporation (India)

Ltd. (CESC) also comprised Government duty at the rate of 17.50 per cent of monthly electricity charges. Since the Commissionerate is an office of the Government of India, it is exempted from payment of State Government duty on the electricity charges as per the provisions mentioned above. The Commissionerate paid the avoidable duty to the tune of ₹ 51.27 lakh for the period from March 2014 to March 2017 to CESC. Similar avoidable excess expenditure of ₹ 12.17 lakh and ₹ 2.26 lakh were also observed in case of Durgapur-I Division of Bolpur Commissionerate and Durgapur Commissionerate (presently Bolpur Commissionerate). This had resulted in avoidable excess expenditure of ₹ 65.70 lakh.

Internal Audit of the Kolkata-II Commissionerate for FY16 was also conducted in May 2016. However, the lapse was not detected.

When we pointed this out (February 2017 to August 2017), the Ministry admitted the observation (August 2018) and stated that Bolpur Commissionerate had requested Durgapur Project Ltd. for exemption from payment of electricity duty and to adjust the already paid duty.

New Delhi **(SATISH SETHI)**

Dated: 30 May 2019 **Principal Director (Goods and Services Tax-II)**

Countersigned

New Delhi **(RAJIV MEHRISHI)**

Dated: 31 May 2019 **Comptroller and Auditor General of India**

APPENDICES

Appendix I

List of observations on departmental lapses (Service Tax)

(Reference: Paragraph: 5.2, 5.3, 5.5, 5.6, 5.7, 5.9, 5.10 and 5.11)

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section A: Broadening of Tax Base					
1	111D	69.00	69.00		Bengaluru South
2	131D	0.60	0.60	0.02	Cochin
Section B: Failure in Scrutiny of Returns					
3	46D	1.40	1.40		Bangalore ST-I
4	14D	1.11	1.11	1.11	Bangalore ST II
5	115D	0.64	0.64		Jalandhar
6	47D	0.58	0.58		Bangalore South
7	117D	0.25	0.25	0.25	Gurugram
8	114D	0.16	0.16	0.16	Gurugram
9	30D	0.15	0.15	0.15	Gandhinagar
10	18D	0.13	0.13	0.13	Kolkata North
11	25D	0.12	0.12	0.12	Kutch
12	53D	0.48	0.48	0.48	Agra
13	107D	10.32	10.32	10.32	Bengaluru North
14	90D	0.42	0.42	0.3	Kutch
15	59D	0.34	0.34	0.34	Hyderabad
16	88D	0.15	0.15		Kutch
17	92D	1.37	1.37	1.37	Vadodara-I
18	118D	0.74	0.74	0.74	Ludhiana
19	110D	0.39	0.39	0.05	Bengaluru North
20	93D	0.28	0.28	0.28	Surat-I
21	119D	0.22	0.22	0.22	Ludhiana
22	84D	1.25		1.05	Salem
23	86D	0.56	0.56	0.07	Chennai North
24	130D	0.38		0.09	Coimbatore
25	121D	0.35	0.35	0.13	Patna-II
26	133D	0.35		0.35	Cochin
27	108D	0.31	0.31	0.31	Mangalore

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
28	83D	0.10	0.10		Lucknow
29	102D	1.36	1.36		Ranchi
30	79D	1.29	1.29	1.29	Agra
31	81D	0.27	0.27	0.27	Agra
32	60D	2.33	2.33	2.33	Patna-I
33	22D	0.27	0.27		Jaipur
34	78D	0.39	0.39		Patna-II
35	27D	0.31	0.31	0.31	Kutch
36	126D	0.27	0.27	0.27	Jaipur
37	68D	0.22			Pune-I
38	80D	0.17	0.17		Patna-II
Section C: Lapses in functioning of Internal Audit					
39	31D	1.89	1.89		Kolkata North
40	1D	1.54	1.54	0.12	Secundrabad
41	138D	1.32	1.32		Cochin
42	74D	0.64	0.64		Bengaluru South
43	77D	0.52	0.52	0.52	Bengaluru North
44	4D	0.41	0.41	0.41	Bangalore East
45	106D	0.40	0.40		Bengaluru East
46	125D	0.40	0.40	0.12	Jaipur
47	24D	0.38	0.38		Bengaluru east
48	134D	0.34	0.34	0.34	Cochin
49	2D	0.33	0.33		Udaipur
50	94D	0.23	0.23		Belgaum
51	10D	0.15	0.15	0.15	Ahmedabad North
52	76D	0.14	0.14		Bengaluru East
53	20D	0.13	0.13	0.13	Pune-I
54	127D	0.13	0.13	0.13	Jaipur
55	3D	0.17	0.17		Thiruvanathapuram
56	12D	0.12	0.12	0.12	Vadodara I
57	5D	0.10	0.10	0.10	Mumbai West
58	123D	62.91			Mumbai South
59	91D	7.17			Vadodara-I
60	113D	2.43			Bengaluru North
61	109D	1.26	0.52	0.52	Bengaluru South

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
62	44D	1.05			Gandhinagar
63	75D	0.27	0.27		Belgaum
64	23D	0.23		0.23	Bengaluru North
65	17D	0.21	0.21		Kolkata North
66	6D	0.17	0.17	0.17	Kutch
67	55D	0.15		0.15	Mumbai East
68	136D	0.11	0.11	0.11	Cochin
69	38D	1.74	1.74	1.74	Pune-I
70	96D	1.16	1.16	1.16	Hyderabad
71	67D	0.90	0.90		Goa
72	36D	0.78	0.78	0.78	Mumbai South
73	37D	0.51	0.51	0.51	Pune-I
74	65D	0.51	0.51		Goa
75	35D	0.34	0.34	0.34	Mumbai South
76	71D	0.31	0.31		Raipur
77	100D	0.25	0.25		Hyderabad
78	98D	0.24	0.24		Hyderabad
79	104D	0.23	0.23	0.23	Delhi East
80	95D	0.20	0.20	0.20	Secundrabad
81	39D	0.19	0.19	0.19	Pune-I
82	64D	0.15	0.15	0.15	Pune-I
83	57D	0.14	0.14	0.14	Pune-I
84	101D	0.13	0.13		Hyderabad
85	33D	0.12	0.12	0.12	Mumbai East
86	103D	0.12	0.12	0.12	Delhi East
87	63D	0.11	0.11	0.11	Mumbai South
88	34D	0.10	0.10	0.1	Pune II
89	73D	0.64	0.64		Raipur
Section D: Short coming in Sanctioning of Refund claim					
90	45D	6.05	6.05	6.05	Bangalore ST II
91	48D	0.41	0.41	0.41	Bangalore South
Section E: Short coming in SCN					
92	61D	0.56			Dibrugarh
93	52D	0.22	0.22		Dibrugarh

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section F: Short coming in functioning of Jurisdictional Commissionerates					
94	132D	1.66	1.66		Calicut
95	112D	0.77	0.77	0.57	Bengaluru North
96	51D	0.44	0.44	0.44	Hyderabad
97	135D	0.23	0.23	0.23	Indore
98	85D	0.13	0.13	0.13	Chennai South
99	99D	1.69	1.69	1.46	Hyderabad
100	89D	0.43	0.43	0.43	Ahmedabad North
101	62D	0.11	0.11	0.11	Pune-I
102	8D	0.33	0.33	0.33	Ahmedabad North
103	9D	0.12	0.12	0.12	Kutch
104	11D	0.19	0.19		Madurai
	Total	**206.54**	**129.10**	**42.00**	

Appendix II

List of observations of non-compliance by the assessees (Service Tax)

(Reference: Paragraph: 5.2)

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Non-payment of Service Tax					
1	124D	1.75	1.75	1.75	Mumbai South
2	1B	1.60	1.60	1.60	Ahmedabad North
3	9A	1.53	1.53		Ranchi-I
4	54D	1.20	1.20		Pune-I
5	16B	1.12	1.12	1.12	Agra
6	122D	0.97	0.97		Ahmedabad South
7	20A	0.79	0.79		Kutch
8	10A	0.52	0.52	0.52	Goa
9	21D	0.43	0.43	0.43	Raigarh
10	4B	0.32	0.32		Kutch
11	11B	0.31	0.31	0.31	Salem
12	7D	0.27	0.27	0.27	Ahmedabad III
13	42D	0.26	0.26	0.26	Gandhinagar
14	13B	0.24	0.24		Ahmedabad North
15	7A	0.19	0.19		Ahmedabad South
16	116D	0.19	0.19		Rohtak
17	15B	0.17	0.17	0.17	Delhi East
18	14B	0.16	0.16	0.16	Vadodara-II
19	23A	0.15	0.15		Jabalpur
20	10B	0.15	0.15	0.15	Chennai Outer
21	7B	0.14	0.14	0.14	Jaipur
22	18B	0.14	0.14	0.14	Chennai South
23	25A	0.13	0.13	0.05	Bhopal
24	19B	0.13	0.13	0.13	Secundrabad
25	15A	0.11	0.11		Hyderabad GST
26	2B	0.11	0.11	0.11	Pune I
27	105D	0.11	0.11	0.11	Delhi South
28	12B	0.10	0.10		Ahmedabad North

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
29	4A	1.86	1.86		Chennai North
30	22A	0.65	0.65		Ujjain
Short payment of Service Tax					
31	12A	2.61	2.61		Hyderabad GST
32	21A	1.49	1.49		Bengaluru East
33	32D	1.24	1.24	1.24	Mumbai West
34	58D	0.73	0.73	0.73	Pune-I
35	3B	0.44	0.44	0.44	Ahmedabad North
36	13A	0.38	0.38		Hyderabad GST
37	14A	0.15	0.15		Hyderabad GST
38	9B	0.12	0.12	0.12	Delhi East
39	40D	0.12	0.12	0.12	Mumbai East
40	3A	6.12	6.12		Chennai North
41	17A	5.30	5.30		Hyderabad GST
42	16A	9.66	9.66		Hyderabad GST
43	5A	0.49	0.49		Chennai North
Irregular Availing/Utilisation of CENVAT credit					
44	18A	1.73	1.73		Gurugram
45	43D	0.94	0.94		Kutch
46	11A	0.42	0.42	0.42	Delhi North
47	69D	0.31	0.31	0.31	Mumbai East
48	1A	0.29	0.29		Hyderabad GST
49	5B	0.26	0.26		Udaipur
50	41D	0.22	0.22		Mumbai East
51	26D	0.19	0.19	0.19	Jaipur
52	29D	0.15	0.15	0.15	Kolkata ST II
53	28D	0.12	0.12		Jaipur
54	6B	0.11	0.11	0.11	Pune-I
55	8B	0.10	0.10	0.10	Delhi East
56	19A	0.64	0.64		Lucknow
57	2A	0.38	0.38		Kolkata North
Non Payment of Interest					
58	70D	0.29	0.29	0.29	Mumbai East
59	15D	0.28	0.28		Durgapur
60	97D	0.17	0.17		Hyderabad

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
61	20B	0.11	0.11	0.11	Indore
62	6A	0.43	0.43		Chennai North
63	8A	0.21	0.21		Secunderabad
	Total	**52.00**	**52.00**	**11.75**	

Appendix III

List of observations on departmental lapses (Central Excise)
(Reference: Paragraph 6.2, 6.3.1, 6.3.2, 6.4.1, 6.4.2, 6.4.3, 6.7 and 6.8)

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section A: Failure in Scrutiny of Returns					
1	50D	2.96	2.96		Bolpur
2	80D	0.17	0.17	0.17	Ranchi
Section B: Non Conduct of Internal Audit					
3	8D	1.16	1.16		Bolpur
4	26D	0.32	0.32		Kolkata North
5	29D	0.15	0.15	0.15	Raigarh
6	52D	0.21	0.21		Durgapur
7	54D	0.64	0.64		Patna-II
8	57D	1.22	1.22		Pune-I
9	75D	1.94	1.94		Rourkela
10	85D	1.22			Raipur
11	88D	0.18			Haldia
Section C: Non-detection of lapse by Internal Audit					
12	2D	0.54	0.54		Daman
13	4D	0.15			Daman
14	5D	0.16			Ahmedabad North
15	7D	0.17	0.17	0.17	Bengaluru West
16	9D	0.29			Haldia
17	10D	0.74	0.74		Bolpur
18	12D	0.40	0.40		Howrah
19	13D	0.29	0.29		Haldia
20	14D	0.60	0.60		Kolkata II
21	15D	0.04			Medchal
22	18D	0.24	0.24		Udaipur
23	20D	0.15	0.15	0.15	Chennai Outer
24	21D	0.29	0.00		Udaipur
25	22D	9.47	9.47		Udaipur
26	23D	0.55	0.55	0.55	Bengaluru North West

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
27	24D	1.38	1.38		Madurai
28	25D	1.19	1.19		Kochi
29	30D	0.30	0.30	0.30	Pune-I
30	31D	0.98	0.98		Vadodara-II
31	33D	0.35	0.35		Rajkot
32	34D	0.45	0.45	0.45	Kutch
33	36D	0.22	0.15	0.15	Belgaum
34	39D	0.26	0.26		Belagavi
35	40D	1.80			Belagavi
36	41D	1.17	1.17		Madurai
37	44D	0.73			Bhubaneswar
38	46D	0.26	0.26	0.26	Rangareddy
39	47D	1.21	1.21		Medchal
40	49D	0.86			Tirupathi
41	51D	0.36			Kolkata I
42	53D	0.16	0.16		Bolpur
43	56D	0.23	0.23		Pune-II
44	59D	0.29	0.29		Raigarh
45	63D	0.50		0.02	Daman
46	71D	0.27	0.27	0.27	Gurugram-I
47	74D	0.58			Rourkela
48	76D	0.20	0.20		Kolkata IV
49	77D	0.15			Haldia
50	79D	0.19	0.19		Ranchi
51	84D	0.15	0.15		Raigarh
52	87D	1.47	0.31		Pune-I
53	90D	0.74	0.74	0.74	Pune-I
54	91D	0.85			Nagpur-I
Section D: Cases where Internal Audit information was not provided					
55	62D	0.22	0.22	0.22	Kutch
56	64D	0.60	0.60		Vadodara-II
57	65D	0.23	0.23		Vadodara-II
58	66D	0.18	0.18		Gandhinagar
59	73D	0.25	0.25		Rourkela

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section E: Failure in timely issuance of SCNs					
60	6D	NMV	NMV	NMV	Belgaum
61	67D	NMV	NMV	NMV	Kutch
Section F: Ineffective monitoring of Call Book cases					
62	19D	0.27			Haldia
63	69D	0.89			Chandigarh II zone
64	86D	0.06	0.06		Raigarh
Section G: Other cases					
65	11D	0.66	0.66		Kolkata North and Bolpur
66	42D	0.75	0.75		Kochi
67	35D	NMV	NMV	NMV	Vadodara-II
	Total	**45.65**	**35.10**	**3.60**	

Appendix IV

List of observations of non-compliance by the assessees (Central Excise) (Reference: Paragraph 6.2)

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Non/Short payment of Central Excise duty					
1	5A	0.23	0.23		Jabalpur
2	6B	0.21	0.21	0.21	Jaipur
3	3D	0.49	0.49		Vadodara II
4	37D	108.66	108.66		Bangalore LTU
5	48D	0.38	0.38	0.38	Guntur
6	58D	0.95	0.95		Goa
7	60D	3.87	3.87		Shillong
8	68D	0.34	0.34	0.13	Jaipur
9	83D	0.96	0.96		Jabalpur
Irregular Availing/Utilisation of CENVAT Credit					
10	1A	2.20	2.20	2.20	Raigarh
11	2A	2.37	2.37	2.37	Raigarh
12	3A	2.19	2.19	2.19	Raigarh
13	4A	0.21	0.21		Ludhiana
14	6A	0.24	0.24		Patna-I
15	7A	1.30			Raigarh
16	1B	0.22	0.22	0.22	Ahmedabad North
17	2B	0.86	0.86		Trichy
18	3B	0.17	0.17	0.17	Chennai Outer
19	4B	0.18	0.18	0.18	Belapur
20	5B	0.36	0.36		Kutch
21	1D	0.37	0.37	0.37	Kutch
22	16D	1.16	1.16	1.16	Raigarh
23	17D	0.26	0.26		Kutch
24	27D	0.62	0.62		Pune-II
25	28D	0.55	0.55	0.55	Pune-I
26	61D	0.32	0.32		Daman
	Total	**129.65**	**128.35**	**10.13**	

Glossary

AC	Assistant Commissioner
ACES	Automation of Central Excise and Service Tax
ADG	Additional Director General
ATM	Automated Teller Machine
ATN	Action Taken Note
BAS	Business Auxiliary Service
BE	Budget Estimates
BIFR	Board for Industrial and Financial Reconstruction
Board	Central Board of Indirect Taxes and Customs
CAAP	Computer Assisted Audit Programme
CAAT	Computer Assisted Audit Techniques
CAS	Central Agency Section
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CBIC	Central Board of Indirect Taxes and Customs
CC	Chief Commissioner
CCR	CENVAT Credit Rules
CDR	Commissionerate Division and Range
CDR	Chief Departmental Representative
CE/CX	Central Excise
CESTAM	Central Excise and Service Tax Audit Manual
CENVAT	Central Value Added Tax
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CFA	Clearing and Forwarding Agent

CGST	Central Goods and Services Tax
CMA	Civil Miscellaneous Appeal
CNG	Compressed Natural Gas
CSO	Central Statistical Office
CTC	Commercial Training or Coaching
CTF	Centralized Task force
CVD	Countervailing Duty
DDM	Directorate of Data Management
DG	Director General
DGA	Director General of Audit
DGCEI	Directorate General of Central Excise Intelligence
DGST	Director General of Service Tax
DLA	Directorate of Legal Affairs
DG GST	Director General of Goods and Services Tax
DoR	Department of Revenue
DGPM	Directorate General of Performance Management
DPC	Duties Powers and Conditions of Service Act
DNP	Data Not Provided
DRT	Debt Recovery Tribunal
DTA	Domestic Tariff Area
FAR	Final Audit Report
FY	Financial Year
GDP	Gross Domestic Product
GST	Goods and Services Tax
IAP	Internal Audit Party

IGST	Integrated Goods and Services Tax
ISD	Input Service Distributor
IT	Information Technology
ITR	Income Tax Return
LAR	Local Audit Report
MCM	Monitoring Committee Meeting
MIS	Management Information System
MOF	Ministry of Finance
MPR	Monthly Performance Report
MTR	Monthly Technical Report
NFS	National Financial Switch
NMV	Non Money Value
NPCI	National Payments Corporation of India
NT	Non-Tariff
OIA	Order in Appeal
OIO	Order in Original
OL	Official Liquidator
PAO	Pay and Accounts Officer
PD	Principal Director
Pr. CCA	Principal Chief Controller of Accounts
P&L	Profit and Loss
PAN	Permanent Account Number
PLA	Personal Ledger Account
QAR	Quality Assurance Report
RA	Revision Application

RnC	Review and Correction
RE	Revised Estimates
SAD	Special Additional Duty
SCN	Show Cause Notice
SEZ	Special Economic Zone
ST	Service Tax
SGST	State Goods and Services Tax
TAR	Tax Arrear Report/Recovery
UTGST	Union Territory Goods and Services Tax
VAT	Value Added Tax