DUTY DRAWBACK SCHEME

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS COMMITTEE
2014-15

SEVENTH REPORT

SIXTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

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(DEPARTMENT OF REVENUE)

Presented to Lok Sabha on 11.12.2014
Laid in Rajya Sabha on 11.12.2014

LOK SABHA SECRETARIAT
NEW DELHI

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(2014-15)

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* Elected w.e.f. 3rd December, 2014 *vice* Shri Rajiv Pratap Rudy who has been appointed as Minister w.e.f. 9th November, 2014.

** Elected w.e.f. 3rd December, 2014 *vice* Shri Jayant Sinha who has been appointed as Minister w.e.f. 9th November, 2014.

*** Elected w.e.f. 3rd December, 2014 *vice* Dr. M. Thambidurai who has been chosen as Hon'ble Deputy Speaker, Lok Sabha and has since resigned from the membership of the Committee.

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* Elected w.e.f. 14th August, 2013 *vice* Dr. Girija Vyas appointed as Minister of Housing, Urban Development & Poverty Alleviation w.e.f. 17th June, 2013.

** Elected w.e.f. 3rd September, 2013 *vice* Dr. V. Maitreyan ceased to be a Member upon his retirement as a Member of Rajya Sabha w.e.f. 24th July, 2013.

*** Elected w.e.f. 3rd September, 2013 *vice* Dr. E.M. Sudarsana Natchiappan appointed as Minister of State for Commerce and Industry w.e.f. 17th June, 2013.

COMPOSITION OF THE SUB-COMMITTEE-III (DIRECT/INDIRECT TAXES)
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(2013-14)

Shri N.K. Singh — *Convenor*

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Lok Sabha

2. Shri T.K.S. Elangovan
3. Shri Sanjay Nirupam

Rajya Sabha

4. Smt. Ambika Soni
5. Shri Satish Chandra Misra

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2014-15), having been authorised by the Committee, do present this Seventh Report (Sixteenth Lok Sabha) on **'Duty Drawback Scheme'** based on C&AG Report No. 15 of 2011-12, Union Government (Performance Audit) relating to the Ministry of Finance (Department of Revenue).

2. The Report of the Comptroller and Auditor General of India was laid on the Table of the House on 23rd August, 2011.

3. The Public Accounts Committee (2011-12), the Public Accounts Committee (2012-13) and the Public Accounts Committee (2013-14) took up the subject for detailed examination and report. A Sub-Committee on Direct/lndirect Taxes specifically constituted for the purpose under the Convenorship of Shri N.K. Singh, MP and a Member of the Public Accounts Committee (2013-14) procured written replies and took evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject at their sitting held on 11th September, 2013. The draft Report on the subject was finalized and approved by the Convenor and subsequently approved by the then Chairperson, PAC. However, due to dissolution of the Fifteenth Lok Sabha, the draft Report could not be considered for adoption by the Public Accounts Committee (2013-14).

4. The subject was subsequently carried forward by the successor Committee (2014-15) for examination. The draft Report which was placed before the main Committee was considered and adopted at their sitting held on 25th November, 2014. The Minutes of the sitting are given at *Appendix I* .

5. For facility of reference and convenience, the Observations/Recommendations of the Committee have been printed in thick type in the body of the Report.

6. The Committee thank their predecessor Committee and the Sub-Committee for taking oral evidence of the Ministry of Finance (Department of Revenue) and obtaining the requisite information on the subject.

7. The Committee would also like to express their thanks to the representatives of the Ministry of Finance (Department of Revenue) for tendering evidence before the Sub- Committee and furnishing information in connection with the examination of the subject.

8. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

NEW DELHI;
08 *December,* 2014
17 *Agrahayana,* 1936 (*Saka*)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee.

REPORT

PART I

I. INTRODUCTORY

Duty Drawback is a duty neutralization scheme designed to promote exports. Its aim is to compensate all duties/taxes embedded in the cost of manufacture of exported products. The basic concept of the Scheme is that export products should not carry the country's taxes so that these are revenue neutral and can compete on an equal footing in the world market. Section 74 and Section 75 of the Customs Act, 1962, Section 37 of the Central Excise Act, 1944 and the Finance Act, 1944 empower the Central Government to grant duty drawback. During the period between April, 2006 and March, 2010 the total payment of drawback was 36,000 crore. The bulk of these payments were made on Section 75 cases.

2. Audit carried out a review of the Scheme in 39 out of 93 Customs Commissionerates across 12 States (Delhi, Maharashtra, Tamil Nadu, Kerala, Karnataka, Uttar Pradesh, West Bengal, Gujarat, Bihar, Punjab, Andhra Pradesh and Rajasthan) where the volume of drawback transactions was relatively higher and had altogether paid ₹31,616 crore as drawback out of the aforesaid total of ₹36,000 crore. Data accessed by Audit related to 34.58 lakh drawback cases out of 46 lakh cases (*i.e.* 75 per cent settled between April, 2006 and September, 2009) and executed queries on the data and scrutinized selected case files to examine the rules, regulations and procedure that were followed. This was done to identify ambiguities and lacunae that were required to be addressed; seek assurance that the fixation of All Industry Rates and Brand Rates was carried out in the prescribed manner; and identify instances of non-compliance to drawback provisions which was leading to loss of revenue.

3. For this, Audit also examined the fixation of the All Industry Rate in the Ministry of Finance, Government of India and Brand Rates of drawback in 28 Central Excise Commissionerates. Further, the Audit scrutinized the records of 19 Regional Director General Foreign Trade (DGFTs)/ Development Commissioners for drawback allowed on deemed exports, under the Foreign Trade Policy (FTP). The Audit review had revealed various deficiencies, lapses shortcomings and irregularities in the implementation of the Scheme. The gist of the Audit findings *inter-alia* is as follows:

(i) No supplementary rules had been framed under Section 74(3) of the Customs Act, 1962 laying down the parameters for identification of goods in case of re-exports;

(ii) The CBEC had not issued instructions specifying how to determine whether goods were "used" or not;

(iii) There were delays in claim processing and absence of floor value in the Customs Valuation rules for freight charges on exported goods;

(iv) Market verification of the declared price had not been initiated in cases where there was material difference between the declared price and declared market value;

(v) Fixation of All Industry Rate of drawback had not been fully documented; and

(vi) There were instances of non-compliance to rules and provisions on processing of time barred claims, delay in fixation of brand rates, sanction of drawback on products not specified in brand rate letters and excess payment of drawback due to mis-classification.

4. Against the above backdrop, the Committee selected Chapters 2.1, 2.2 and 2.3 of C&AG Report No. 15 of 2011-12 (Performance Audit), Union Government (Indirect Taxes - Service Tax and Customs) on 'Service Tax Banking and Other Financial Services and Duty Drawback Scheme' for examination and report. In the process, the Committee obtained the requisite information/materials/written replies from the Ministry of Finance (Department of Revenue). The Committee also took oral evidence of the representatives of the Department. Based on the information gathered and examination of the testimony, the Committee proceed with the examination of the issues in detail in the succeeding paragraphs.

II. DRAWBACK ON RE-EXPORTS: SECTION 74

(a) Identification of goods

5. Audit scrutiny revealed that no supplementary rules have been framed under Section 74(3) *ibid* laying down the parameters for identification of goods in case of re-exports. In the absence of specific instructions the establishment of such identity remained with the discretion of the concerned Assistant Commissioner of Customs. Test check of cases indicated that the markings on the export items were used as an important criterion for identification. However, Audit scrutiny revealed instances of discrepancy in other parameters like dimension, gross weight, chemical properties, etc. Audit found 12 such cases involving drawback payment of ₹ 1.42 crore. The nature of the discrepancies in these cases are as follows:—

(i) There was a significant rise in gross/net weight of the re-exported goods;

(ii) Identity of the imported item was established only with reference to the markings in the drums and names of enzyme indicated in the Bill of entry; and

(iii) Re-exported goods were identical to goods lying in the import area which were related to other consignments.

6. In the above context, the Committee sought to know the measures taken by the Ministry for identifying re-exported goods with the originally imported items. In reply, the Ministry submitted as under:—

> "The Ministry has issued Instructions *vide* Circular No. 46/2011- Customs dated 20.10.2011 that identification of goods require examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, documentary evidences *vis-à-vis* import documents, etc. and that the Assistant/Deputy Commissioner of Customs shall pass a speaking order, following the principles of natural justice, giving detailed reasons with regard to establishing the identity or otherwise of the goods under re-export while sanctioning drawback (either in full or part) or denying it".

7. Asked about framing and issuing supplementary rules for identifying re-exported goods, the Ministry replied as under:—

> "Audit recommendations were implemented by issuance of instructions *vide* Circular No. 46/2011-Cus. dated 20.10.2011 prescribing that identification of goods require examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, documentary evidence *vis-à-vis* import documents, etc., and directing that Assistant/Deputy Commissioner shall pass speaking order, following the principles of natural justice, giving reasons with regard to establishing the identity of goods under re-export while sanctioning the drawback (either in full or part) or denying it. These speaking orders passed are subject to review by Commissioner and can be appealed against by department or the exporter as per provisions under the Customs Act, 1962.
>
> In view of the above stated framework to mandatorily pass reasoned speaking order in each case of re-export, which are subjected to mandatory review by Commissioner who may order filing of appeal in deserving cases, the Ministry is, at present, not considering issuing supplementary rules as the Instruction shall serve the purpose".

8. The Committee then specifically enquired about the action taken in cases illustrated by Audit and recovery made thereon. In reply, the Ministry stated as under:—

> "With respect to identification of re-export goods, 12 cases involving drawback payment of ₹ 1.42 crore were illustrated by Audit.
>
> All the cases were verified. In 11 cases the identity of the goods under re-export was found to have been established and the manner of identification was satisfactorily explained. In the case of Syncrolift Inc., the demand of drawback ₹ 1.11 Lakh is confirmed, and the DGFT requested to suspend the importer-exporter code".

9. On being asked whether the Ministry reviewed similar cases other than those highlighted by Audit, the Ministry apprised as under:—

> "The Ministry had brought the entire Audit Report to notice of field formations. The status of review received from 8 Customs Zones indicates that similar cases have not been noticed".

10. The Committee further enquired whether the Ministry had adopted any system for cross verifying physical properties of goods placed for re-export along with the documentary declarations. To this, Ministry replied as under:—

> "Export requires physical presentation of the goods declared in the shipping bill. In case of re-export under claim for drawback the Section 74 requires the goods to be identified as the goods which were imported. Thus, prior to allowing the export, examination of the goods is done to check that the goods are the same goods on which duty had been paid on importation.
>
> This involves cross-verification of the goods placed for export, along with the documentary declarations like bill of entry, import invoice.
>
> The Ministry's Instructions *vide* Circular No. 46/2011- Customs dated 20.10.2011 also direct, *inter alia*, that identification of goods may require examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, documentary evidences *vis-à-vis* import documents, etc".

11. Responding to the Audit observations that the Department of Revenue might consider issuing necessary instructions/frame rules under section 74(3) indicating parameters for identification of re-exported goods with the originally imported items, the Ministry *inter-alia* submitted as under:—

> "It may be noted that considering the spread of commodities under re-export, it may not be possible or advisable to specifically lay down parameters in each and every case of re-export. The basic issue which needs to be appreciated is that the proper officer, in terms of the statute, is expected to exercise due diligence before being satisfied that the goods under re-export, are indeed the identical goods which had been imported. It is felt that laying down parameters and guidelines for field officers to exercise due diligence in establishing the identity of the goods to his/her satisfaction. It is feared that while such instructions may or may not benefit the officers, it would almost certainly result in routine denial of the benefit.
>
> The Ministry has since issued circular no. 46/2011-Cus. dated 20.10.2011 directing the officers to ensure that detailed speaking orders are issued specifying the reasons why the re-exported goods have been held to be fulfilling the requirement of section 74 or otherwise".

12. In this regard, the Committee wanted to know the reasons due to which the Ministry was unable to lay down parameters in case of re-export and the reasoning of the Ministry was:—

> "Ministry examined the matter and noted that because of the spread of commodities under re-export it may not be possible to lay down specific parameters in each and every case; that specific parameters could constrict and restrict the officer's capacity to exercise due diligence in identifying the goods and lead to routine denials of benefit to exporters.

Since under the Customs Act, 1962 the identity of the goods has to be established to the satisfaction of the Assistant Commissioner of Customs, the Ministry recognized that the basic issue was that this should be through the exercise of due diligence. Therefore, the Circular No.46/2011- Customs was issued illustrating the nature of some of the parameters relevant for identification but directing that reasoned speaking orders should be issued in each case".

(b) Determination of use

13. According to Audit there were no instructions of the board specifying how to determine whether goods were "used" or not. Test check of cases in Audit indicated that a large number of goods fulfilled the criteria for "used after import" but were treated as unused goods. In 55 such cases drawback paid was ₹ 1.74 crore.

14. With regard to the above, the Committee enquired about the guidelines issued by the Ministry/Department in respect of imported goods which are re-exported after being used or otherwise. In reply, the Ministry submitted as under:—

"The Shipping Bill provides for the exporter to make declaration whether the goods had been taken into use or not after importation.

The Ministry has issued Instructions *vide* Circular No. 46/2011- Customs dated 20.10.2011 that it is to be determined if the goods had been used after import in the cases where drawback under section 74 is claimed, and that the Assistant/ Deputy Commissioner of Customs shall pass a speaking order following the principles of natural justice giving detailed reasons with regard to determination of use, if any, while sanctioning drawback".

15. When asked about the monitoring system put in place to ensure that drawback is not paid to ineligible goods, the Ministry submitted as under:—

"In cases of re-export under claim for drawback, the eligibility of the goods to drawback is dependent not only on their identification as the goods which had been imported on payment of duty but also with reference to the goods being unused or used after importation and this is subject to the satisfaction of the Assistant/Deputy Commissioner of Customs and not of any officer lower than that rank.

Secondly, all payments of such drawback are subject to internal audit.

After the Audit pointed out instances amongst which there were certain cases where ineligible drawback was paid and recommended to clarify the typical conditions when goods would be treated as used, the Ministry examined the matter further.

Consequently, by issuing Circular No.46/2011-Customs and No.35/2013- Customs mandating that Assistant/Deputy Commissioner of Customs shall pass speaking order on identification, determination of use of the goods and all aspects of compliance with the legal provisions, a framework of quasi-judicial decision has been introduced whereby the Assistant Commissioner is bound to consider all aspects and come to a reasoned finding.

This has the added advantage that the Commissioner of Customs becomes bound to examine the order and satisfy itself of the legality and propriety of the decision, and accept or file an appeal against the decision in terms of section 129D(2) of Customs Act, 1962".

16. Regarding the outcome of the Ministry's consultations with their field formations on this issue, the Committee were apprised as under:—

"Audit observed 55 cases involving ₹ 1.74 crore relating to determination of use. These were checked in consultation with field formations. The outcome indicates that —

(a) In 27 cases it was established that the goods were either unused or the lower drawback was paid taking into account that the goods were used;

(b) In 28 cases involving ₹ 38.11 lakh, recovery has been made in 1 case, 7 cases are confirmed and 20 cases are under adjudication".

17. The Ministry further stated that of the 20 cases earlier reported under adjudication, in 16 cases the drawback (including interest) ₹ 9.08 lakh had been recovered and 4 cases, involving drawback ₹ 7.97 lakh, remained under adjudication.

18. To the view that the Department of Revenue might issue suitable instructions to clarify the typical conditions under which goods are to be treated as "used after import", the Ministry *inter alia* stated that Circular No. 46/2011-Cus. dated 20th October, 2011 had since been issued directing the officers to pass detailed and reasoned speaking orders covering both these features before sanctioning the drawback claims under Section 74 or otherwise.

19. On being enquired about the outcome of the aforesaid Circular, the Ministry replied as under:—

"The Circular No.46/2011 — Customs was issued on 20.10.2011 directing passing of speaking orders on issues of establishment of identity and 'determination of use'.

Between November 2011 and June 2013, a total of 2442 speaking orders have been passed and in 13 cases the Commissioners were not satisfied of the legality and propriety of the decisions and ordered filing of appeal.

Making "determination of use" a quasi-judicial process after the exporter has declared that the goods were not taken into use or were taken into use would ensure that the Assistant/Deputy Commissioner of Customs takes into account and records all relevant facts and aspects for arriving at a decision.

This is expected to ensure due diligence and lead to avoidance of doubtful cases in future, especially since the head of office, namely the Commissioner, has to also subsequently satisfy itself that the determination of use or non-use was legal and proper".

(c) Time Barred Claims and Delayed Replies to Deficiency Memo

20. As per Rule 5 of Re-export of Imported Goods Rules, 1995, a claim for drawback shall be filed with relevant documents within three months from the date on which Let Export Order (LEO) is granted. If the Assistant Commissioner of Customs is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, he can allow the exporter to file his claim within a further period of three months. Sub rule 5(3) states that the date of filing of the claim shall be the date of affixing the dated receipt stamp on the claim which is complete in all respects and for which an acknowledgement is issued. Further, as per sub-rule 4(a) of Rule 5, any claim which is incomplete in any material particulars or is without the documents shall not be accepted and returned to the claimant with deficiency memo within 15 days of submission and shall be deemed not to have been filed. Where exporter complies with the requirement specified in deficiency memo within 30 days from the date of receipt of deficiency memo, the same will be treated as a claim filed under Sub-Rule (1) of Rule 5.

21. Audit scrutiny revealed that in 54 cases in Bengaluru, Chennai, Delhi, Hyderabad II and Kandla, time barred claims were admitted and drawback of ₹ 1.19 crore was paid. Audit also found that 171 claims were filed in ACC Shamsabad under Hyderabad II during the review period. The Department had neither affixed receipt stamp nor issued acknowledgment in any of these cases. Even though internal audit of these payments were carried out in the Commissionerates at Hyderabad, no observations in this regard were made in any of the Commissionerates.

22. Asked to explain the cases revealed in Audit scrutiny wherein time barred claims had been admitted and drawback paid, the Ministry submitted as under:—

> "The reference here is to processing of certain cases of re-export drawback under section 74 of Customs Act, 1962. Such instances may be said to arise from lesser than desired diligence. Moreover, if the error had been pointed out by Internal Audit it would have ensured much earlier remedial actions on compliance and systemic fronts".

23. The Ministry further submitted as under:—

> "All the 54 cases pointed out by Audit were reviewed. One case of M/s Golconda Corrosion (involving drawback of ₹ 0.99 lakh) has not been admitted.
>
> Out of remaining 53 cases involving ₹ 117.81 lakh, in 7 cases recovery of ₹19.51 lakh (drawback amount ₹ 15.99 lakh alongwith interest ₹ 3.52 lakh) has been made, in 41 cases demands for ₹ 74.22 lakh are confirmed and remaining 6 cases (amount ₹ 27.58 lakh) are under adjudication".

24. On being asked about the checks and balances put in place to ensure that such irregularities do not recur, the Ministry stated as under:—

> "Ministry's Instructions dated 31.7.13 had directed field formations to, *inter alia*, ensure due diligence in the application of Rule 5 of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

Since the Ministry had also earlier issued Instructions that speaking orders are to be issued in re-export (section 74) cases, a further Circular No. 35/2013- Customs dated 5.9.2013 was issued directing that the aspect of how the provisions, of the various sub-rules of said Rule 5, are satisfied or not satisfied, as also other attendant aspects relevant to sanction of the re-export drawback, should invariably be covered in the speaking order issued by the officer. The coverage of such details in the speaking order in original is expected to ensure due diligence by Assistant/Deputy Commissioner of Customs.

With each order in original being required to be specifically examined by the Commissioner of Customs for its propriety and legality, a double check against irregularities is ensured".

25. With respect to the 171 cases filed in ACC Shamsabad under Hyderabad II, the Committee called for the reasons for the lapses and the failure of the internal audit to point them. To this, the Ministry submitted as under:—

"The matter was examined in consultation with the field formation. It is reported that in order to determine the date of filing the claim to check that the claims were not time barred, the ACC Shamsabad was maintaining a drawback register containing details of name of claimant, date of claim, file number, shipping bill details, drawback amount claimed, etc. The time barred claims could be ascertained from shipping bill details and date of claim in the register. Out of the 171 claims for the period April 2006 to March 2009, 6 claims were rejected on account of time bar and 23 claims were rejected on account of other reasons such as non-submission of documents. In the balance 142 cases, the precautions for monitoring eligibility were taken by ACC Shamsabad. As a result, there was no lapse in processing the drawback claims and due precautions were taken in monitoring the eligibility.

It appears that on account of the maintenance of the above-mentioned drawback register, the aspect, that neither receipt stamp was being affixed nor acknowledgments issued, remained to be pointed out by Internal Audit. Commissioner Hyderabad-II has reported that the point made by Audit had been noted for the future".

III. DRAWBACK ON EXPORTS: SECTION 75

(a) Delays in Claims Processing

26. Section 75A of the Customs Act 1962 provides that where any drawback payable to claimant is not paid within one month from the date of filing of the claim, interest at six per cent *per annum* is to be paid to the claimant thereafter. In 2002, the Board directed that drawback claims should be cleared within 3/5 working days from the date of shipment and electronic filing of EGM where processing is done online/manually. As per Drawback Rules, if a drawback claim is incomplete, deficiency memo is to be issued to the exporter within 10 days. Audit examined the drawback transactions data pertaining to Andhra Pradesh and Gujarat and found significant delays in processing drawback claims in the Commissionerates situated in these locations. In Andhra Pradesh,

Audit noted delays in processing in 10,177 cases — more than half of which were processed after more than three months. In 20 per cent of these claims, settlement was delayed beyond a year. In Gujarat, out of 88,000 claims analysed/queried, delays occurred in 20,856 (23.7 percent) cases. Delayed settlement of cases held up the payment of drawback and in 4048 cases of delayed processing at Kandla and Ahmedabad Audit found deficiency memos were raised much later (ranging from 31 days to more than 2 years) after filing of claim. Similarly, 2,276 claims settled at Bihar, Mumbai, Rajasthan and UP, Audit noted delays between 13 days to four years in processing the claims. Audit also found that the queries were raised much beyond the stipulated time of 10 days. Moreover, numerous queries were incomplete with comments like 'please produce documents' without clearly specifying the deficiencies.

27. In the above context, the Committee enquired whether the Ministry had examined the issue of delayed payments in respect of drawback claims. To this, the Ministry replied as under:—

> ‘‘The Ministry has noted that a time bound process for sanction of drawback is in place and generally adhered and the claims are being processed in a faster and transparent through automated processes. Further, under citizens’ charter of the department and "sevottam" certification initiative, the process has been defined against time lines.
>
> However, there are instances where the processing of the drawback claims gets delayed. A reason for this in certain instances, as observed by Audit as well, is that the deficiencies in the claim get pointed out beyond the stipulated period of 10 days. Other reasons include that generalized queries get raised and the time taken to communicate the deficiencies to the exporters. After sanction of claims there is also the time factor before consolidated payments are scrolled to the banks.
>
> From another perspective, a delay by the carriers incorrectly filing Export General Manifest (EGM) implies absence of proof of export to initiate the drawback process. Similarly, time taken by the banks to credit the exporters’ accounts, after Customs has scrolled payment to the bank, is also a factor".

28. Asked about the steps taken by the Ministry/Department to streamline the verification procedures to enable faster processing of claims, the Ministry explained as under:—

> "To streamline specifically the verification process—
>
> (a) The Ministry instructed *vide* Circular no. 46/2011-Customs dated 20.10.2011 that the field formations issue deficiency memo within the stipulated 10 days and take necessary action to resolve the matters in all such cases. It was also directed that drawback claims be disbursed in accordance with the timelines as specified in the citizens’ charter and that the Commissioners of Customs undertake periodic review and monitoring of the status of pending drawback claims;

(b) The Board's letter dated 26.6.2012 directed that the tendency to raise generalized queries is to be checked and the concerned officers, as well as their supervisory officers, should to be made responsible if the norm of specificity in queries is violated;

(c) The Customs EDI system has provided Importer-Exporter Code-wise facility to view status/reasons of pending drawback shipping bills. This shall ensure timely communication of deficiencies/queries to the exporters.

From the larger trade facilitation perspective,—

(a) The Board's letter dated 26.06.2012 directed the Chief Commissioners to include in their monthly monitoring, the levels of pendency of Export General Manifests (EGMs) not filed, of EGMs filed in error and of non- filing of stuffing reports. It was also directed to begin monthly monitoring of dwell time (from time EGM is correctly filed to the time of actual scrolling out of payment to the bank)for ensuring performance levels;

(b) The Customs EDI system was enabled with Importer-Exporter Code-wise facility to view the date the Customs have scrolled payment to the banks. This enables exporter to take up the matter with the bank, if necessary; and

(c) A sample study has been initiated to ascertain time taken by banks for disbursal of drawback payments into the exporter's accounts".

29. When specifically asked as to how the cases of delayed payments were monitored regularly by the Commissionerates, the Ministry submitted as under:—

"The EDI system makes every officer aware of the work in his/her work queue and this is monitored daily by senior officers through officer-wise pendency and disposal reports in EDI. Overall monitoring to avoid delay is separately enabled by several reports that can be generated indicating pendency breakup on account of the various reasons such as shipping bills for which EGM is yet to be filed or is filed with errors, query reply pending, samples sent for testing, whether pending with Superintendent or Assistant Commissioner, etc. The monitoring of dwell time (from time EGM is correctly filed to the time of actual scrolling out of payment to the bank) highlights the time taken at pre-defined stages and can also be effectively used by Commissioners to improve performance levels".

30. On being asked whether any study on dwell time of customs procedure was conducted, the Ministry apprised as under:—

"The Ministry had addressed letter dated 26.06.2012 to the Chief Commissioners to begin monitoring of dwell time for drawback and to ensure that performance level set by Citizens' Charter is met by the Commissioners. This letter has also been made part of Ministry's Instructions dated 31.07.2013. However, no specific study on dwell time for drawback has been conducted by Ministry".

31. In this regard, the Chairperson, CBEC while deposing before the Committee testified as under:—

> "There is a demand by the exporters that the drawback should not be withheld. So, in our desire to expedite the process, we have laid certain mechanisms in place which ensure that as soon as the exporter submits his papers, within a span of five days' time, it is done".

32. On being pointed out that in a number of cases, it had not been done in five days but had taken enormously long time, the Chairperson deposed as under:—

> "I am sure that is also correct. There would be certain cases where there would be a delay. Perhaps, the delay may be on account of the documents not available. I am not saying that in all the cases, we are right".

33. Asked if lack of proper dissemination of information regarding the documents that were to be submitted was causing delays in claims process, she further deposed as under:—

> "Very rightly. These do exist. I accept that. To tide over that, we have issued instructions, as the Revenue Secretary has just mentioned. There is the Circular of 2011 which you mentioned. There are subsequent instructions which have been reiterated. You would appreciate that there is large number. There are 114 EDI locations where I am implementing this. There are about 14 banks where this facility does exist. So, there are bound to be some delays. Perhaps, some places may not be so desirable. So, to overcome that, we are doing our best to make sure that there are no generalised queries and these are not raised time and again; they should be raised in a comprehensive manner at one point of time so that we can take care of that.
>
> You have expressed concern about export proceeds. On the one hand, we are trying to expedite it, trying to ensure that there is no harassment to the exporters. On the other hand, we have also to ensure that the export proceeds come on time. For that, we have very well-defined drawback disbursal mechanism and also a monitoring system is in place. We are constantly in touch with the RBI. We are working on something called the e-BRC modules. We have been working on it very hard because there are delays. So, they have assured us that the feed for modules would be in place by December, 2013''.

34. To a pointed query as to whether the filed documents which were found to be deficient were being communicated to the applicant within the stipulated period of 10 days, the Ministry responded as under:—

> "Once the Export General Manifest (EGM) is correctly filed by the carrier of the goods, the EDI system retrieves the shipping bill and places it in the drawback queue for processing. From this stage, the deficiency is to be raised and communicated in 10 days.
>
> On the aspect of communicating the deficiency, the Department has recently enabled the exporter to directly view the shipping bill-wise reason/query for

pendency in the EDI system. This is expected to effectively communicate the matter to the exporter.

The Circular 46/2011 — Customs dated 20.10.2011 has directed raising and communication of deficiency/query within stipulated period of 10 days.

However, a general assessment indicates that it may not be always possible to adhere to the10 day limit in every case. Part of the reasons lie in the "batch" and "queue" nature of processing. Moreover, the officers also handle multiple screens relating to query, query reply, sanction of drawback, scrolling of drawback payments. Aspects such as intervening holidays or leave periods also have a bearing. The quantum increase in workload from 1.10.2010, when erstwhile DEPB items began to be exported under drawback scheme, is also a factor.

However, the field formations shall make every effort to adhere to the time limit of 10 days".

35. Pursuant to the Ministry's admission that it may not be possible to adhere to the 10 day limit in every case for some reason or other, the Committee wanted to know whether the Ministry had conducted any study as to what extent delay was attributable to the aforesaid reasons. In reply, the Ministry stated as under:—

"While a specific study has not been made, it is relevant to mention that the number of drawback shipping bills has increased from 14.73 lakh in 2010-11 to 28.40 lakh in 2012-13. Thus, there is a distinct effect of increased work load from 01.10.2011 onwards. The Ministry had sensitized the field formations in this regard in advance *vide* letter dated 23.09.2011".

36. When asked to provide the details of the delay in settlement of claims in 2,276 cases in Bihar, Mumbai, Rajasthan and Uttar Pradesh along with the details regarding the period of delay and amount involved therein, the Ministry apprised the Committee as under:—

"In various locations in Rajasthan, Audit observed delay of 30 days to 1813 days in 2135 cases. This involved drawback of ₹ 9.87 crore. It is reported that delay was due to various reasons on account of exporters. At ICD Agra in Uttar Pradesh, Audit observed delay of 13 to 17 days in 22 cases. It is reported that time taken in granting drawback was on account of incomplete claims where deficiency memo was issued and claims settled after required documents were filed. At ICD Saharanpur in Uttar Pradesh, Audit observed delay of 17 to 300 days in 10 cases. It is reported that in most of the cases the delay is due to deficiency of documents submitted at the time of filing drawback claims.

At, JNCH in Maharashtra, Audit observed delay of 50 to 420 days in 37 cases. These cases related to section 74 drawback of ₹ 1.68 Cr. and time taken were on account of factors such as collection of certificates from Central Excise and Banks and verification of imports from other ports.

In Patna (Preventive) Commissionerate in Bihar, Audit observed delay of 30 days to 4 years in 72 cases. It is reported that export under drawback scheme

to Nepal is governed by special conditions and procedures under Notification No. 208- Customs dated 1.10.1977. The claim also does not become due till certificate (signed by bank) of receipt of sale proceeds is produced".

37. Asked whether any time frame was being considered to comply with deficiency memo by exporters as in the case of Section 74, the Ministry replied as under:—

"In the rules framed under Section 74, when a claim is returned with a deficiency memo to the exporter, it is treated as filed when the exporter complies with the requirements specified in the deficiency memo within 30 days of receipt of the deficiency memo.

The nature and purpose of Sections 74 and 75 of Customs Act, 1962 are quite different. Drawback on re-export under Section 74 is a refund of duties paid at the time of import and the number of such cases is relatively very less. On the other hand, Drawback on export of goods under Section 75 is in relation to goods manufactured in India, and it is a rebate of duty/tax chargeable on input materials or input services used in the manufacture of goods exported. Keeping this difference in view, as well as because Section 75 drawback is a factor in export pricing and competitiveness, such a provision does not have relevance for Section 75 cases".

38. With regard to the delay and deficiencies in raising queries, the Committee sought the Ministry's views and desired to know the action taken to ensure that the queries were raised within the stipulated time of 10 days. The Ministry submitted as under:—

"The Board's letter dated 26.6.2012 instructed the Chief Commissioners that any tendency to raise generalized queries that do not clearly specify the exact deficiency is to be checked and that the concerned officers, as well as their supervisory officers, need to be made responsible if the norm of specificity is violated. This letter has also been placed in public domain on CBEC website along with Instruction No. 603/01/2011-DBK dated 31.7.2013. Secondly, the Customs EDI system has recently provided the Importer-Exporter Code-wise facility to view the queries raised. Both these measures, taken together, are expected to minimize any tendency to raise generalized queries".

(b) Declaration of Freight

39. For claims U/Sec. 75, drawback is allowed on *ad valorem* basis on the FOB value. Wherever transaction value is inclusive of freight cost, the freight component is reduced from the transaction value and drawback is paid on the FOB value. In May 2000, the Department issued a circular which mandated the exporter to declare the actual freight paid or payable by him on the shipping bill. The circular, *inter alia*, stated that the Commissioner of Customs should also ensure that a regular test check of 10-15 per cent of claims be carried out to verify the declaration of freight by the exporter and take appropriate action on mis-declaration. However, unlike Rule 10(2) of valuation rules for imports (which considers freight at 20 per cent of FOB value when

not ascertainable), no floor value has been imposed in Customs Valuation rules for freight charges on exported goods.

40. The above provisions imply that it is possible to claim a larger sum as drawback by under declaring the freight value. Audit reviewed the freight declarations made by exporters by running SQL queries on the transactions data and found that the freight declared was less than five per cent of FOB value in a significant number of cases in Gujarat, Punjab, Karnataka and Tamil Nadu. In 4,519 out of the 88,000 cases (5.13 per cent) in Gujarat (Ahmedabad and Kandla Commissionerates) the freight declared was found to be less than 1 per cent indicating risk of underreporting of freight.

41. On the Audit findings, the Ministry submitted as under:—

"Audit found the freight declared was less than 5 per cent of FOB value in a significant number (approx. 20%) of cases in certain States and in 4,519 cases in Ahmedabad and Kandla Commissionerates, the freight declared was less than 1% of FOB value. Audit observed that in absence of floor value for freight, there can be possibility of claiming higher drawback on an over-declared FOB value by under-declaring the freight value. Hence, the sample verification through test check of 10- 15% of the freight declarations, as mandated by Circular No.44/2000 — Customs dated 15.05.2000, assumed significance and should be implemented strictly by the Board.

The Ministry agrees with the above observation. *Vide* Circular No. 46/2011 — Customs dated 20.10.2011, the Ministry has directed the field formations to ensure that periodic sample checks and verifications are carried out with respect to the actual freight payment certificates and the previous Circular be strictly followed. In addition, for the cases indicated by Audit, the Ministry's letter dated 15.7.2013 has directed concerned Commissioners to conduct sample verifications as follows — 100% where the freight as percentage of FOB value is upto 1%, and 10% in cases where it is upto 5%".

42. On being asked whether random verification of freight values of 10-15 per cent cases as stipulated in the May 2000 Circular had been carried out, the Ministry submitted as under:—

"The verification is carried out by field formations headed by the Commissioners.

The Ministry collated information on sample verification of the actual freight payment certificates during the period 1.4.2011 to 31.5.2012.The period involved covered 7 months prior to Ministry reiterating (on 20.10.2011) the instructions for sample verification of actual freight payment certificates and the subsequent 7 months. It was reported that 3529 freight certificates were got specifically verified and ₹ 4.75 lakh drawback with ₹0.02 lakh interest was recovered.

In addition, the field formations reported that the amount of freight declared at the time of export is bein7g compared with that shown in the relevant bank realization certificate when submitted in respect of export proceeds and action for recovery of excess drawback, if any, is taken. However, separate data is not available for this".

43. Asked about the steps taken by the Ministry for determining and fixing a suitable floor value for freight charges on exported goods, the Ministry apprised the Committee as under:—

"It was noted that the possibility of deducting a standard freight @ 16% to arrive at the FOB value was considered earlier and the Board's Circular No.44/2000 — Customs dated 15.5.2000 had conveyed that considering very large number of shipments under drawback claims, it would cause considerable administrative problems if provisional drawback was given on that basis and later supplementary drawback claims on the basis of actual freight were to be handled. Therefore, it had been decided that the exporter must generally declare the actual freight paid or payable.

Ministry further noted that the freight component of an export consignment depends upon varying factors such as destination, type and mode of carrier, airway bill/ bill of lading issued on volume basis, nature of goods being perishable, etc.

For these reasons, Ministry viewed that determining a floor value for exports may not be feasible and practical".

44. Asked whether the Ministry were considering using EDI data to detect cases of under declared freight value, it was replied as under:—

"(a) Ministry had issued Circular No. 46/2011 dated 20.10.2011 directing field formations for sample verification of actual freight certificate. Further, Instructions dated 11.10.2013 have highlighted the importance of regular sample checks of the veracity of declarations made by exporters (including actual freight certificate where price declared on CIF or CIF basis) that are accepted for disbursal of AIR drawback and directed that these should be regarded as a form of audit checks for which proper record should be maintained. Hence, Board has taken the requisite steps for strict implementation by the field formations;

(b) D.G. (Systems) has been given the mandate to integrate export realization data feed (once received from RBI under future arrangement) with the ICES. This feed is expected to include the field for freight and would enable cross check of details".

45. To a query as to whether a suitable floor value for freight could be determined and fixed, the Ministry replied as under:—

"The freight component of an export consignment depend upon varying factors such as destination, type and mode of carrier, AWB/BL issued on volume basis, nature of goods being perishable etc. Therefore, determining a floor value for exports may not be feasible and practical. However, the instructions for verification of freight amount based on actual freight payment certificate have been issued and reiterated *vide* Ministry's circular no. 46/2011 — Cus. dated 20.10.2011".

46. On being specifically asked about the effectiveness of the aforesaid Circulars issued by the Ministry and how the Ministry monitored the field formations, the Ministry replied as under:—

> "The recovery of excess drawback indicates that regular verification of actual freights is an effective mechanism to check over payment.
>
> To ensure uniformity in implementation, certainty in data and improved monitoring, the Ministry is prescribing a 6-monthly report regarding verification of freight declarations.
>
> Separately, the Ministry is working on a future arrangement with the Reserve Bank of India to electronically receive a feed of bank realization data which the banks would be obliged to upload on a separate RBI server. It is intended to capture the freight in relevant cases in this feed. The Director General of Systems, CBEC has been mandated the task of integrating this future data feed with Customs EDI".

(c) Realisation of Export Proceeds

47. According to Audit the instruction issued by the Board in February 2009 for monitoring the realization of export proceeds through the Bank Realisation Certificate (BRC) module had not been followed by the field formations uniformly. While monitoring work had been initiated and SCNs were being issued to the defaulting exporters in six Commissionerates (Ahmedabad, Kandla, Chennai Sea, JNCH, Mumbai, Bengaluru)/ ICDs (Tughlakabad, Patparganj, and Rajsico) monitoring of realization through the BRC module had not been introduced in six Commissionerates, *viz.* Kolkata (Port), Kolkata (Airport), Hyderabad - II, Ahmedabad, Kandla and Cochin Commissionerates. In Bengaluru Commissionerate, where the monitoring had been initiated, Audit found that 150 letters issued to exporters, asking for submission of BRCs for exports involving drawback payment of ₹ 27.23 crore between 2004 and 2007, returned undelivered. In NCH, Delhi Audit were informed that the BRC module was unable to track outstanding realisations due to technical problems.

48. Asked about the steps taken by the Ministry/Department for timely submission of Bank Realisation Certificates by all exporters and entering the same into the system promptly, the Ministry apprised as under:—

> "Taking into account, *inter alia*, the legal provisions under section 75(1) of Customs Act, 1962 read with rule 16A of the Drawback Rules, 1995 an in-house mechanism, devised in consultation with trade and field formations and based on EDI but involving manual entry of realization details, has been introduced *vide* Circular No.5/2009- Customs dated 2.2.2009.
>
> To ensure timely submission of details of export realisation, the exporter is put on notice at the time of export itself with the due date for submission of realization certificates being printed on shipping bills. Further, the submission process is facilitated by requiring bank realisation certificates (BRCs) in six-monthly blocks and option is given to submit certificates in the form of negative statements from authorised dealers/statutory auditors.

For promptly entering the port-wise certificates, each Custom House is mandated to create a special cell and the Commissioner is to designate the officers who will make entries in the BRC module.

The progress of implementation has been reviewed periodically. In the Instruction No. 609/119/2010-DBK dated 18.1.2011, the Board emphasized the accomplishment of the work of feeding the details of BRCs/negative statements into the System in a methodical and time bound manner. *Vide* Circular No. 46/2011- Customs dated 20.10.2011, the field formations were directed to ensure proper data entry. *Vide* Instruction No. 609/35/2013-DBK dated 4.4.2013 the Board issued strong disapproval of instances where the exporters were asked to submit BRC/negative statements more than once and directed Commissioners to ensure proper management, guidance and close supervision of the reconciliation process.

It is relevant to mention that the process of issuing show cause notices following the reports generated from the BRC module has also acted to sensitize the exporters to timely submit the certificates.

The Ministry is working on a future arrangement with the Reserve Bank of India to electronically receive data feed of sales proceeds realization details including freight, commissions, item-wise realization, shipping billwise part payments, etc. that the banks would be obliged to upload on a separate RBI server. The Director General of Systems, CBEC has been mandated the task of integrating this future data feed with Customs EDI. This would not only reduce manual work of feeding reconciliation but also enable cross check of relevant details electronically".

49. On being asked about the implementation of the BRC module in all Customs locations, the Ministry submitted as under:—

"The BRC Module has been implemented at all EDI locations under Indian Customs EDI System (ICES). These number 114 at present and account for over 90% of the drawback paid. In few manual locations, export proceeds realization is monitored manually. In the case of exports to Nepal, Bhutan, Myanmar, Tibet, Sinkiang, on account of the risk of exported goods being smuggled back into India, the certificate of receipt of sale proceeds is a pre-condition to payment of drawback".

50. About the mechanism put in place to quantify the outstanding foreign exchange realization and drawback recoverable on those exports as on any particular data, the Ministry submitted as under:—

"The bank realisation certificate (BRC) Module will indicate all the cases of drawback shipping bills which are not accounted by the BRC/negative statement details fed manually by officers into the EDI system.

A standard report can be generated at each EDI location which provides the outstanding shipping billwise, authorized dealer code, FOB value in Indian Rupees and drawback amount.

It is possible to generate a special report to quantify the outstanding foreign exchange realisation against the said drawback shipping bills/FOB value".

51. Further asked whether any special cell had been set up for monitoring the Bank Realisation Certificates, the Ministry submitted as under:—

"Special cells were set up by field formations in terms of the following directions —

(a) Circular No.5/2009- Customs dated 2.2.2009 mandated that each Custom House shall create a special cell for management of declarations, amendments thereto, annexures, certificates, registers etc. The cell shall be responsible for keeping the declarations and other relevant papers in a proper manner and tracking the remittance of export proceeds. Further, officers will be specially designated by the Commissioner to verify the BRC/negative statement and to make entries in the BRC module. Notices are to be issued to recover drawback paid on export consignments in respect of which export proceeds have not been realized.

(b) Instruction No. 609/119/2010-DBK dated 18.1.2011 directed that the bank realization certificate (BRC) module should be implemented earnestly by all Custom Houses. Complete and effective implementation was highlighted that there should not remain any cases in the Custom Houses where the realization has become due but the exporter has not submitted BRC/negative statement and the SCN for such non submission has not been issued within a reasonable time. It was directed that further action including adjudication of the cases for recovery of drawback has to be accomplished in a methodical and time bound manner.

Ministry has collated that in the 4 years from 2009-10 to 2012-13, ₹56.83 crore drawback and interest was recovered on account of reconciliation work by Custom Houses. Of 30,349 show cause notices issued (drawback ₹7558 crore), as on 31.5.2013, 11,248 notices (₹4676 crore) had been dropped as reconciled, 16,687 notices (₹2672 crore) were under adjudication and 2,422 notices (₹ 210 crore) were confirmed under appealable orders. Ministry's letter dated 4.9.2013 has directed field formations for expeditious follow-up and disposal".

52. During oral evidence, the Committee desired to know the time period of realization of export proceeds, the quantum of export proceeds which were realized and yet to be realized and also whether the exporters delayed realization of export proceeds to get the benefit of the depreciation. The Ministry responded in a written submission as under:—

"(i) On 20.5.2013, the Reserve Bank of India (RBI) has reduced the time period for realization and repatriation to India, of the amount representing the full value of goods or software exported from twelve months to nine months from the date of export.

(ii) The details of all exports proceeds realized and yet to be realized obtained from Reserve Bank of India are as follows:—

Year	Exports proceeds realized (₹ in crore)	Exports proceeds yet to be realized to (₹in crore)	Exports proceeds yet be realized as percentage of total exports proceeds
2010-11	13,26,396	45,462.39 as on 30.6.11	3.31%
2011-12	17,30,564	75,677.20 as on 30.6.12	4.19%
2012-13	19,54,365	73,349.35 as on 30.6.13	3.62%

(iii) It would appear that reducing the time period for realization and repatriation of export proceeds suitably curtail a possible tendency by exporters to delay realization of export proceeds to get the benefit of the depreciation in situation where there is expectation of further depreciation".

53. The Committee also sought to know that if realization of export proceeds was not made within the specified time, whether the drawback alone was recovered or any penal action taken in this regard. The Ministry submitted as under:—

"Apart from drawback, the interest is also recovered from the date of payment of drawback till the date of its recovery. The interest is recovered in terms of section 75 A (2) of Customs Act, 1962. The rate of interest is 18% since 1.4.2011".

54. Asked whether the Department had given wide publicity to rules and norms disseminating information and the awareness that violation would lead to penal action, the Ministry submitted as under:—

"Yes. All the basic Statutes, Rules, Notifications, Circulars and Instructions are published on the Board's website. The Commissionerates issue Public Notices and Trade Notices which are also published on their respective websites. These facilities are freely accessible. This effectively disseminates information and awareness of all provisions including penal provisions".

(d) Declaration of Value

55. Board Circular No.7/2003 dated 5th February 2003 stipulates that exporter has to declare Present Market Value (PMV) of the goods in every case in the shipping bills. Market verification is to be initiated in cases where specific information is available that the FOB value declared is inflated or there is *prima facie* evidence to suggest such overvaluation and/or where the goods are sub-standard and it appears that the acceptance of the declared FOB value would result in accrual of substantial unintended drawback benefits.

56. In Hyderabad-II and Visakhapatnam Customs Commissionerates, Audit observed that during the period from April 2006 to September 2009, there were 984 claims where shipping bills showed Present Market Values (PMVs) that were lower than the Free on

Board (FOB). In 221 out of these 984 cases, Audit noted that the difference between the declared price (FOB) and the PMV was material. In more than 50 per cent of the 221 SBs, the FOB declared was about 10 times the PMV of the items. Although such differences fulfilled the criteria of *prima facie* evidence for triggering PMV enquiry, market verification was not done in any of the 221 cases.

57. The Committee sought to know whether any market verification was conducted in cases where the total claims in shipping bills showed Present Market Value lower than the FOB and what action had been taken in erroneous cases. Further it was also enquired whether the Ministry had any means to verify the declared value of the export goods. To these queries, the Ministry replied as under:—

> "Based on the Circular No.7/2003-Customs dated 5.2.2003, the Audit has observed the need for conducting Present Market Value (PMV) enquiries in the cases where PMV was lower than the FOB value, especially where the FOB was more than 10 times the PMV declared.
>
> There have been subsequent changes in legislation, which also need to be taken into account —
>
> (a) The Notification No.10/2006 - Customs (NT) dated 15.2.2006 amended the Drawback Rules, 1995 to insert rule 8A to provide that AIR drawback shall not exceed 1/3rd of the market price of the export product. Thus, apart from the limitation that drawback would become zero if drawback exceeded PMV, a further limitation was introduced that restricted drawback to a third of the PMV, irrespective of the extent to which the FOB was higher than PMV.
>
> (b) The Customs Valuation (Determination of Value of Export Goods) Rules 2007 were introduced with effect from 10.10.2007 to provide the legal basis for the valuation of export goods and to check deliberate over valuation. These rules have been framed emphasizing the acceptance of transaction value for export goods subject to rejection of declared value in certain exceptional cases on the basis of objectivity. The raising of doubts on the declared value is to be based on certain reasons which may include — (a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export (c) the mis-declaration of goods in parameters such as description, quality, quantity, year of manufacture or production.
>
> Hyderabad-II Commissionerate has reported that it has noted Audit's observations for future. However, with respect to the specific cases, it has been reported that many of the exporters were manufacturer-exporters. Further, they were awarded GMP (Good Manufacturing Practices) certificates by the concerned Drug Controllers/ISO 9002 certificates by the BIS and also the goods were FDA approved. Hence, the export goods were not sub-standard. Many exporters did not also have any domestic clearances. The proof of receipt of the export proceeds was produced.

In the case of Visakhapatnam Customs, in majority of the cases, the drawback sanctioned was based on the brand rate fixed by Central Excise. In two cases of AIR drawback, there appeared to have been incorrect feeding/typographical errors of PMV against certain items, which was not noticed during assessment. However, on 15 items pertaining to RAK Ceramics is reported that PMV is correct.

Ministry finds it relevant to state that in relevant cases where sufficient reasons exist, verification of market price is being undertaken by field formations. Details of the number of enquiries for present market value conducted with respect to goods presented for export or exported under AIR duty drawback during the period 2008-09 to 2012-13 were collated. A total of 780 such enquiries were conducted across the country. Hence, action is being taken by field formations in suspected erroneous cases.

On the question whether the Ministry has any means to verify the declared value of the export goods, it is relevant to mention that in deserving cases overseas enquiry may be done through the Directorate General of Revenue Intelligence under certain conditions".

58. On being asked whether any recovery of drawback had been made in selected cases, the Ministry apprised as under:—

"From amongst the cases highlighted by Audit, the Hyderabad - II Commissionerate has reported recovery of ₹11,477 with interest of ₹3,781 in 1 case. The Visakhapatnam Customs have reported that though there was evidently a typographical error or erroneous entry, an amount of ₹5,723 and an amount of ₹ 4,584 was paid by two exporters".

(e) Fixation of All Industry Rate of Drawback

59. The All Industry Rate (AIR) is fixed under rule 3 of Drawback Rules by the GoI for different commodities after an assessment of average incidence of Customs and Central Excise duties suffered on inputs utilized in the manufacture of export products. For fixation, average quantity and value of each class of inputs used in manufacture of any product class along with average amount of duties paid is considered. The rates are fixed for broad categories of products. The rate for any particular product group is fixed on the basis of weighted averages of consumption of imported/indigenous inputs of a representative cross section of exporters and average incidence of duties. Normally, the rates are revised every year from 1st June, *i.e.* after considering changes in duty rates made in the budget presented. The AIR is usually fixed as a percentage of FOB price of export products. However, in respect of many items specific rates are also notified to provide a ceiling on drawback.

60. The Drawback Committee decides the modalities of holding deliberations and meetings with the stakeholders and conducts field visits to study specific production processes as it may consider necessary for the formulation of All Industry Rate (AIR). It also interacts with the Administrative Ministries, Export Promotion Councils, Commodity Boards, Trade Bodies and other stakeholders to elicit their views on the existing Duty Drawback Scheme and the schedule (All Industry Rates).

61. Audit found that the working of the Committee to arrive at declared rates was not fully documented. The Directorate of Drawback could not produce year-wise data regarding cost sheets of various commodities, Import-Indigenous ratios of various inputs used in manufacture, details on manufacturing processes of various products, etc. that would have been the basis for fixation of AIR. Audit further found that the Committee had not submitted any calculation sheets/worksheets along with their reports to support the fixation of AIR. In the absence of working papers, Audit was not in a position to assess or verify the procedures adopted for determination of All Industry Rates of drawback. Further, the trend of rate revisions in the AIR drawback schedules *vis-a-vis* changes in import/excise duty rates could not be correlated.

62. In the above context when asked about the role of the Drawback Committee and sought explanation on the Audit finding that the Drawback Committee had not fully documented the way the declared rates were worked out, the Ministry apprised the Committee as under:—

> "The Drawback Committee interacts with Export Promotion Councils, Trade Bodies, Administrative Ministries and other stakeholders, conducts field visits to study production processes and works out modalities for calculation of Duty Drawback. The Committee suggests the All Industry Rates of Duty Drawback on the basis of broad parameters including, *inter alia*, the prevailing prices of inputs, input output ratios, share of imported materials, rates of duty, value of export goods and also factors the incidence of duty on packaging, HSD/Furnace Oil, service tax paid on taxable input services, etc.
>
> The Audit's observation that Drawback Committee had not fully documented the way the declared rates were worked out related to non-availability of calculation sheets/worksheets behind All Industry Rates suggested by the Committee. This was accepted by the Ministry and a beginning made in line with Audit observations from 2010-11 onwards".

63. To a query whether the Directorate of Drawback maintained year-wise data regarding cost sheets of various commodities, import-indigenous ratios of various inputs used in manufacture and details on manufacturing processes of various products, the Ministry submitted as under:—

> "The data and information sought and received, from various sources like Export Promotion Councils, Trade Associations, field formations, and Government Ministries/Departments/Organizations as well as gathered from representations from individual units, Government websites, CBEC databases and other sources, is segregated, broadly by sectors, and made available to the Drawback Committee.
>
> The Drawback Committee takes this information into consideration in working out the All Industry Rates for which it has begun to provide worksheets for major commodities indicating the input quantity and price, import-indigenous ratios, duty incidence, export value, etc. Consequently, the Drawback Division is also keeping the said data/information with the Drawback Committee's reports".

64. Further, when asked about how the All Industry Rates were fixed, the Ministry *inter alia* submitted as under:—

> "The All Industry Rate (AIR) is based on average quantity and value of inputs and duties (both excise and customs) borne and service tax on input services suffered in the manufacture of export product and is expressed as a percentage of ratio of the average duty incidence and the average FOB value, per unit of the export product.
>
> This is illustrated for the export item adult shoes made of leather (drawback tariff item No. 640305 for the Schedule effective 21.9.2013) in the attached worksheet.
>
> The quantum of individual inputs taken for making one shoe pair are multiplied with their average import/domestic price, import/indigenous ratio and the applicable duty rates to arrive at the customs and central excise portions of the duty incidence. The average prices are taken from National Import Database (NIDB) and the Council for Leather Exports. The said duty incidence has been totalled and then divided by the average FOB value of adult shoe pairs arrived from Export Commodity Database (ECDB) to get the *ad valorem* rate. Then, the average rates for duty incidence on fuel & packaging and for incidence of service tax have been individually factored in the worksheet to arrive at the AIR 'composite rate' of 9.1% and customs rate of 2.3%".

65. To a specific query as to whether the fixation of AIR for major commodities was documented, the Ministry stated as under:—

> "From 2010-11 onwards, except for the year 2011-12, the Drawback Committee has been documenting its worksheets indicating the input quantity and price, import-indigenous ratios, duty incidence, export value, etc. for certain major commodities under export which are used by the Committee for developing the schedule of All Industry Rates.
>
> In 2011-12, the erstwhile DEPB items were provided drawback rates in a transitional arrangement and keeping in view aspects such as over lapping products between Drawback and erstwhile DEPB scheme, Drawback Committee did not provide worksheets".

(f) Fixation of Brand Rate

66. As per the provisions of Rule 7 (1) of the Drawback Rules 1995, whenever an exporter finds that the amount or rate of drawback declared under the AIR schedule is less than four-fifth of taxes or duties paid on inputs, he may apply to the jurisdictional Commissioner of Central Excise for fixation of Brand Rate within 60 days from the first Let Export Order date which can be extended for further period of 30 days by the Commissioner. Board Circular No.14/2003 dated 6 March, 2003 prescribed that the jurisdictional Deputy Commissioner of Central Excise is required to carry out verification within a maximum period of 15 days from the date of receipt of a Brand Rate application in the Headquarters of the Central Excise Commissionerate and thereafter the Brand Rate is to be fixed within 10 days of receipt of verification report.

67. However, Audit found significant delays in Brand Rate fixation across the Commissionerates as detailed below:—

- In Delhi, 17,692 claims were pending settlement for more than three months as on January, 2010 due to delay in fixation of Brand Rates.
- In Central Excise Commissionerate, Mangalore, there were delays in 26 out of the 27 cases of Brand Rate fixation during the review period. The average time taken in verification by the Divisional Office was more than three months against the norm of 15 days. After receipt of the verification report, the Commissionerate took more than 8 months, on average, to fix the Brand Rate against the norm of 10 days. The entire process of fixation took almost a year.
- Similarly, in Commissionerate Excise Jaipur-I —for the 35 applications examined, the average delay in verification was found to be beyond three months and delay for rate fixation after verification was close to three months. The total delay in fixation of Brand Rate of drawback in each of the 35 cases examined was beyond 6 months.
- Delays upto one month were noticed in 104 cases in Hyderabad-IV Commissionerate as well.

68. With regard to the above Audit findings, the Ministry submitted the following:—

"The Ministry took up the matter with these jurisdictions. Hyderabad-IV Central Excise reported that in most of the cases, the delay arose from non-furnishing of required data/information by the assessee which deferred the required verification. Mangalore Central Excise reported that in many of these cases the exporter had submitted copies of application for removal for export (ARE-1) that did not bear the signatures of the Customs authority at port of export and that the verifications had involved a large amount of arithmetical calculations. Jaipur-I Central Excise has noted Audit's observations for future.

Reasons for delay reported on all-India basis were collated by the Ministry. Broadly, these include reasons attributable to exporters, such as non-submission of original documents and related documents/information, explanation of use of inputs and process of manufacture, inclusion of free shipping bills in claims, non-compliance with deficiency memo etc; and also reasons attributable to the nature of authentication being handled by field formations which involves voluminous documents requiring verification, process verification in cases where large number of inputs involved, large amount of arithmetic calculations, etc.

The Ministry *vide* Circular No. 46/2011-Customs 20.10.2011 has again directed the field formations to ensure that brand rate drawback claims are disposed in a time bound manner and to strictly follow the previous instructions".

69. Regarding the steps taken by the Department for quick disposal of Brand Rate claims in order to facilitate exporters (as prescribed in the Board Circular of 2003), the Ministry submitted that:—

"After the decentralization of work of fixation of Brand Rates to the Central Excise Commissionerates with effect from 1.4.2003, the matter was reviewed periodically to ease difficulties. Some of the important measures taken to facilitate exporters were following —

(a) *Vide* Circular No. 83/2003 dated 18.9.2003, as a matter of further decentralisation and for speedier issuance of the Brand Rate letters the power to decide fixation of Brand Rate involving duty drawback above ₹ 5 lakh without any limit was delegated to the Additional/Joint Commissioner of Central Excise.

(b) Board's letter No. 609/110/2005-DBK dated 26.8.2005 directed that subject to certain conditions, for five categories of exporters the rates were to be normally fixed without pre-verification of the data (verified and certified by applicant and chartered accountant/chartered engineer) and exporter authorized by Central Excise with a provisional Brand Rate letter (within 15 days where complete applications are filed) to claim the drawback from the Customs and the rates fixed revised if necessary based on *post-facto* checking to be completed within 2 months of the receipt of the application. It was also directed that in the case of other exporters (*i.e*. other than the above-mentioned five categories), the normal procedure for fixation of Brand Rate would apply. However, these exporters may be granted All Industry Rate (AIR) in respect of applications filed under Rule 7 (Special Brand Rate) pending verification and fixation of Brand Rates.

(c) *Vide* amendments dated 17.6.2010 to the Drawback Rules, 1995 the time limit for filing application for fixation of Brand Rate was revised from a maximum period of 90 days (from export including extension) to 12 months. These higher levels of extension were made allowable at level of field formations and advice issued that delays on the part of exporters may generally be condoned on receipt of the exporter's applications".

70. Asked whether the process of fixing Brand Rate had been streamlined and how the cases of delayed fixation of Brand Rate were being monitored regularly by the Commissionerates, the Ministry submitted as under:—

"The decentralization of work of fixation of Brand Rates to the Central Excise Commissionerates with effect from 1.4.2003 was ensured in a smooth manner with advance directions to field formations to gear up for discharging the work, creation of a Unit (in the Headquarters of the Commissionerate) to handle Brand Rate fixation, specifying the broad parameters for taking decisions, maintenance of records, grievance redress. The Board also clarified all the initial doubts that Commissionerates raised on specific issues. Therefore, the organisational and technical aspects of the process of fixing Brand Rate have been streamlined.

Since, the emphasis is for disposal of Brand Rate applications on priority and transparent basis, the Commissioners of Central Excise closely supervise the overall functioning of the Brand Rate Unit and draw monthly reports on receipt

and disposal of applications. The Chief Commissioners of Central Excise review the functioning of Commissionerates in the Zone and grievances of the exporters on this account are redressed through conduct of Open House".

71. Further, when asked whether the process of disposal of Brand Rate drawback claims in a time bound manner had been streamlined and if there would be no delays on this count in future, the Ministry responded as under:—

"As per Rule 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the claim for drawback is to be accompanied by specified documents including copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Commissioner of Central Excise under rule 6 or rule 7 of the rules.

Accordingly, the exporters provide the Brand Rate letters (fixing either the rate for a period of time or the rate in respect of specific Shipping Bills) to the Custom House for claiming the payment of Brand Rate of duty drawback.

No specific impediments in the process of timely disposal of such claims, once the documents have been submitted, have been reported. However, if any issues arise Ministry would have them resolved".

(g) Verification

72. As per para 3(c) of Customs Circular 14/2003, the authenticity of the data furnished by the applicant in the specified statements for fixation of Brand Rate are required to be verified by the jurisdictional Central Excise authority within 15 days of filing of the application. However, Audit found that there was a problem in verifying data furnished by Indian Oil authorities in their Brand Rate applications.

73. In one such instance, the Central Excise Commissionerate, Haldia issued 26 Brand Rate letters for an aggregated sum of ₹12.93 crore between June, 2006 and June, 2009, in favour of the exporter, Indian Oil Corporation Ltd. Audit found that the exporter had claimed use of 1.04 MT and 1.08 MT of crude oil to produce 1 MT of ATF and 1 MT of SKO respectively. However, the production process indicated that a wide range of products were obtained from crude oil that together constituted the final output. It was not clear how the output of single product was worked out. This called for a detailed technical verification.

74. About the problem in verifying data furnished by Indian Oil authorities in their Brand Rate applications owing to a large number of by-products that are obtained during processing of crude oil, the Committee asked the Ministry to explain how they arrived at Brand Rate in these cases. The Ministry apprised as under:—

"The question is in the context of fixation of brand rate in 26 cases by Haldia Commissionerate. Audit noted that IOC Ltd. claimed crude oil to ATF ratio of 1.04:1 and crude oil to SKO ratio of 1.08:1. In light of wide range of products being obtained from crude oil, the Audit observed that it was not clear how output of single products was worked out which required technical verification.

The brand rate is determined and fixed by the jurisdictional Central Excise Commissionerate. The Haldia Central Excise Commissionerate has reported that in the documents submitted by the IOC Ltd. the input-output ratio for ATF and SKO was particularly supported by Chartered Engineer's certificate".

75. To a specific query as to whether the Department had any mechanism of their own to verify the declaration made by the exporters, the Ministry replied as under:—

"Based on Ministry's instruction, the D.G. (Audit), Customs & Central Excise letter dated 13.07.2012 has directed all field formations to ensure that while conducting audit of such assessees, the documents/declarations pertaining to drawback claims should be randomly compared with their original production records and in case, any discrepancy is noticed appropriate action to safeguard the revenue is taken. The details of discrepancies noticed are also to be included in draft audit report".

76. On being asked whether the creation of standard industry norms would negate the very purpose and objective of Brand Rate, the Ministry reasoned as under:—

"Since, the brand rate is determined and fixed essentially based on actual incidence suffered in the export product and the norms of output vary from refinery to refinery due to age of machinery, level of technology used in refining and quality of the crude used, it was conveyed that the creation of a standard industry norm would go against the concept of brand rate.

However, Ministry had also noted the Audit observation that some standard norms are necessary for products (petroleum products and other products with similar technical complications) to enable verification of information and ensuring uniformity. In this connection, Ministry had already stated (June, 2011) that the documents submitted are duly verified by the chartered engineers. The Audit's further recommendation on this for random checks was also implemented and the Director General of Audit (CBEC) issued directions dated 13.7.2012 to all field formations to ensure that while conducting audit of such assessees, the documents/declarations pertaining to drawback claims should be randomly compared with the original production records and details of discrepancies noticed included in draft audit report and action taken to safeguard revenue".

77. On the feasibility of creating standard industry norms in order to enable meaningful verification of information and ensure uniformity in fixation of Brand Rates, the Ministry *inter alia* submitted as under:—

"The very nature of fixing brand rate makes it necessary that it has to be on the basis of actual incidence of taxes suffered and creation of standard industry norms as suggested by Audit would negate the very purpose and objective of brand rate".

(h) Availment of CENVAT Credit

78. Drawback Schedule specifies higher All Industry Rate of drawback including central excise component if CENVAT credit is not availed by the manufacturer of export

product. To avail this benefit, the exporter cannot avail CENVAT credit on inputs and input services and has to produce a non-availment certificate from the jurisdictional excise authorities. However, Audit found 2,160 cases in nine Commissionerates namely Chennai Sea, Chennai Air, Tuticorin, Kandla, Jamnagar, Ahmedabad, Bengaluru, Mangalore and Cochin where higher All Industry Rate of drawback was allowed to the exporters but the "CENVAT not availed" certificates were not available with the drawback claims files. Drawback of ₹5.70 crore was sanctioned in these cases.

79. To a specific query as to how the Ministry ensured that CENVAT had not been availed in the cases pointed out by Audit, the Ministry submitted that:—

> "In the 1784 cases of Air Cargo in Tamil Nadu, the CENVAT certificates were verified at the time of examination/export. In the 24 cases of Tuticorin in Tamil Nadu, the drawback was sanctioned after checking the examination report of the examining officer who had verified the non-availment of CENVAT Credit at the time of examination of the export goods or that the goods were animal origin product, where CENVAT is not applicable. After verification in respect of 212 cases, the Chennai (Seaport) Customs have reported that they are re-examining 63 cases.
>
> The 24 cases of Cochin in Kerala pertained to two exporters. The first exporter submitted CENVAT non-availment certificate from its supporting manufacturer which was verified and confirmed from the jurisdictional Central Excise. The second exporter shipped artistically hand carved wood furniture (mahogany wood chair) for which the drawback rates in 2007 and 2008 were same whether CENVAT credit was availed or not, which made the CENVAT non-availment certificate inapplicable.
>
> In 81 cases of export by Palvi Power Tech Sales Pvt. Ltd. higher drawback to the extent of ₹48.54 lakh was paid. The reversal of CENVAT credit (₹6.03 lakh) related to service tax on input services was done after export. The exporter has appealed against confirmation of demands.
>
> In Bengaluru Customs, 7 cases were found to relate to exports from units not registered with Central Excise and 25 cases were verified as correctly paid. It is reported that in 1 case of Birdy Exports Pvt. Ltd. the Bengaluru Customs found higher drawback was claimed by mis-declaration that CENVAT credit is not availed. The enquiry was widened and demand of ₹2.44 cr. has been confirmed. In the 2 cases of Mangalore Customs, declaration of non-availing of CENVAT credit of supporting manufacturer was verified and found correct".

80. On being asked on what basis drawback claims were processed in cases where the mandatory certification of "CENVAT not availed" was not produced by exporters, the Ministry submitted as under:—

> "In cases where mandatory proof of CENVAT not availed (the declaration made by the exporter in the ARE-1 in case of a Central Excise registered manufacturer or a self-declaration in case of others as provided for in Board's Circular No.8/2003- Customs dated 17.02.2003) is not produced, the Central Excise and Service

Tax portion of AIR of duty drawback is not due and drawback rate 'when CENVAT facility has been availed' may only be allowed".

81. The Ministry further stated as under:—

"In the extant procedure, the "Non- Availment of CENVAT Certificate" appears in the list of documents in ICES (Indian Customs EDI System). The Certificate is verified and this is recorded in the System document menu after which the shipping bill moves to Let Export Order (LEO) stage. Non-availability of Certificate requires amendment of shipping bill to show lower drawback rate, but in subsequent (post LEO) drawback processing, the exporter can file supplementary claim to restore higher drawback claim by producing the Certificate.

It has also been reported to Ministry that so as to not hold up export consignment for the purpose of amendment, there has been a practice of recording comments in the field for "departmental comments" in ICES of the non-availability of the Certificate while it is shown as available in the System document menu that enables LEO to be granted without delaying the export consignment and subsequently the drawback claim is to be processed in terms of the departmental comments requiring the production of the Certificate, else the lower rate is sanctioned. Ministry shall examine this reported matter so as to ensure a uniform procedure".

82. Asked about the latest position of recovery of drawback of ₹18.90 lakh that was paid in excess in respect of 36 cases, the Ministry stated as under:—

"The exporter's appeal, against confirmation of demand for drawback, was rejected by Commissioner (Appeal) but in Revision it was ordered that exporter is to deposit 25% of the drawback amount after which his appeal will get restored before the Commissioner (Appeal). The time period for pre-deposit is till 8.10.2013".

83. The Ministry further stated that the exporter had predeposited ₹4.73 lakh (25 per cent of ₹ 18.90 lakh) on 30.09.2013 and the exporter's appeal was pending before Commissioner (Appeals).

(i) Restoration of Scrolls

84. In the ICES, the Assistant Commissioner is authorized to generate a scroll enumerating all the claims sanctioned on a particular day/week. The same is sent to the Bank for direct credit to exporter's account. The Assistant Commissioner can also restore a previous scroll for rectification of mistakes made while sanctioning the drawback amount. Audit examination revealed that the Assistant Commissioner (DBK), Custom House Kandla restored scroll No. 825/2009 on 1 April, 2009. Consequently, all the drawback shipping bills in the restored scroll became ready for reprocessing. Thereafter, scroll No. 845/2009 dated 8.4.2009 was re-generated and sent to the Bank. This led to double payment of drawback of ₹1.88 crore in 109 cases (April, 2009). This was later detected and recovered in a phased manner with interest. However, this issue was not brought to the notice of DG (Systems) for rectificatory action.

85. When enquired about the control mechanism, if any, devised by the Ministry in order to rule out the risk of bulk reprocessing of shipping bills, the Ministry submitted as under:—

> "The risk of bulk re-processing of drawback shipping bills arose from an option to 'restore scroll' in the EDI system. The purpose of this option was to enable rectification of mistakes in the generated scroll sent to bank for payment. At the instance of Audit, double payment arising from restoring a 'paid scroll', which had to be recovered with interest, was highlighted and the Systems Directorate decided to remove the option to 'restore scroll' itself. This was implemented in May, 2010. Presently, a temporary scroll is generated which enables internal checks before being finally generated and sent to the bank".

86. Asked whether any action had been taken against the erring officials, the Ministry responded as under:—

> "The 'restore scroll' option was exercised by the Assistant Commissioner leading to double payment because amounts had already been credited from the earlier scroll. While there was error, the double payment was detected and the entire amount was recovered with interest within 5 months. Moreover, the decision to altogether remove the 'restore scroll' option indicates its nature. In the overall facts, no action was taken against the officers concerned".

(j) Monitoring of Declarations

87. Conditions 8(e) and (f) of Notification No.103/2008-cus dated 29th August, 2008 stipulated that AIR of duty drawback, including the customs component, could not be availed when the inputs used in the manufacturing of exported goods were procured either duty free under Rule 19(2) of Central Excise Rules, 2002 or when rebate of duty paid on them had been taken under Rule 18 of Central Excise Rules, 2002. To keep a check on the possibility of dual claim, the department had devised a mechanism in the form of declarations (ARE-1 and 2) where the manufacturer would declare the details of goods to be exported and non-claiming of rebate etc. under Excise Rules. These declarations would thereafter be certified by both Central Excise and Customs authorities.

88. Audit found 335 cases in Customs Commissionerate, Visakhapatnam, where drawback of ₹6.59 crore in respect of exports of 4.89 lakh tones of soya meals falling under drawback serial No. 23 was sanctioned at AIR rate. The claims of the manufacturing exporters were cleared without insisting on ARE-2 declarations on non-availment of rebate as required under the rules *ibid*. This resulted in irregular sanction of drawback of ₹6.59 crore and the risk of dual benefit was not addressed.

89. The department while accepting the audit observation stated (August, 2010) that the matter was under investigation of the Special Intelligence and Investigation Branch (SIIB).

90. Regarding the outcome of the investigation conducted by the Special Intelligence and Investigation Branch (SIIB) with reference to monitoring of declarations, the Ministry submitted as under:—

> "Audit had pointed out that in 335 cases at Visakhapatnam Customs, ₹6.59 cr. of drawback was sanctioned without addressing the risk of double benefit as there was no insistence on ARE-2 declarations regarding non-availment of duty free excisable inputs under rule 19(2) or rebate of duty paid on excisable inputs under rule 18 of Central Excise Rules, 2002 in relation to the exported soya meal.
>
> It was reported that the merchant-exporters had given declarations stating that the exported goods were not manufactured by availing the procedure under rule 18 or 19 of Central Excise Rules. In view of this, the insistence on submitting ARE-2 at time of export would not arise.
>
> However, the manufacturer-suppliers of one merchant-exporter (Suraj Impex) appeared to have procured duty free inputs (hexane) under rule 19(2) of Central Excise Rules in relation to the exported soya meal. This was suppressed through mis-declarations by the merchant exporter with respect to exports under 135 shipping bills".

91. The Ministry further stated as under:—

> "The investigation was done by lndore Regional office of Director General of Central Excise Intelligence. It detected totally 57 cases of wrong availment of duty drawback amounting ₹29.68 crore on exported goods (de-oiled cake) manufactured availing benefit of rule 19(2) of the Central Excise Rules, 2002. Show cause notices were issued in all these cases. 7 cases have been decided in Settlement Commission and 8 cases adjudicated. Recovery of ₹11.86 crore has been made so far. Remaining cases, including that of M/s. Suraj Impex involving drawback of 2.33 crore against 135 shipping bills filed at Visakhapatnam, are in the process of adjudication."

92. Asked whether any remedial action had been initiated in this regard, the Ministry stated as under:—

> "Mis-declaration by one merchant exporter Suraj Impex in the case of 135 shipping bills has been addressed by issuing show cause notice dated 11.11.2011 for wrong availment of drawback amounting to ₹2.33 cr. This notice is also issued to the alleged manufacturers who availed the rule 19(2) procedure. The adjudication is likely to be completed around end of October, 2013. Other exports did not involve obtaining duty free excisable inputs or availing rebate of duty paid on excisable inputs.
>
> In order to ensure integrity of the declarations made by exporters, the Board's Circular No. 46/2011-Customs dated 20.10.2011 has directed field formations to carry out periodic sample checks and verifications of export declarations".

(k) Sanction of Drawback on products not specified in Brand Rate Letters

93. As per Duty Drawback Rules, 1995, where brand rate of drawback has been determined in respect of a particular category of export goods, the drawback has to be paid as per the specifications mentioned and the terms and conditions stipulated in the brand rate letters issued by the competent authority.

94. In the Commissionerate of Customs (Preventive), West Bengal, drawback was sanctioned on the basis of brand rate letters issued by Commissioner of Central Excise, Chandigarh and Faridabad for export of 'agricultural tractors' of specified models. Audit scrutiny of the export documents (shipping bills, invoice, packing lists etc.) revealed that the exported agricultural tractors were different from the models that were mentioned in the brand rate letters. This resulted in irregular payment of drawback amounting ₹45.07 lakh which was recoverable with interest. Action taken on the departmental personnel responsible for the mistake had not been communicated.

95. When asked to furnish reasons for sanction of drawback on products not specified in Brand Rate letters, the Ministry justified its action as under:—

> "Audit observed that the export documents revealed that exported agricultural tractors were different from the models that were mentioned in the brand rate letters which resulted in irregular payment of drawback by the Commissionerate of Customs (Preventive), West Bengal.
>
> On examination of the matter it was found that agricultural tractors were exported under bills of export accompanied by requisite documents which mentioned the description of the goods (model number and corresponding horsepower). The brand rate was fixed, for exports made under these bills of export, by the Central Excise Commissionerate where the goods were manufactured and cleared for export. The brand rate fixation letters issued by Central Excise mentioned the specific bill of export number, model number and quantity of tractors.
>
> For example, in the bill of export No.7614 dated 30.11.2008, the model number is PT-439 (39 h.p.) agricultural tractor and the brand rate letter dated 19.1.2009 of Faridabad Central Excise mentions details as the shipping bill No. 7614 dated 30.11.2008 for agricultural tractor Powertrac — 439.
>
> Thus, in the above cases, the identification of the goods flowed from the brand rate letters which mention both bill of export number and the description. Hence, the Audit observation is not admitted.
>
> However, to avoid unnecessary room for doubt in future, the Ministry has *vide* Instructions dated 31.7.2013 highlighted the instance to all field formations and directed that full and comprehensive details of the exported goods should be indicated clearly in the brand rate letters".

IV. COMPLIANCE OF AUDIT OBJECTIONS

96. In his deposition before the Committee, the Revenue Secretary while expressing gratitude to Audit, admitted that the Audit Report had assisted greatly in devising enhanced provisions for proper disbursement of drawback. He *inter-alia* testified as under:—

> "Recommendations regarding proper procedure for identification and use of imported goods re-exported, better documentation in fixation of All Industry Rate, introducing validation in EDI system for net weight, removing risk in EDI of reprocessing of drawback scrolls, have been implemented.

The Audit had highlighted instances where re-export drawback had been extended inconsistently with the provisions for time and manner of claiming the drawback. Board has directed that the speaking orders passed in the cases of re-export relating to identification and determination of use of the goods shall encompass all relevant aspects including compliance with provisions of Rule 5.

After Audit had emphasized the issue of mismatch in shipping bill and drawback declarations, the Board specifically advised the field formations of the need for continued scrutiny to avoid any sanction of excess drawback. Moreover, a large number of cases have been verified, and the balance undergoing verification with Audit being periodically updated".

97. He added:—

"In line with recommendations to take measures for faster claims processing, the Board has directed checks on raising generalised queries, monitoring of EGM pendency (since drawback is processed after EGM is filed as proof of export) and monitoring of time taken to pay drawback. The exporter has also been given access to electronically view status/reasons of pending drawback claims.

While reiterating instructions for periodic sample verification of actual freight payment certificates, the Board has also issued directions for sample verification of the cases observed by Audit and for reporting outcomes.

For better tracking of defaults in realization of export proceeds—

- The bank realization certificate (BRC) module is now implemented at 114 EDI locations.
- To keep field formations sensitized, all India survey was conducted for 4 years period from 2009-10 to 2012-13. During this period, the field formations issued 30349 notices of which 11248 were closed as proof of realization was produced, 2422 notices were confirmed, and 16687 notices were under adjudication as on 31 May, 2013. Recovery of ₹56.83 crore drawback including interest has been made in this period. Orders have also been issued for expeditious follow-up and disposal of these cases.
- The Board has decided to move to an Electronic-BRC system in which the data feed shall be received from a Gateway set up by RBI in which all banks shall be obliged to upload the export realizations. The data feed, expected to begin in December, 2013 shall be integrated with the Customs EDI system".

98. He also stated:—

"On the provisioning in EDI to record justification for changes made by assessing officers and to capture brand rates, the EDI system records the AIR drawback rate declared and the altered rate, if any. Reasons can be recorded in the field for departmental comment, and the Board has directed that speaking details, including related to brand rates, should be recorded. Meanwhile, a mechanism

of either capturing brand rate details electronically in Central Excise software or capturing the particulars of the brand rate letters in Customs EDI, is being explored.

On the compliance aspects of the Report, while certain aspects are contested, in other cases either the recovery is made (₹3.16 crore) or demands confirmed (₹2.15 crore). Certain cases remain under process of verification or adjudication and reporting outcomes to Audit shall remain an on-going process".

99. When asked that in spite of these remedial measures, the same lapses and irregularities continued to persist as reported in a subsequent Audit Report (No. 8 of 2013), the Revenue Secretary deposed as under:—

"Based on the Audit Report, a whole lot of actions have been put in place by the CBEC and by the Department. The next Report also picks up many of these weaknesses is not surprising. It is because a whole lot of instructions, for example, went out in the month of June, 2012. Some instructions went out in October, 2011. A whole lot of instructions have gone out in July, 2013. So, this is an on-going process."

100. A tabulated statement of the compliance to Audit findings as furnished by the Ministry is given in **Annexure I**.

101. When specifically asked about what was meant by acceptance of Audit recommendation, the Ministry submitted as:—

"The acceptance of recommendation implies that the appropriate action for its implementation is initiated. A few illustrations are given below.

The recommendations to issue instruction indicating parameters for identification of goods under re-export and clarify the typical conditions under which goods are to be treated as used after import were followed by instructions to the field formations that identification of goods require examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, documentary evidences *vis-à-vis* import documents etc., and that the Assistant/Deputy Commissioner of Customs would pass a speaking order, giving detailed reasons with regard to establishing the identity and determination of use for all cases of re-export drawback. Subsequently, taking cognizance of other Audit observations related to re-export cases, these instructions were expanded to cover all aspects of section 74 and the related rules. This not only ensures objectivity in action, but also requires that the Commissioner to be satisfied of the legality and propriety of the decisions.

The instructions for sample verification of actual freight paid were reiterated as recommended. Observations to document fixation of AIR by Drawback Committee were conveyed to Committee and a beginning made from 2010-11 onwards by Committee providing worksheets for certain major commodities. Validation for net weight declared was implemented by an EDI provision that sum total of

drawback quantity does not exceed net weight of Shipping Bill for like quantities. Devising of control mechanism to rule out risk of bulk reprocessing of drawback was implemented by removing the 'restore scroll' option from EDI.

In areas of mismatch in the related declarations for commercial purposes or drawback purposes, where it was not found feasible to fully build provisions in EDI to ensure consistency of data, field formations were specifically instructed of the need for continued scrutiny of the details so that excess drawback did not arise from the mismatch. Similarly, for capturing the brand rates in the Customs EDI system, directions were issued to record speaking details in the field for departmental comments while EDI options are explored".

102. During evidence, the Chairperson, CBEC informed the Committee that they had recovered ₹3.16 crore based on the Audit recommendations and an amount of ₹2.15 crore had been confirmed.

V. WEAK INTERNAL AUDIT

103. In the light of accepted audit objections, the Committee during evidence enquired about the measures undertaken for strengthening internal audit procedures. The Revenue Secretary *inter alia* deposed as under:—

"I think certainly the internal audit procedures are important. But I would also mention that there has been - even following this audit report - further codification. Codification helps in both the exporters and our officers knowing the rules. It has followed — all the instructions. Ones issued in 2011; ones issued in 2012. All are in those directions. Certainly, the internal audit and vigilance checks will help. We have been taking actions against our officials who are involved in any of these irregularities, pretty stringently. And the whole lot of departmental proceedings which take place against officers or on issues related to drawback too".

104. When asked about its implications it had for Internal Audits' functioning and strengthening it, the Ministry submitted as under:—

"Ministry has noted that there are aspects highlighted by C&AG of India on compliance side, particularly those related to processing of re-export drawback cases under section 74 of Customs Act, where Internal Audit could not point out the deficiencies. Hence, there is room for improvement in functioning of Internal Audit.

While the entire section 74 re-export drawback process stands strengthened by the mandate for passing appealable orders in original and their examination by Commissioner, the perceived deficiency in Internal Audit functioning is being highlighted to Commissioners with regard to section 74 cases, cases of manual drawback and fixation of brand rates so that steps are taken to strengthen and ensure desired diligence and improved performance".

105. About the existing mechanism to monitor the Scheme with specific reference to its review, adequacy to avoid lapses in future and steps to strengthen the internal control and monitoring mechanism, the submission of the Ministry was as under:—

"Shipping bills filed under drawback scheme are subjected to scrutiny by different levels of field officers. The Export Commodity Data Base (ECDB) developed by CBEC is an important tool to verify the values as declared for export commodities. Examination norms for drawback shipping bills are in place and these vary with amount of drawback, sensitivity of destination, splitting of consignments, etc. At examination stage, the requirement of documentation that assists in subsequent processing has been provided in the EDI system. Feasible EDI system validations have been provided. Once goods are exported, the processing of drawback claims in EDI acts as a second stage check. The level of scrutiny is automatically raised depending on drawback amount. Suitable instructions ensure that appropriate checks are exercised by field officers at these stages before payment.

A number of sample checks on the declarations made by exporters are prescribed. Reconciliation of export sales proceeds is provided for. The Commissioners are expected to also exercise special checks in case of first time exporters, exporters who have taken large amounts of drawback suddenly, sensitive destinations, sensitive products etc. as well as random audit checks in respect of other exporters to ensure that all export proceeds are realized, including confirming on random basis whether the certificates given by the authorized dealers are genuine. These aspects enable recovery in deserving cases, including wider investigation where necessary, which are on-going processes.

As aids to monitoring, the Special Intelligence and Investigation branches of field formations conduct checks. Similarly, Customs (Preventive) formations have concurrent jurisdiction to carry out checks and investigations. The Directorate of Revenue Intelligence also makes appropriate interventions in deserving cases".

106. The Ministry further stated as under:—

"From point of service delivery, the supervisory officers take corrective steps on periodical basis taking into account the nature of queries, status of EGMs, etc. The monitoring of fixation of Brand rates is done by Central Excise field formations and brand rate fixation is subjected to internal audit. The pendency of claims and disbursal is also reviewed by the Ministry.

Based on dialogue between field formations, Systems Directorate, stake holders and the Ministry as well as inputs from Audit and other wings of Government, the functioning of the Drawback Scheme is regularly reviewed.

Some of the recent steps taken to strengthen internal control and monitoring mechanism include deciding the section 74 re-export drawback cases through *quasi-judicial* orders that invariably get subjected to examination by the Commissioners, re-iteration of directions for sample checks of exporters various declarations, introduction of Risk Management System on export side on pilot

basis which shall be extended to all EDI locations, newer EDI system validations such as for consistency of net weights declared, provisioning for all India alerts in EDI system, introducing temporary payment scroll before final scroll for ensuring additional checks, enabling more effective monitoring through making available to supervisory officers the text of departmental queries, the Chief Commissioners and Commissioners being enabled to electronically view pendency and disbursal details for all locations in their jurisdictions/Zones, making daily EDI drawback disbursal and stage-wise pendency on all India and location basis available through CBEC website.

With these steps, Ministry hopes to improve internal control and monitoring at all levels and minimise instances that lead to less than desired levels of performance. This shall be a continuous process".

107. Further asked to elucidate the steps taken to strengthen the Internal Audit, the Ministry responded as under:—

"Ministry has issued instructions dated 11.10.2013 pointing out to field formations that the Audit Report had highlighted aspects on compliance *vide* which Internal Audit did not notice and that better performance by Internal Audit would have enabled remedial actions to be taken earlier. The Commissioners have been directed on 11.10.2013 to appropriately strengthen their Internal Audit Wings to achieve desired diligence levels and significantly improved performance in areas such as payment of re-export drawback, manual drawback and fixation of Brand Rates. The respective Commissioners would be taking further action in this regard.

The audit conducted by Pr. CCA is related to accounting, while that conducted internally by Commissionerates is in the perspective of assessment and compliance issues".

108. Enquired whether ECDB was linked to the ICES and how it was used and what percent of confidence did the two stage check provide to CBEC, the Ministry submitted as under:—

"Relevant export data from ICES is made available to Directorate of Valuation for ECDB. ECDB is used by Customs officers to access information on valuation including for live consignments. ECDB is a web-based application where FOB value of export goods can be ascertained for exports made over a period of time from different Customs locations. Search options are available in respect of commodity description, RITC code, Drawback serial number, Country of destination etc.

Two stage check in the case of Drawback Scheme *i.e.* at the time of export and at the time of sanction of drawback, ensures that deficiencies are addressed and different set of officers exercise scrutiny, thereby instilling the confidence of compliance with the rules".

109. On being asked about auditing the entire Import/Export data captured in the EDI system of customs, the Ministry stated as under:—

> "The import/export data captured in EDI Systems of Customs is transactional data. Prior to implementation of RMS in Imports, there was concurrent audit of bills of entry. RMS in Imports substituted concurrent audit with selective Post Clearance Audit (PCA). In exports the subsequent stage in which shipping bills are processed for sanction of drawback in EDI, acts as a second check. Implementation of RMS in exports has begun. In first phase, which is under implementation, the RMS in exports processes the data upto goods examination stage. In the second phase, the RMS in exports shall process shipping bill data after the Export General Manifest (EGM) is filed and select shipping bills for drawback scrutiny and PCA".

110. Further asked whether the findings of this audit were different from the findings of the statutory audit findings, the Ministry replied as under:—

> "As explained above, in the case of drawback sanctioned in EDI system, the processing stage that is subsequent to filing of the EGM is acting as a second stage check before drawback is disbursed. The statutory audit occurs after this stage. The systems and processes have benefitted and have been strengthened based on the findings and recommendations of statutory audit".

111. Asked whether RMS had been introduced in the EDI ports, the Ministry submitted that out of the 116 ports under EDI, RMS (Imports) had been introduced at 87 ports and RMS (Exports) at 14 ports.

112. To a specific query as to what were the kinds of MIS, exception reports, alerts generated at different levels, the Ministry explained as under:—

"(a) There are various kinds of MIS Reports generated which include the following:

- Pendency Reports for Imports and Exports: Through these reports, status of pendency at each stage of processing of import documents or export documents, as well as drawback pendency, in a custom location can be monitored. Facility to drill down to individual document level has also been provided.
- Periodic Import & Export reports: Through these reports, details of duty collection, documents submitted, drawback sanctioned, cess collected, Scheme wise export FOB, etc. can be monitored.
- Top Commodity/Duty/Importer/Exporter/Drawback Reports for Imports and Exports.
- RMS Reports

(b) Facility has also been provided in ICES 1.5 for viewing National MIS reports based on role and location. In addition, there are more than 150 other MIS reports available to the officers of the Commissionerate for monitoring, reporting and control.

(c) Alerts are generated at different levels. These may relate to valuation, quantity, any type of mis-declaration or modus operandi etc. For imports, alerts are placed by the Local Risk Manager of the Commissionerate or by Risk Management Division (RMD). In RMS in Exports, the local alerts can be placed in similar manner after due approvals of the Commissioner or an officer, not below the rank of Additional/ Joint Commissioner, designated by him or by RMD".

VI. EVASION PRONE COMMODITIES

113. Deposing before the Committee, the Chairperson, CBEC conceded that there were traditionally evasion prone commodities and ready made garments (RMG) was one of the very sensitive commodities where it was difficult to ascertain the present market value and consequentially the amount of drawback which was due to the exporter.

114. She *inter alia* deposed:—

"That is the sensitive commodity that does receive our attention. The DGRI would bear me out, on a large number of cases that we have made on RMGs and as you are aware, there are drawback caps that have been put, which ensure that beyond a certain level, they cannot claim what is not due to them".

115. When the Committee pointed out the need for having a value cap, the Director General, Directorate of Revenue Intelligence deposed as under:—

"Ready Made Garments lends itself to such misuse. But there are value caps. Basically, what this value cap means is that you cannot get more than a certain percentage irrespective of the value you declare and these value caps are running across the entire drawback schedule and except for around 30 per cent of the commodities, everything else has a value cap."

He added that if the value cap for a ready made shirt was ₹31 which was also duty component then the price of the shirt would be around ₹ 400.

116. When it was pointed out that there had been a tendency of the RMG exporters to overvalue the declared price of the garments much above the actual selling price and grab the high rate of drawback, the Chairperson, CBEC conceded this and stated that because of such trends and evasions more attention was being paid to this sector so as to prevent wrong doings.

VII. WORKING OF THE ECONOMIC INTELLIGENCE AGENCIES

117. During evidence, the Revenue Secretary apprised the Committee that the total incidence of duty drawback abuse during 2012-13 was ₹ 20,061 crore (₹ 17,354 crore on duty drawback and ₹ 2,706 crore on DEPB duty foregone and others). When asked about the action taken in the fraudulent cases, the Chairperson, CBEC deposed as under:—

"Wherever there was a deliberate connivance found — in some cases, there has been connivance and I admit that — very serious charge-sheets have been

issued, officers have been punished. The exporters have also been arrested wherever we could find this. In some cases, as you know, they just disappear after six months. But we take very stringent action wherever it is necessitated. You wanted to know that in the case of default, what do we do. The interest part is recovered from the exporter".

118. Asked about the mechanisms put in place to prevent/check the organized misuse of drawback and to ensure verification of exports, the Ministry apprised the Committee as under:—

"The monitoring mechanisms serve as checks on organized misuse of drawback scheme. These include the assessment and examination mechanisms on exports, use of export commodity database (ECDB), provision of drawback caps, restrictions on quantum of drawback related to market value, insistence on certificates supporting drawback claims, mechanisms of recovering drawback when export proceeds are not realized, sample verifications of certificates and declarations, and concurrent checks by different agencies.

In addition, specific legislative provisions assist in checking organized misuse. For example, in year 2007 the section 114 of Customs Act was suitably amended to provide for penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under the Act, whichever is higher. Thus, cases of over-valuation could be more effectively penalized. Similarly, section 135 of Customs Act relating to punishment for offenses was suitably amended to expressly provide that offence related to fraudulent availing of drawback was punishable.

The role and functions of DRI have relevance in checking organized misuse of drawback scheme. DRI receives intelligence, *inter alia*, from officers posted with Customs Overseas Intelligence Network (COIN). It also coordinates the requests for overseas inquiry or investigative assistance, made by the Indian Customs authorities, through the COIN units either under various bilateral agreements or the International Convention on Mutual Administrative Assistance for the Prevention and Repression of Customs offences (Nairobi Convention 1977)".

119. When the Committee sought to know the number of cases of fraudulent claims of duty drawback were detected by the DRI in 2012-13, commodities/private ports/ exporters/officials found involved in these cases and the actions initiated thereon, the Ministry responded as under:—

"In 2012-13, the DRI detected 39 cases involving drawback amount of ₹67.79 crore. No specific role of officers requiring action against them was found. Details of the major cases are:

(a) 5 cases of over-valuation by Ludhiana based exporters (Century Knitters, Rajesh Hosiery Mills, Rama Krishna Knitters Pvt. Ltd., Famina Knit Fab;

Radhika Knitters) exporting readymade garments through ICD, Tughlakabad. The amount of excess duty drawback availed is estimated to be ₹55 crore of which voluntary deposit of ₹2.9 crore has been received.

(b) 10 cases of overvaluation and non-realisation of foreign exchange by Tirupur based exporters (Morning Star Apparels, Cherish Knits, High Breed Fashions, VTX Industries Ltd., Tunic Fashion Apparel, R.K. Cottons, Excel Sourcing Co., Anugraha Fashion Mills Pvt. Ltd., Naveena Apparels, Pounds Apparels) exporting readymade garments and textiles from Tuticorin and Chennai. Show cause notices have been issued. Amount recovered is ₹2.05 crore.

(c) cases of mis-classification of goods by Hind Steels (Gandhi Dham), Vinod Electroplating Works (Jalandhar), Bright Steels & Alloys (Phagwara), Ravi Technoforge Pvt. Ltd. and Upkar International (Rajkot) and Jaykal Exports (Mumbai) exporting threaded rods, alloy steel, forged rings and diesel engine parts through the privately owned Mundhra Port. Estimated drawback involved is ₹1.98 crore.

(d) 3 cases of over-valuation by the Ahmedabad based exporters (Ganesh Trading Co., Pearl Exim and Midland Trading Co.) exporting scarves and readymade garments made of man-made fabrics from ICD, Khodiyar and Air Cargo Complex, Ahmedabad. Show cause notices involving drawback of ₹33 Lakh have been issued.

(e) 1 case of non-realization of export proceeds by Shree Vallabh Overseas, Ludhiana who exported readymade garments through ICDs at Ludhiana and Tughlakabad availing drawback of ₹4 crore investigation is underway".

120. Asked whether any exercise had been undertaken to detect instances of nexus between the Customs officials and the exporters, the Ministry replied as under:—

"The remedial action in cases that have been accepted has been undertaken or initiated. However, it is reported that these cases are not of nexus between officers of the Department and exporters.

In deserving cases, the Department examines roles of officers, including in cases of wrongful drawback. The Director General (Vigilance), CBEC has reported that since 2010-11 (till November 2013), a total of 22 officers (of the rank of AC, DC and JC) have been proceeded against for failure to maintain absolute integrity in connection with cases related to duty drawback".

121. On the issue whether FEMA was attracted when there was non-realisation of export proceeds for drawback exports and whether DRI had taken any action in such cases, the Ministry submitted in a note as under:—

"FEMA, 1999 is also attracted when non-realisation of export proceeds of drawback occurs. Section 8 of the FEMA, 1999 deals with realisation and repatriation of foreign exchange and Section 13 deals with penalties for contravention of any provision of the FEMA, 1999.

While the DRI generally does not itself investigate non-realisation of exports proceeds, but if there is specific intelligence such cases are taken up for investigation. Moreover, once cases related to fraudulent availing of drawback are initiated all the aspects, including non-realisation of export proceeds, are investigated".

122. When the Committee specifically asked how vigilant and well equipped was the DRI to deal with cases of systemic frauds and gather advance information to prevent the frauds, the Director General, Directorate of Revenue Intelligence, deposed as under:—

"Wherever we do notice substantial enhancement in values to claim unduly large benefits in the form of drawback, we capture all export data in export commodity data base; we see values of goods so being exported. And based on that, we pick up some cases for scrutiny. We have made such cases which the Chairperson has mentioned. The challenges really in all these cases are that the export proceeds invariably gets realised and money comes into the country. The second challenge thereafter is that in terms of valuation rules, we have to prove that the values declared by them are incorrect and similarly priced goods could not have been valued so. That remains a challenge. Having said that, we have detected a few cases".

123. Regarding the measures that could be taken to strengthen DRI, the Ministry apprised as under:—

"Looking at the mandate, functions, jurisdiction and challenges faced by DRI, the Ministry is examining a range of measures to strengthen the functioning of DRI. These include enhancement of organizational strengths in terms of persons, office premises, anti-smuggling equipment, logistics, parity with CBI in special incentives for personnel, dedicated residential accommodation, fixed tenure of 2 years for the Director General. It is also being examined if DRI should have powers under PMLA limited to cases related to the Customs Act".

124. On the issue of working of the Economic Intelligence Agencies like DRI, CEIB and ED and synergizing their actions for avoiding needless overlap, the Ministry submitted in a note as under:—

"A number of economic intelligence agencies are working under the Department of Revenue, Ministry of Finance, Government of India. A brief note on the functions and mandate of these agencies is enclosed as **Annexure II.**

Each of these agencies has a specific mandate and pursues investigations concerned to the respective laws it administers. However, since the mandate of operation of these agencies is primarily related to economic intelligence, there may be instances of unintended overlap in their functioning. Many a times, while pursuing investigations under its mandate, an agency can come across information that may not be directly relevant to its own mandate, however the same may be directly relevant to another agency. It is in this background that the need for synergizing the actions of all these agencies is highlighted.

Department of Revenue has over the years formulated various methods and mechanism to ensure that all economic intelligence agencies working under it function with complete synergy. Some of these mechanisms are detailed as under:—

(a) The Central Economic Intelligence Bureau (CEIB) has been designated as the Nodal Agency on Economic Intelligence. The CEIB coordinates in the field of economic intelligence to ensure active information exchange and smooth interface between the different agencies using the following mechanisms— (i) The Economic Intelligence Council (EIC) (ii) The Working Group on Intelligence Apparatus (iii) Heads of Agencies Committee (iv) Group on Economic Intelligence (v) Regional Economic Intelligence Committees (REICs) and (vi) Secured Information Exchange Network (SIEN);

(b) The Department of Revenue has also constituted a High Level Committee (HLC) under its aegis to expedite exchange of relevant information emerging from on-going investigations into alleged economic offences and to facilitate a coordinated investigation by different law enforcement agencies. The HLC is headed by the Revenue Secretary and comprises of Deputy Governor (RBI), Director (IB), Director (Enforcement), Director (CBI), Chairman CBDT, DG (NCB), DG (Revenue Intelligence), Director (FIU) and JS (FT&TR-I) CBDT as members. The main mandate of the High Level Committee is to ensure a multi-disciplinary approach for a coordinated investigation under different laws".

125. About the need for ensuring harmonious functioning of the Economic Intelligence Agencies, the Director General, Directorate of Revenue Intelligence deposed as under:—

"It sees whether there is misdeclaration of value which has taken place. Having seen that, it takes action to ensure that benefits which accrue from this misdeclaration of value are recovered. The next issue is purely on hawala to finance this misdeclaration. That aspect, the Enforcement Directorate would be better equipped to handle it. We pass on all the details to them and they concurrently also do that task. So, we do the task relating to the customs, getting back the incorrectly availed benefits and the Enforcement Directorate does the hawala part of it".

VIII. CUSTOMS OVERSEAS INTELLIGENCE NETWORK (COIN)

126. When the Committee sought to know about the performance and efficiency of the foreign post of the customs officials in minimizing incidents of invoice manipulation and other actions of aberrations, the Director General, Directorate of Revenue Intelligence deposed as under:—

"We have nine officers posted outside in Dubai, Hong Kong, Kathmandu, London, New York, Moscow, Singapore and Brussels. We have two officers posted there. We have Customs Mutual Agreements with some of these countries which provide the framework within which we can seek information. We have

had excellent results from officers in New York, London, Hong Kong and Russia where we have been able to get details of declaration as given by the party, quote from this end to the other end and there was a mismatch.

We have had some problems in using this information in some cases because they gave it with a caveat, not to use it for any purposes other than for limited purposes of investigation and not to be used in the courts of law. Hong Kong, however, has been permitted as also to use it without any caveat whenever we specifically bring to notice the details of the case itself. So the Customs Overseas Intelligence Network Officers have been doing outstanding work. We have also had cases where they have detected round tripping in the case of export of diamonds where again it was values only which had been shown to get moneys in and out of the country. So, they have been extremely useful".

127. To a pointed query as to whether the instances and volumes of invoice manipulation had come down as a result of the aforesaid measures, he deposed as under:—

"I would not be so brave enough to make such a venture. But having said that, it has definitely acted as a deterrent: the presence of the officers and the fact that we have been able to get information in such cases. It is because, we do it on selective basis, on the basis of specific intelligence. We cannot do anything more than that and it has been useful to that extent".

128. In a subsequent note, the Ministry summed up the performance of COIN and the measures to strengthen it as under:—

"With respect to performance of COIN units, these have played a major role in rendering investigative assistance in matters related to smuggling, drug trafficking, commercial frauds and national security to the DRI, and other Indian Customs formations, through the formal network of cooperation with other Customs administrations and the informal network of sources cultivated overseas. COIN has been vital in exposing the scam in Rupee-Rouble trade with Russia, effecting seizures of FICN in Bangkok, Nepal and Bangladesh and narcotic drugs/psychotropic substances in South East Asian countries (like Singapore, Indonesia and Hong Kong) and Canada. The COIN unit in Dubai has often provided vital inputs relating to business and commercial activities of syndicates involved in anti-national and terror activities which are shared with sister intelligence agencies. COIN units also play an active role in passing on actionable intelligence inputs to DRI in number of cases relating to trans-border movement of goods including CITES goods like Red Sanders logs and hazardous waste(s). Moreover, the officers in COIN units have been successful in making the presence of Indian Customs felt globally, and in international such as WCO, RILO A/P, WTO and UNEP. Their COIN officers' also contribute significantly in the area of bilateral negotiations and implementation of bilateral/multilateral agreements.

With regard to measures for strengthening COIN, the single most priority area is to set up new COIN units. With trade expanding and covering more regions of

the world, the present COIN units located in Birganj, Brussels, Dubai, Hong Kong, Kathmandu, London, Moscow, New York and Singapore have come to have vast jurisdictions and the new units are essential to have more effective development of intelligence on smuggling and cross border commercial frauds and create a holistic intelligence network with an eye on security related issues.

A proposal for creation of seven (7) COIN units is pending with the Ministry of External Affairs (MEA). Three COIN units have been proposed at Colombo, Dhaka and Bangkok with a clear focus on FICN smuggling. Beijing and Guangzhou have been proposed because of the exponential growth of the trade between India and China and the intelligence supported by cases of undervaluation and anti-dumping duty. Brasilia and Pretoria have been proposed in view of their increasing importance and in the context of IBSA (India, Brazil, and South Africa) framework. The proposal has undergone numerous rounds of discussion with Ministry of Finance and Ministry of External Affairs. The MHA has actively supported the creation of three units at Colombo, Dhaka and Bangkok. The MEA has given in principle approval for creation of two posts at Beijing and Guangzhou in China".

IX. INTERNATIONAL BEST PRACTICES FOR COMPENSATING DUTY INCIDENCE TO EXPORTERS

129. Enumerating the international benchmarks/best practices in other emerging/ Asian countries for compensating duty incidence to exporters, the Ministry elaborated as under:—

"Broadly, the international benchmark is to permit remission of duties or taxes in amount not in excess of those which have accrued in the exported product.

It is gathered that in the case of USA the drawback is basically on individual claim basis. It is linked with certain designated and prior identified duty paid imports received for production for exports. It is on actual basis and takes due note of consumption pattern and is given subject to verification from records. Similarly, in the United Kingdom, the drawback claim is related with detailed record keeping, establishment of yield and linkages of use of duty paying inputs with export products, and verification.

Thailand's provisions governing drawback are somewhat similar to USA provisions. There is facility of "substitution drawback" in which only duty paid inputs are not required to be used in exports for claiming drawback, but a commercially interchangeable input will also do, provided the duty paid input are used for domestic production and not disposed of in any other manner which may give any excessive benefit to the claimant. In Malaysia, duty drawback is provided to manufacturers on imported materials that are physically incorporated into exported products.

These systems of drawback do not appear to have provisions for an average or simplified general rate which can be claimed by a class of exporters, enterprises or exempt sectors".

PART II

OBSERVATIONS AND RECOMMENDATIONS

Introductory : International trade takes place on the principle that no sovereign country should export its taxes to another country because citizens of another country will have to bear these taxes. Hence, the practice the world over is to refund or exempt the taxes borne on export goods. Like in other countries, the country's Duty Drawback Scheme is a duty neutralization scheme which seeks to rebate the duties or taxes chargeable on any imported/excisable input materials and input services used in the manufacture of export goods. Designed to promote exports, the basic concept of the Scheme is that export products should not carry the country's taxes so that its products can compete on an equal footing in the world market. The duties and taxes neutralized under the Scheme are (i) Customs and Central Excise Duties in respect of inputs; and (ii) Service Tax in respect of input services. Section 74 and Section 75 of the Customs Act, 1962, Section 37 of the Central Excise Act, 1944 and the Finance Act, 1944 empower the Central Government to grant duty drawback. During the period between April 2006 and March 2010, the total payment of drawback was ₹36,000 crore. An Audit review was carried out in 39 out of 93 Customs Commissionerates across 12 States (Delhi, Maharashtra, Tamil Nadu, Kerala, Karnataka, Uttar Pradesh, West Bengal, Gujarat, Bihar, Punjab, Andhra Pradesh and Rajasthan) where the volume of drawback transaction was relatively higher and which altogether paid as much as ₹ 31,616 crore out of the aforesaid total of ₹36,000 crore. The Audit got access to data relating to 34.58 lakh drawback cases out of 46 lakh cases (*i.e.* 75 per cent) settled between April, 2006 and September, 2009 and found serious lapses and irregularities in the implementation of the Scheme resulting *inter-alia* in fraudulent availment of drawback amount. These and other relevant issues have been dealt with in the succeeding paragraphs.

2. Identification of Goods : The Committee are constrained to find that the rules which lay down parameters for identification of goods in case of re-exports are not only inadequate but also beset with discrepancies. Audit in their test check found 12 cases of discrepancy in parameters like dimension, gross weight, chemical properties etc. involving drawback payment of ₹1.42 crore due to discrepancies and ambivalence in the rules. In the absence of specific instructions, the establishment of such identity remained with the discretion of the Assistant Commissioner of Customs concerned leading to the discrepancies. To the suggestion to issue supplementary rules for ensuring accurate identification of re-exported goods, the Ministry replied that necessary instructions in this regard *inter-alia* emphasizing physical verification and passing of speaking orders had been issued *vide* Circular No. 46/2011-Cus. dated 20.10.2011. While the effectiveness of this measure remains to be seen, the Committee urge the Ministry to initiate tangible measures for removal of lapses, irregularities and discrepancies in the identification of the goods for re-export. Taking note of the fact that due to the spread of commodities under re-export, it may not be

possible to lay down specific parameters in each and every case as these would constrict and restrict the officers' capacity to exercise due diligence in identifying the goods and would lead to routine denials of benefit to exporters, the Committee recommend that suitable mechanism be put in place to prevent negative discretion of the customs officials concerned so as to help ensure identification of re-exported goods with the originally imported goods as well as cross verification of the physical properties of goods placed for re-export alongwith documentary declarations.

3. Determination of use: The Committee find that no CBEC instruction exists specifying how to determine whether goods were "used" or not and thereby resulting in fraudulent claim of drawback in many cases. Audit in their test check found 55 cases involving drawback payment of ₹1.74 crore where a large number of goods fulfilled the criteria for "used after import", but were treated as unused goods. Such gross misuse of this provision indicates defects in the rules requiring the exporters to make declaration whether the goods had been put into use or not after importation in the Shipping Bill. The Committee were informed that the Ministry had since issued instructions *vide* Circular No. 46/2011 — Customs dated 20.11.2011 in respect of duty drawback claims under Section 74 the Assistant/Deputy Commissioner of Customs should pass a speaking order following the principles of natural justice giving detailed reasons with regard to determination of use, if any, while sanctioning drawback thus making it a *quasi- judicial* process for ensuring proper examination of the cases. The Committee, however, find that between November, 2011 and June, 2013, a total of 2442 speaking orders were passed and in 13 cases the Commissioners were not satisfied with the legality and propriety of the decisions and ordered filing of appeal. Deeply concerned over the functioning of the field formations and the concerns expressed by the Commissioners, the Committee urge the Ministry to put in place a robust monitoring system so that fraudulent claim of drawback on "used after import goods" can be prevented. The Committee would also like the Ministry to earnestly act in the 55 cases involving ₹1.74 crore relating to determination of use reported by Audit and recover the drawback fraudulently claimed by the exporters.

4. Time barred claims and delayed replies to deficiency memo: The Committee are perturbed to find that against Rule 5 of Re-export of Imported Goods Rules, 1995, Audit found 54 cases in Bengaluru, Chennai, Delhi, Hyderabad II and Kandla where time barred claims were admitted and drawback to the tune of ₹1.19 crore was made. Worse, in 171 claims filed in ACC Shamsabad under Hyderabad II, the Department had neither affixed receipt stamp nor issued acknowledgement in any of these cases. The Ministry conceded that such instances may have arisen from lesser than desired diligence. The Ministry also informed that necessary instructions had been issued directing field formations to, *inter-alia*, ensure due diligence in the application of the aforesaid Rule 5. While urging for meticulous compliance of the instructions to avoid further instances of time barred claims, the Committee would like the Ministry to periodically review the effectiveness of the extant Rules and Instructions in this regard so that the system is able to evolve itself and meet the emerging challenges. The Committee further desire the Ministry to recover the drawback payment made on time barred claims and take suitable corrective action in the matter.

5. Delays in claims processing: The Committee are concerned to note significant delays in processing drawback claims in the Commissionerates in Andhra Pradesh, Gujarat, Bihar, Mumbai, Rajasthan and Uttar Pradesh. In Andhra Pradesh, there were delays in processing 10,177 cases with more than half of which were processed after more than three months. In 20 per cent of these claims, settlement was delayed beyond one year. In Gujarat, out of 88,000 claims analysed, delays occurred in 20,856 cases *i.e*. 23.7 per cent. Delayed settlement of cases held up the payment of drawback and in 4048 cases of delayed processing at Kandla and Ahmedabad, deficiency memos were raised much later (ranging from 31 days to more than 2 years) after filing of claims. Similarly, 2,276 claims settled in Bihar, Mumbai, Rajasthan and Uttar Pradesh recorded delays between 13 days to four years in processing the claims. The main reason for delays in claims processing was that the deficiencies in the claim were pointed out beyond the stipulated period of 10 days. Other reasons included submission of deficient documents at the time of filing drawback claims, raising of generalized queries and the time taken to communicate the deficiencies to the exporters, time factor before consolidated payments were scrolled to the banks, incorrect filing of Export General Manifest (EGM) by the carriers and time taken by the banks to credit the exporters accounts. These clearly indicate lack of awareness on the part of the exporters in filing the claims and absence of proper supervision by the officials concerned. The Committee were informed that certain measures had been taken to enable faster processing of claims. Notably, in order to streamline the verification process, the Ministry have issued instructions and directives in October 2011 and June 2012 and the Customs EDI system has provided Importer-Exporter Code-wise facility to view status/reasons of pending drawback shipping bills so as to ensure timely communication of deficiencies/queries to the exporters. The Committee, however, find that no specific study on dwell time of customs procedure for drawback has been conducted by the Ministry. In the absence of such a study, the Committee feel that the instructions and directives issued by the Ministry would not be comprehensive enough to yield the desired results. As per the Ministry's admission, it may not be possible to adhere to the 10 day time limit of raising and communicating the deficiencies in claims filing in every case due to sheer increase in the number of drawback shipping bills which had increased from 14.73 lakh in 2010-11 to 28.40 lakh in 2012-13. This further strengthens the need for a proper study of the process to identify the attributes which cause delay and address them by proper designing of the system in automated environment. The Committee, therefore, urge the Ministry to undertake the aforesaid studies with a view to fine tune the system and streamline the verification procedure so as to enable faster processing of claims. Further, appropriate report/MIS of the IT system available should be generated to watch the timely issue of queries after issue of the instructions for monitoring, etc. This would help in ensuring communication regarding the deficient documents filed, if any, to the applicants in clear, unambiguous terms within the stipulated time frame of 10 days. The Committee would also like the Ministry to take earnest efforts to make the exporters aware of the relevant rules, procedures, processes, etc. concerning claim processing so as to avoid wastage of time. The Committee would like to be apprised of this within 6 months of the presentation of the Report.

6. Declaration of Freight: The Committee find that no floor value has been imposed in Customs Valuation rules for freight charges on exported goods thus providing an opportunity to the exporters to claim a larger sum as drawback by under declaring the freight value. Audit found that the freight declared was less than five percent of FOB value in a significant number of cases in Gujarat, Punjab, Karnataka and Tamil Nadu. Worse, in 4,519 out of the 88,000 cases (*i.e*. 5.13 per cent) in Gujarat (Ahmedabad and Kandla Commissionerates), the freight declared was found to be less than one per cent indicating risk of underreporting of freight. The instances of under declaring of freight was so widespread as can be gauged from the fact that during the period 01.04.2011 to 31.05.2012, a sum of ₹4.75 lakh drawback with ₹0.02 lakh interest was recovered pursuant to specific verification of 3529 freight certificates. As a remedial measure, the Ministry had directed field formations for sample verification of actual freight certificate. Instructions have also been issued highlighting the importance of regular sample checks of the veracity of declarations made by exporters. In addition, integration of export realization data feed with the ICES had been initiated to enable cross checking of details. The Committee have also been informed that the Ministry were working on a future arrangement with the Reserve Bank of India to electronically receive a feed of bank realization data for integration with customs EDI. Taking note of these initiatives aimed at checking the cases of under declaration of freight value, the Committee would like the Ministry to ensure strict compliance of their remedial measures so that there is no under declaration of freight. The Committee would also like the Ministry to initiate appropriate punitive action where violation of rules and procedure is established.

7. Realisation of Export Proceeds: The Committee are concerned to note that the instruction issued by the CBEC in February, 2009 for monitoring the realization of export proceeds through the Bank Realisation Certificate (BRC) module had not been followed by the field formations uniformly. While monitoring work had been initiated and Show Cause Notices were being issued to the defaulting exporters in six Commissionerates (Ahmedabad, Kandla, Chennai Sea, JNCH, Mumbai, Bengaluru)/ ICDs (Tughlakabad, Patparganj and Rajsico), monitoring of realization through the BRC module had not been introduced in six Commissionerates *viz*. Kolkata (Port), Kolkata (Airport), Hyderabad II, Ahmedabad, Kandla and Cochin. In Bengaluru Commissionerate, where the monitoring had been initiated, Audit found that 150 letters issued to exporters asking for submission of BRCs for exports involving drawback payment of ₹27.23 crore between 2004 and 2007, returned undelivered. In NCH, Delhi, the BRC module was unable to track outstanding realization due to technical problems. These indicate crippling failure of the CBEC in exercising their authority over the Commissionerates and field formations. The Committee were apprised that a slew of measures had been taken up by the Ministry for timely submission of Bank Realisation Certificates by all the exporters and entering the same into the system promptly. While appreciating these initiatives which would help proper realization of export proceeds and monitoring thereof, the Committee recommend that corrective/punitive action be taken against those Commissionerates and field formations which failed to comply with the instructions of the CBEC. Besides, the cases of non-delivery of 150 letters to exporters in Bengaluru Commissionerate

should be probed and appropriate punitive action taken against those found guilty. The Committee further desire that all the Customs units/locations in the country should be computerized under an integrated IT network and operationalised for achieving an improved performance in realization of export proceeds.

8. Declaration of Value: The Committee are concerned to find marked discrepancies in the declaration of value of exported goods for claiming drawback. To illustrate, there were 984 claims where shipping bills showed Present Market Values (PMVs) that were lower than the declared price (FOB) during the period from April, 2006 to September, 2009 in Hyderabad II and Visakhapatnam Customs Commissionerates. In 221 out of these 984 cases, the difference between the FOB and the PMV was so significant that in more than 50 per cent of the 221 Shipping Bills (SBs), the FOB declared was about 10 times the PMV of the items. To make matters worse, no market verification was done in any of the 221 cases although such differences fulfilled the criteria of *prima facie* evidence for triggering PMV enquiry. The Committee express their serious concern over the inability of the CBEC to make the Commissionerates comply with their Circular issued in February, 2003 and prevent such irregularities. The Committee would like the Ministry to take appropriate follow up action in the cases reported by Audit with regard to discrepancy in declaration of value. Further, the errant exporters be penalized and also the drawback erroneously claimed by them recovered with interest at the earliest. The Committee would also like the Ministry to take necessary measures to prevent recurrence of such incidents.

9. Fixation of All Industry Rate (AIR) of drawback: The Committee are distressed to find that fixation of All Industry Rate (AIR) of drawback was not done in a transparent manner. While the working of the Drawback Committee to arrive at declared rates regarding fixation of AIR of drawback was not fully documented, the Directorate of Drawback could not produce year-wise data regarding cost sheets of various commodities, Import-Indigenous ratios of various inputs used in manufacture, details on manufacturing processes of various products, etc. that would have been the basis for fixation of AIR. Further, the Drawback Committee had not submitted any calculation sheets/worksheets along with their reports to support the fixation of AIR. In the absence of such working papers, the procedures adopted for determination of All Industry Rates of drawback could not be verified in Audit. Furthermore, the trend of rate revisions in the AIR drawback schedules *vis-a-vis* changes in import/excise duty rates could not be correlated. The mandate of the Drawback Committee and the Directorate of Drawback is to fix AIR for drawback and the manner of its functioning calls for speedy improvement. The Committee feel that reasonableness of the AIRs so fixed needs to be reviewed to rule out the possibility of any financial loss to the exchequer. The Committee also desire that the process of rate fixation by the Drawback Committee should be fully documented in order to ensure transparency in the procedure.

10. Delay in fixation of Brand Rate: The Committee note with concern that there have been significant delays in fixation of Brand Rate across the Commissionerates. In Delhi, 17,692 claims were pending settlement for more than three months as on January, 2010 due to delay in fixation of Brand Rates. In Central Excise

Commissionerate, Mangalore, there were delays in 26 out of the 27 cases of Brand Rate fixation during the audit review period. In these cases, the average time taken in verification by the Divisional Office was more than three months against the norm of 15 days. After receipt of the verification report, the Commissionerate took more than 8 months on average to fix the Brand Rate against the norm of 10 days. Thus, the entire process of fixation took almost a year. Similarly, in Excise Commissionerate Jaipur I, the average delay in verifications examined was more than three months and delay for rate fixation after verification was close to three months making the total delay in fixation of Brand Rate of drawback in each of the 35 cases beyond six months. Further, delays upto one month were noticed in 104 cases in Hyderabad IV Commissionerate. Reasons for the delays, as submitted by the Ministry, broadly include non-furnishing of required data/information original documents and related documents/information; explanation of use of inputs and process of manufacture; inclusion of free shipping bills in claims; non-compliance with deficiency memo etc. which were attributable to the exporters and involvement of voluminous documents requiring verification, large number of inputs in process verification, large amount of arithmetic calculation, etc. which were attributable to the field formations. The Committee deprecate such stark mistakes of the exporters and the sheer inability of the field formations to meet the challenges leading to the delay in fixation of Brand Rate. The Ministry have informed that they have been taking measures to ensure quick disposal of Brand Rate claims in order to facilitate exporters and a Circular and a Letter in this respect were issued in September 2003 and August 2005 respectively pursuant to the Board circular of March 2003. Subsequently, the field formations have been directed on 20th October 2011 to comply with the instructions strictly and ensure that Brand Rate drawback claims are disposed in a time bound manner. Besides, *vide* amendments dated 17.06.2010 to the Drawback Rules, 1995, the time limit for filing application for fixation of Brand Rate was revised from a maximum period of 90 days to 12 months. The Ministry further claimed that the organizational and technical aspects of the process of fixing Brand Rate have been streamlined. The Committee are, however, skeptical about the efficacy of these measures, which are mostly instructions and circulars, considering the widespread cases of delay in fixation of Brand Rate and the nature of the human failures as reported by Audit. To surmise, the Ministry need to do something more serious and tangible to pin point the causes of the delays and devise and put in place an effective system to prevent delays and malpractices. The Committee, therefore, urge the Ministry to identify the problematic areas and streamline the system. Since the delays were also seemingly on account of lack of awareness of the due procedures and formalities on the part of the exporters, the Ministry need to sensitize them through wide publicity campaigns, etc. Further, wherever instances of wilful violation of rules by officials leading to irregularities is *prima facie* evident, the Committee would like appropriate punitive action to be taken in the matter. The Committee would like to be apprised of the corrective measures taken in due course of time.

11. Verification: The Committee are concerned that problems did surface in verifying data furnished by Indian Oil authorities in their Brand Rate applications. To cite an example, the Central Excise Commissionerate, Haldia issued 26 brand rate

letters for an aggregated sum of ₹12.93 crore between June 2006 and June 2009 in favour of the exporter, Indian Oil Corporation Ltd. While the exporter had claimed use of 1.04 MT and 1.08 MT of crude oil to produce 1 MT of ATF and 1 MT of SKO respectively, the production process indicated that a wide range of products were obtained from crude oil that together constituted the final output. This made it unclear as to how the output of single product was worked out. The Ministry informed that in the documents submitted by the IOC Ltd., the input-output ratio for ATF and SKO was particularly supported by Chartered Engineer's certificate. The Ministry, submitted that creation of a standard industry norm towards enabling meaningful verification of information and ensuring uniformity in fixation of Brand Rates would go against the concept of Brand Rate. Statedly, as a remedial measure, necessary directions were issued on 13th July 2012 to all field formations to ensure that while conducting audit of such assessees, the documents/declarations pertaining to drawback claims should be randomly compared with the original production records and details of discrepancies noticed included in draft Audit report and action taken to safeguard revenue. Taking into consideration these initiatives, the Committee urge the Ministry to further introspect in the matter specially in the case of petroleum products and improvise the system in order to ensure smooth verification of the data furnished by the applicants.

12. Availment of CENVAT Credit: In yet another disquieting lapse, the Committee find that drawback of ₹ 5.70 crore was irregularly sanctioned in 2,160 cases in nine Commissionerates *viz*. Chennai Sea, Chennai Air, Tuticorin, Kandla, Jamnagar, Ahmedabad, Bengaluru, Mangalore and Cochin. In these cases, higher All Industry Rate of drawback was allowed to the exporters but the "CENVAT not availed" certificates which were mandatory for the purpose were not available in the drawback claims files. The Ministry informed that in most of the cases (*i.e.* 2008 cases) either the CENVAT certificates were verified at the time of examination/report or the drawback was sanctioned after checking the examination report of the examining officer who had verified the non-availment of CENVAT Credit at the time of examination of the export goods. The Ministry also stated that in some cases, the CENVAT non-availment certificate was inapplicable. However, the Ministry admitted that in certain cases higher drawback was paid to the exporters. The Committee are concerned that the file maintenance system could not ensure availability of crucial documents. The Committee, therefore, urge the Ministry to take corrective action for improper upkeep and maintenance of files and also in cases wherein higher drawback was sanctioned without the mandatory "CENVAT not availed" certificates. Further, the higher drawback paid to the ineligible exporters be recovered at the earliest.

13. Monitoring of Declarations: The Committee are dismayed to note that in Customs Commissionerate, Visakhapatnam, there were 335 cases wherein the claims of the manufacturing exporters were cleared without insisting on the mandatory ARE-2 declarations on availment of rebate as required under the Central Excise Rules 2002. This resulted in irregular sanction of drawback of ₹6.59 crore and the risk of dual benefit was not addressed. The matter investigated by the Special Intelligence and Investigation Branch had detected a total of 57 cases of wrong availment of duty drawback amounting to ₹29.68 crore and issued Show Cause Notices

in all these cases. Subsequently, in 7 cases decided in Settlement Commission, recovery of ₹11.86 crore was made while the remaining cases were in the process of adjudication. In this regard, the Ministry informed that the merchant-exporters had given declarations stating that the exported goods were not manufactured by availing the procedure under Rule 18 or 19 of Central Excise Rules. In view of this, the insistence on submitting ARE-2 at time of export would not arise. The Committee have been informed that in order to ensure integrity of the declarations made by exporters, field formations had been directed in October 2011 to carry out periodic sample checks and verifications of export declarations. Though belated, the Committee hope that the Ministry would make further efforts in this direction to monitor such declarations and avoid revenue leakage in the form of drawback on account of misdeclarations. To set a deterrent, the Committee further desire that appropriate punitive action be taken against the errant exporters.

14. Sanction of drawback on products not specified in Brand Rate letters: The Committee are dismayed to note that unnecessary controversy had arisen in the sanction of drawback in the Commissionerate of (Customs Preventive) West Bengal for export of agricultural tractors on the basis of Brand Rate letters issued by the Commissioner of Central Excise Chandigarh and Faridabad. Audit scrutiny of the export documents *viz.*, shipping bills, invoice, packing lists, etc. revealed that the exported agricultural tractors were different from the models that were mentioned in the Brand Rate letters. While Audit observed that this resulted in irregular payment of drawback amounting to ₹45.07 lakh, the Ministry claimed that the identification of the exported goods flowed from the brand rate letters which mentioned both bill of export number and description and there was no irregular payment. The Committee, however find that there were some differences in the description of model number and name of the tractors in the bill of export and the Brand Rate letters which apparently was the cause of the controversy. Since such discrepancies could lead to manipulation and organized fraud, the Committee were informed that to avoid unnecessary room for doubt in future, the Ministry had in July 2013 instructed all the field formations that full and comprehensive details of the exported goods should be indicated clearly in the Brand Rate letters. Noting that though it is a belated measure, the Committee hope the Ministry would be more vigilant in future.

15. Compliance of Audit objections and Weak Internal Audit: The Committee find that the Ministry have accepted most of the Audit observations regarding weak internal audit thus affirming/admitting that there were lapses and irregularities in the implementation of the Duty Drawback Scheme. Surprisingly, these lapses could not be detected by the Internal Audit of the Ministry. The Ministry themselves conceded that there is room for improvement in the functioning of their Internal Audit. The Ministry claimed that necessary remedial measures have been initiated by issuing a series of instructions/directives to the Commissionerates/field formations and improvising their IT system. The Committee, however, find that similar lapses/ irregularities have been pointed out in a subsequent Audit Report (No. 8 of 2013). Though the Ministry attributed the repetition of the lapses/irregularities to the late issue of instructions/directives which went out in October 2011, June 2012 and July 2013, the Committee do not feel that the Ministry's mechanism of Internal Audit will

be strengthened just by issuing instruction/directives alone. The need of the hour is the systemic overhaul of the entire machinery. Deplorably, the Ministry failed to give serious attention to strengthening their Internal Audit with a view to detecting the lapses well in time. The Committee, therefore, recommend that the Ministry strengthen their Internal Audit so that lapses/irregularities/deficiencies are promptly detected and appropriate remedial action taken to protect the revenue.

16. Evasion Prone Commodities: While examining the traditionally evasion prone commodities like Readymade Garments (RMGs) which is fuelling the abuse of the Duty Drawback Scheme, the Committee found that it was because the Present Market Value (PMV) of such a sensitive commodity was difficult to ascertain and consequentially not easy to fix the amount of drawback. During evidence, the Director General, Directorate of Revenue Intelligence conceded that readymade garments lend themselves to such misuse but there are value caps which basically meant that an exporter cannot get more than a certain percentage irrespective of the value they declare. The Committee, however, find that the value cap for a readymade shirt was ₹31 which was duty component and the price of the shirt would be around ₹ 400. But there are widespread instances of the exporters selling such shirts at a price much below this declared price which meant that they were earning a much higher drawback than what was justified or due. The Committee, therefore, urge the Ministry to beef up vigilance on such evasion prone commodities by putting in place a suitable foolproof procedure.

17. Working of the Economic Intelligence Agencies: The Department of Revenue have six economic Intelligence Agencies mandated with the task of securing the country's economic and revenue interest *viz*. the Directorate of Revenue Intelligence, the Central Economic Intelligence Bureau and the Enforcement Directorate, the Financial Intelligence Unit, the Directorate General of Central Excise Intelligence and the Directorate of Criminal Investigation. Though they have been able to detect some of the economic frauds, their overall performance in tackling such frauds left much to be desired as can be gauged from the admission of the Revenue Secretary that the total incidence of duty drawback abuse alone during 2012-13 was ₹20,061 crore. The Ministry admitted that 39 cases of fraudulent claim of duty drawback were detected by DRI in 2012-13 but the chances of many other such cases going undetected are high. Moreover, since 2010-11 (till November, 2013), as many as 22 customs officials of the ranks of Assistant Commissioner, Deputy Commissioner and Joint Commissioner were proceeded against for failure to maintain absolute integrity in connection with cases related to duty drawback which indicates possible nexus between the customs officials and the exporters. With successive Audit Reports and the media highlighting frauds, lapses and irregularities in revenue assessment and collection, the actual revenue loss to the public exchequer in the entire Central Excise and Customs sector needs to be ascertained and plugged. This calls for urgent revamping of the six Economic Intelligence Agencies. Though certain initiatives have been taken towards this goal, yet a lot remains to be done. Besides, one handicap affecting the overall performance of the six agencies is the avoidable overlapping of their functions. The Committee, therefore, recommend that earnest efforts be made to examine this aspect and demarcation of powers and responsibilities among these six entities be

revisited so as to avoid overlapping of their functioning and ensure harmonious functioning with optimum synergy. Keeping in mind the emerging challenges, they should also be provided with adequate manpower and infrastructure to ensure that the guilty are not allowed to go scot free. The Committee would like to be apprised of the specific actions taken in this regard.

18. Customs Overseas Intelligence Network: The Committee note that the Customs Overseas Intelligence Network (COIN) of the DRI presently at 9 Indian Missions abroad *viz*. Birganj, Brussels, Dubai, Hong Kong, Kathmandu, London, Moscow, New York and Singapore have been playing a key role in gathering economic intelligence and interacting with the foreign administrations to obtain investigative assistance and to strengthen the overall bilateral relations. In fact, it is with their inputs that fraud/abuse of such a crucial scheme like the Duty Drawback Scheme could be detected. The Committee, however, find that at present each of the COIN officers is in charge of a large geographical area, which is not conducive for efficient discharge of duties. Many countries have emerged as the country's important trade partners but COIN officers were yet to be posted there. Moreover, with the increase in 'related party' transactions between global arms of transnational corporations and Free Trade Agreements, the complex nature of frauds has acquired new dimensions. Thus, the need for overseas enquires and external intelligence feeding into the risk management system of Indian customs is on the rise. Under the circumstances, the additional posts for customs officials in Indian Embassies/Missions abroad for compliance of foreign exchange laws, and for combating illicit trafficking of narcotics and prohibited/contra-band goods needs to be reinforced by other changes like increased surveillance and use of modern technology. While the case for expansion of COIN was a credible and persuasive one, this should be done in conjunction with other administrative and structural measures with other agencies and possibilities of sharing intelligence and benefits of using newer technologies. However, the action for additional foreign offices should be expedited in a time bound manner.

19. International Best Practices with regard to compensation of duty incidence to exporters: The Committee note that the Duty Drawback Scheme is not *sui generis* only to India as the countries all over the world incentivize their exports and exporters by making sure that they do not suffer the disability of local duties and taxes. There would have been many emerging markets which have proved very successful in their export market and administering the scheme of duty drawback. The country needs to study them for learning broad lessons. The Committee, therefore, urge the Ministry to find best international benchmarking in the realm of duty drawback scheme and suitably formulate benchmarks befitting the national need.

20. Strengthening the IT activities of the Department: The Committee note that the Directorate of Systems in the CBEC provides the IT support for the Department. Over the years, automation levels have been steadily increasing in tune with the multiproliferation of revenue activities. Given the complexity of the processes, vast and highly technical nature of IT activities under the CBEC, there is a case for hiving these activities into a Special Purpose Vehicle under the strategic control of the Board. This will ensure financial agility and flexibility in hiring experts in the fields

of IT and Finance Vendor Management towards achieving greater professionalism under the overall supervision and direction of the CBEC officers. Such a move will also strengthen Internal Audit mechanism of the Department for better monitoring of various schemes. The Committee would like to have a detailed Action Plan in this regard from the Ministry.

21. Dispute Resolution: The Committee observe that tax litigation has been on a continuous rise clogging the courts and other appellate bodies, locking up revenue and creating an atmosphere of uncertainty for the trade. Simplification and rationalization of tax law is a key solution which was sought to be addressed by various Committees in the past and is being looked into by the Tax Administration Reforms Commission now. Creation of additional benches for CESTAT has been another step taken recently for expeditious disposal of appeals. The Committee feel that another important measure would be the separation of executive and *quasi- judicial* functions at the field level. The Committee, therefore, recommend creation of a vertical hierarchy with a Commissioner (Judicial) supported by a compact complement of officers exclusively responsible for issue of notices and adjudication of cases not only to vest some independence in the functionaries discharging this role but also to enable a speedier and qualitatively superior decision making.

22. Improvement in Tax Payer Services: The Committee observe that facilitation of trade and rendering tax payer services of assured quality is one of the main functions of every regulatory/law enforcement agency. However, there needs to be greater cohesion and coordination even among such agencies. It is also important to encourage cross-agency initiatives that redress the traders' problems. The Committee feel that one of the key solutions to the challenges posed by multiple border regulatory is single window as it enables entities involved in international trade to lodge standardized information and documents at a single entry point to fulfil all import, export and transit related regulatory requirements. Customs is in an advantageous position to develop single window since it is almost fully automated in that 95 per cent of import and 98 per cent of export volumes and documents are handled by ICES which interacts electronically with over 15 agencies including RBI, DGFT, Airlines, Banks, DGCI&S, Apparel Export Promotion Council etc. However, consensus building amongst agencies concerned, inter-agency differences in degree of automation and data requirements impede the development of this initiative. The Committee, therefore, recommend the Government to spell out necessary mandate clearly designating the CBEC as the lead agency for this purpose as per international practice and lay down a time bound road map for its implementation. In providing a single window to the tax payers, the Board could consider greater outreach programmes, tax payer education, etc. so as to increase responsiveness and compliance.

23. Large Enterprise Management: From the relevant data, the Committee understand that a handful of large companies bring in substantial revenue to the Government. These large enterprises are also more likely to have complex issues that challenge the tax administrations. The Committee, therefore, recommend both from compliance monitoring and facilities perspective, setting up of administrative units to manage the taxation matters of large enterprises. These units would not only

act as single window facilitation mechanism for the large enterprises for their central taxes but also develop the expertise necessary to understand the operations of such enterprises and conduct the scrutiny and audit in a more meaningful manner.

24. Focus on infrastructural development: The Committee feel that a modern tax administration needs to be suitably equipped to discharge its mandate effectively and efficiently. In such matters, cadre restructuring of the CBEC assumes great importance. The Committee understand that the cadre restructuring proposal of the CBEC has been approved by the Union Cabinet. The Committee urge the Ministry to expedite this exercise and provide the consequent infrastructural requirements including proper offices, residential facilities, IT equipment, communication networks, non-intrusive inspection equipment, mobility solutions, etc. for their personnel which should not be hit by austerity measures introduced from time to time as in the case of paramilitary forces.

25. Strengthening of the CBEC: The Committee feel that the CBEC, being at the apex of the Customs, Central Excise and Service Tax Wings, has been witnessing multiproliferation of activities and needs to be provided with adequate human resource support. Each of the above streams of taxation collects over ₹1.6 lakh crore annually. Yet the support in the Board at the levels of Joint Secretaries, Directors and Under Secretaries has not changed over the past decade. The Committee would like the Ministry to undertake a comprehensive exercise to identify the posts needed in the Board for the technical functions as well as for human resource management functions. Steps should also be taken to create and man these posts from the officers with the requisite technical skills. Further, hiring of Research Assistants should be encouraged to meet the needs of specific projects and research activities.

26. Grant of Financial Autonomy to the CBEC: The Committee find that currently, the CBEC has no financial autonomy. Vesting well defined financial powers and the funds with the Board will enable it to pursue its prioritized needs and bring them to fruitition expeditiously. This step will also reduce the delays associated with movement of proposals between the field formations, the Board and IFU besides increasing flexibility and accountability. A Financial Adviser can be posted in the Board to scrutinize the proposals prior to consideration by the Board Chairman. The Committee, therefore, urge the Ministry to consider granting financial autonomy to the CBEC on the above lines and apprise them in due course.

NEW DELHI;
08 *December*, 2014
17 *Agrahayana,* 1936 (*Saka*)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee.

ANNEXURE I

(With Reference to Para 100 Of the Report)

Status of compliance issues in audit paras on Duty Drawback Scheme (C&AG Report No. 15 of 2011-12)

Para No./ Gist`	Amt. in Para Rs. Lakh	Not admitted Rs. Lakh	Admitted/ SCN issued Rs. Lakh	Recovery incl. interest Rs. Lakh	Remedial action in brief	Vetting status of CAG	Confirmed demand Rs. Lakh	Update
1	2	3	4	5	6	7	8	9
2.2.2 Identification of Goods (12 Cases)	141.87	140.76	1.11		11 cases not admitted/ 1 case SCN issued.	No comment./ present status	1.11	Rs. 1.11 lakh confirmed
2.2.3 Determination of use (55 cases)	173.72	135.61	38.11	0.02	27 cases not admitted/20 cases (JNCH) SCN issued.	No comments		
					Kandla—SCN to Ajanta Manufacturing Ltd; CFS Ludhiana—SCN issued for 6 SB.	Present status	19.62 + 3.6	SCN for Rs. 19.62 lakhs and Rs. 3.6 lakhs confirmed. In 1 other SB Rs. 1,995/- recovered.
2.2.4(i) Time barred claims (54 Cases)	118.79	0.99	117.81	19.51	Kandla—36 cases, Bangalore—03 cases, Delhi —11 cases, Chennai Air—03 cases, where either SCN issued or recovery made	No comments	66.45	

					Hyderabad II—M/s Golconda Corrosion (Rs. 0.99L)—As per standard practice Bill of Entry is defaced. These rules out filing drawback claims at other ports.	Rebuttal		Confirmed that original Bills of Entry were defaced. It is not possible to file claim at other port since neither the identical goods nor original import documents will be available.
2.2.4.1. (ii) Deficiency memos (12 cases)	152.02	91.69	60.31	24.88	Bangalore—Recovery Rs. 24.88 lakh in 2 cases and explanation in 1 case; Hyderabad II—Noted audit observation for future compliance.	No comments		
					Chennai Air Cargo—SCN for Rs. 45.15 lakh.	Final outcome	45.15	Rs. 45.15 lakh confirmed
2.2.4.2 Cenvat reversal (3 cases)	53.14	53.14			Chennai and Visakhapatnam—Position explained and not admitted.	No comments		
2.3.2 Delays in processing	236.66	236.66			Remedial measures taken under Circular 46/2011 Cus. and Board's letter dated 26.6.2012 explained.	No comments		
2.3.3 Declaration of freight (73 cases of ICD Sabarmati)	N/A		12.03	12.03	Directions issued *vide* Circular 46/2011-Cus. and matter explained.	No comments		
2.3.4 Realisation of proceeds	N/A			57.08	Cases pointed out by Audit were scrutinized by field formations and remedial corrective actions taken.	No comments		

1	2	3	4	5	6	7	8	9
2.3.5 Declaration of value	30.42	30.32	0.21	0.21	Hyderabad-II—Nature of exporters explained to provide reasons why PMV enquiry not conducted. Recovery in 1 case; Visakhapatnam—PMV found correct in certain cases and erroneous entry in others where recovery made in 2 cases while other SBs under brand rate of drawback.	No comments		
2.3.6 Fixation of AIR	N/A				Observations conveyed to Drawback Committee and remedial steps initiated.	No comments		
2.3.7.1 Brand rates fixation delay	1883.07	1883.07			Reasons behind delays were explained. Remedial directions to ensure timely disposal and following previous instructions issued by Circular 46/2011-Cus.	No comments		
2.3.7.2 Time barred BR application	3443.81	3443.81			Applications were either not time-barred or delay was condoned by Competent Authority.	No comments		
2.3.7.3 Verification for Brand rate	1293.0	1293.0			Chartered Engineers certificate supporting input-output ratios in refinery being used. Instruction issued that audit of assessee to involve random checks of comparing the documents and declaration given for drawback with original production records.	No comments		

2.3.8 Availing Cenvat credit	569.96	521.42	48.54		Chennai (Air), Tuticorin and Cochin—Not admitted. Also ICES has provision to record the documents received and verified at the time of export including non-availment of Cenvat certificate; Gujarat—SCN for Rs. 48.53 lakh in 81 cases were confirmed; Mangalore—2 cases found in order.	No comments	48.54	Bangalore: 32 cases found in order. In 1 shipping bill of Birdy Exports from the Audit list, it was found mis-declared that cenvat credit was not availed. Based on this investigation was expanded and period June 2006 to September 2012 covered and a demand for Rs. 244.56 lakh confirmed. Hence, this amount though linked with Audit, is not taken to be included in Audit figure.
2.3.9 Net weight declared	2.63			0.24	All cases pointed out by Audit were taken up for verification. Further, necessary validation in ICES for net weight.	Final outcome		JNCH: 8 SCN dropped as found in order; Tuticorin: No excess found; Chennai Sea Port: No excess in 79 cases and recovery of Rs. 24,434 in 1 case; Chennai ACC: 8 cases reconciled, SCN issued in 27 cases.
2.3.10 Mismatch in related declarations	109.00		105.32	10.5	All cases ordered for verification which is ongoing and details being updated to Audit.	Final outcome in specific cases	105.32	The specific cases on which outcome sought are as follows—JNCH: Objection not found sustainable in r/o SB No.5066227 dt. 08.03.07 and SCN dropped; In 500 cases of unit of measurement same but quantity different, no excess drawback found in 54 cases, Rs. 3.27 lakh recovered in 37 cases and rest and under scrutiny;

1	2	3	4	5	6	7	8	9
								Bangalore: EDI Data-dump provided to Audit to identify the cases for scrutiny; Mangalore: 24 cases correct; Kandla: demand Rs. 105.32 lakhs confirmed against Jayant Agro and M. Lakhamsi & Co.
2.3.11.1 Restoration of Scroll	188.0 (109 cases)		188.0	188.0	The option for restoration of scroll removed from system	No comments		
2.3.11.2 Audit Trail	1150	1150			Amount paid was lesser by this amount. Position explained.	No comments		
2.3.12 Monitoring of declarations	659	659			Objection that ARE-2 was to be insisted was contested. Exporter had declared the exported goods were manufactured without availing rule 19 of central excise rules. However, in 135 shipping bills this was a mis-declaration and based on DGCEI investigation, SCN for Rs. 233 lakh issued to merchant exporter and alleged manufacturers for fraudulently taking drawback.	Final outcome		Show cause notice is likely to be adjudicated by end of October, 2013.
2.3.13 Sanction of drawback on product not	45.07	45.07			Not admitted. However, to avoid room for doubts in future field formations advised to indicate full and comprehensive details of the	Final outcome		Protective demand is issued. Objection is not admitted.

mentioned in Brand rate letters					exported goods in the brand rate letters.		
2.3.14 Excess drawback due to misclassification	174.65	149.06	25.59	11.86	All cases reviewed. SCN were issued/recoveries made in certain cases. In some cases, Audit objections were not admitted and position explained supported by technical details.	No comments	2.24
Total CBEC	10424.81	9833.6	595.03	324.33			292.03

An amount of Rs. 244.56 lakh confirmed by Bangalore Customs is also attributable to Audit intervention though it is not included in financial implication of Rs. 10424.81 lakh.

ANNEXURE II

(With Reference to Para 121 of the Report)

Intelligence Agencies working under the Department of Revenue

Sl. No.	Intelligence Agency	Brief	Mandate
1	2	3	4
1.	Directorate of Revenue Intelligence (DRI)	The Directorate of Revenue Intelligence, formed in 1957, is an intelligence agency and its primary function is collection of intelligence, its analysis, collation, interpretation and dissemination on matters relating mainly to cross border movement of goods, violations of customs laws, and other allied Acts, In order to ensure effective discharge of its responsibilities, DRI maintains close liaison with all the important enforcement agencies in India like Income-Tax department, Enforcement Directorate, Narcotics Control Bureau, Directorate General of Foreign Trade, Border Security Force, Central Bureau of Investigation, Coast Guard, the State Police, authorities, Intelligence Bureau, Cabinet Secretariat and also with all the Customs and Central Excise Commissionerates. It also maintains close liaison with the World Customs Organisation, Brussels, the Regional Intelligence Liaison Office at Seoul, INTERPOL and foreign Customs administrations.	CHAPTER OF DRI (a) Collection of intelligence about smuggling of contraband goods, narcotics, under-invoicing etc. through sources in India and abroad, including secret sources. (b) Analysis and dissemination of such intelligence to the field formations for action. (c) Working out of intelligence by the Directorate officers themselves to a successful conclusion, where necessary. (d) Keeping watch over important seizures and investigation cases. (e) Associating or taking over the investigations which warrant specialised handling by the Directorate. (f) Guiding important investigation/prosecution cases. (g) Functioning as the liaison authority for exchange of information among ESCAP countries for combating international smuggling and customs frauds in terms of the recommendation of the ESCAP conference. (h) Keeping liaison with foreign countries, Indian Missions and Enforcement agencies abroad on anti-smuggling matters. (i) To keep liaison with C.B.I. and through them with the INTERPOL. (j) To co-ordinate, direct and control anti-smuggling operations on the Indo-Nepal border. (k) To refer cases registered under the Customs Act to the Income Tax Department for action under the Income Tax Act.

			(l) To keep statistics of seizures and prices/rates etc. for watching trends to smuggling and supply required material to the Ministry of Finance and other Ministries. (m) To study and suggest remedies for loopholes in law and procedures to combat smuggling.
2.	Enforcement Directorate (ED)	The Directorate of Enforcement implements two Acts *viz.* Foreign Exchange Management Act, 1999 (FEMA) and Prevention of Money Laundering Act, 2002 (PMLA). FEMA replaced the Foreign Exchange Regulation Act, 1973 (FERA) with effect from 01.06.2000. The Directorate also continues to perform the residual work under the repealed FERA, 1973. The Directorate also implements the provisions of COFEPOSA, 1974.	The main functions of the Enforcement Directorate are as under:— (i) To collect, develop the share intelligence relating to contraventions of FEMA. The intelligence inputs are received from various sources such as Central and State Intelligence agencies, RBI, complaints, information gathered by officers, etc. (ii) To investigate suspected contraventions of the provisions of FEMA relating to activities such as Hawala, unauthorized dealings in foreign exchange, non-realization of export proceeds, unauthorized retention of funds abroad including bank accounts, unauthorized acquisition of immovable properties abroad, contraventions relating to Foreign Direct Investments (FDIs), External Commercial Borrowings (ECBs), Foreign Currency Convertible Bonds (FCCBs), etc. (iii) To adjudicate cases of violations of the erstwhile FERA, 1973 and FEMA, 1999. (iv) To realize penalties imposed on conclusion of adjudication proceedings. (v) To handle appeals under FEMA. (vi) To handle appeals and prosecution cases under the erstwhile FERA, 1973. (vii) To process and recommend cases for detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) in respect of contravention under FEMA.

1	2	3	4
			(viii) To initiate investigations under PMLA to ascertain whether proceeds of crime have been generated from the Scheduled offence booked by the concerned Law Enforcement Agency and such proceeds have been laundered. If a *prima facie* case of money laundering is made out, to attach the property derived from the proceeds of crime. (ix) To file prosecution complaints in the designated PMLA Court for the offence of money laundering under PMLA. (x) To provide and seek mutual legal assistance to/from contracting states in respect of attachment/confiscation of proceeds of crime as well as in respect of transfer of accused persons under PMLA. (xi) To facilitate international cooperation in Anti Money Laundering (AML) matters.
3.	Central Economic Intelligence Bureau (CEIB)	The Central Economic Intelligence Bureau is the nodal agency on Economic Intelligence. It was set up in 1985 for coordinating and strengthening the Economic Intelligence and enforcement activities under Department of Revenue, Ministry of Finance.	In terms of its existing Charter, the CEIB functions as— (a) The Secretariat to the Economic Intelligence Council (EIC) (b) Coordinator and repository of economic intelligence (ECOINT) and (c) Administrator of the COFEPOSA Act, 1974 at Central Government level. As part of its mandate, the CEIB— (i) Maintains database on economic offenders. (ii) Acts as a Think Tanks and studies and analysis macro level economic activities. (iii) Supervises and monitors the functioning of 22 Regional Economic Intelligence Committees (REICs) which is a coordinating body at the field level and comprises of representatives from various central

and state enforcement and investigative agencies dealing with economic offences.

(iv) Organizes training programmes in premier training institutions for officers of the Department of Revenue/Member Agencies of REICs.

In addition, the Bureau implements the directions received from Economic Intelligence Council (EIC) headed by the Hon'ble Finance Minister and the Working Group on Intelligence Apparatus chaird by the Revenue Secretary. For coordinating Intelligence and Investigations, the Bureau works with the **Heads of Agencies Committee** and the **Group on Economic Intelligence (GEI)** set up in CEIB.

4. Financial Intelligence Unit (FIU-IND)

Financial Intelligence Unit-India (FIU-IND) was set up by the Government of India *vide* Ministry of Finance, Department of Revenue, Office Memorandum dated 18th November, 2004 as a central national agency responsible for receiving, processing, analyzing and disseminating information related to suspicious financial transactions. It receives prescribed information from various entities in financial sector under the Prevention of Money Laundering Act, 2002 (PMLA) and in appropriate cases disseminates information to relevant intelligence/law enforcement agencies which include Central Board of Direct Taxes, Central Board of Excise & Customs, Enforcement Directorate, Narcotics Control Bureau, Central Bureau of Investigation, Intelligence Agencies and regulators of financial sector. FIU-IND does not investigate case.

The main functions of FIU-IND include all matters pertaining to—

(a) Analysis of information/reports received from Reporting Entities as per the provisions of PMLA 2002 and Rules made thereunder and their dissemination to authorized domestic agencies for further action.

(b) Enforcement of the provisions of PMLA in so far as it relates to FIU-IND.

(c) Egmont Group and exchange of information with foreign FIUs.

(d) Interface with reporting entities and their regulators and domestic agencies authorized to receive information from FIU-IND including

1	2	3	4
5.	Directorate General of Central Excise Intelligence	Directorate General of Central Excise Intelligence (DGCEI) is an intelligence organization functioning under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, entrusted with detection of cases of evasion of duties of Central Excise and Service Tax. It was established in the year 1979 as an independent wing under the control of Directorate of Revenue Intelligence and became a full-fledged Directorate in 1983 headed by a Director. In 1988, the Directorate was upgraded to Directorate General. At present DGCEI, with its Headquarters at New Delhi, has 6 Zonal Units and 18 Regional Units.	promoting awareness about AML/CFT, capacity building and training. The main functions of DGCEI are— (a) To collect, collage and disseminate intelligence relating to evasion of Central Excise duties and Service Tax; (b) To study the price structure, marketing patterns and classification of commodities vulnerable to evasion of Central Excise duties; (c) To coordinate action with other Departments like Income Tax etc. in cases involving evasion of Central Excise duties and Service Tax; (d) To investigate cases of evasion of Central Excise duties and Service Tax having inter-Commissionerate ramifications; (e) To advise the Board and the Commissionerates on the *modus operandi* of evasion of Central Excise duties and Service Tax and suggest appropriate remedial measures, procedures and practices in order to plug loopholes, if any.
6.	Directorate of Criminal Investigation	A Directorate of Criminal Investigation (DCI) has been created to assist the CBDT tracking financial transactions relating to illegal/criminal activities, including illicit cross border transactions, from the direct taxes angle. Creation of DCI is also in line with FATF recommendations to exclusively deal with tax crimes, including direct taxes. The Directorate also continues to do the intelligence functions aimed at widening and deepening of the tax base.	The DCI, in discharge of its responsibilities under the direct tax laws, is required to perform the following functions:— (a) To seek and collect information about persons and transactions suspected to be involved in criminal activities having cross-border, inter-state of international ramifications, that pose a threat to national security and are punishable under the direct tax laws; (b) To investigate the source and use of funds involved in such criminal activities;

(c) To cause issuence of a show cause notice for offences committed under any direct tax law;

(d) To file prosecution complaint in the competent court under any direct tax law relating to a criminal activity;

(e) To hire the services of special prosecutors and other experts for pursuing a prosecution 'complaint filed in any court of competent jurisdiction;

(f) To execute appropriate witness protection programmes for effective prosecution of criminal offences under the direct tax laws, *i.e*. to protect and rehabilitate witnesses who support the State in prosecution of such offences so as to insulate them from any harm to their person;

(g) To coordinate with and extend necessary expert, technical and logistical support to any other intelligence or law enforcement agency in India investigating crimes having cross-border, or international ramifications that pose a theart to national security;

(h) To enter into agreements for sharing of information and other cooperation with any Central or State agency in India;

(i) To enter into agreements for sharing of information and other cooperation with such agencies of foreign states as may be permissible under any international agreement or treaty; and

(j) Any other matter relating to the above.

APPENDIX I

MINUTES OF THE FIRST SITTING OF THE SUB-COMMITTEE- III (DIRECT/ INDIRECT TAXES) OF THE PUBLIC ACCOUNTS COMMITTEE (2013-14) HELD ON 11TH SEPTEMBER, 2013

The Sub-Committee III (Direct/Indirect Taxes) of the Public Accounts Committee sat on Wednesday, the 11th September, 2013 from 1100 hrs. to 1215 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri N.K. Singh—*Convenor*

MEMBERS

Lok Sabha

2. Shri Sanjay Brij Kishorlal Nirupam

Rajya Sabha

3. Smt. Ambika Soni

SECRETARIAT

1. Shri Devender Singh	—	*Joint Secretary*
2. Shri Abhijit Kumar	—	*Director*
3. Smt. A. Jyothirmayi	—	*Deputy Secretary*

Representatives of the Office of the Comptroller and Auditor General of India

1. Dr. Prasanjit Mukherjee	—	Dy. CAG (Accounts and Central Receipts)
2. Shri N. Goswami	—	Principal Director (Customs)
3. Shri Purushottam Tiwary	—	Principal Director of Audit (PAC)

Representatives of the Ministry of Finance (Department of Revenue) and the Ministry of Commerce and Industry

1. Shri Sumit Bose	—	Revenue Secretary
2. Ms. Praveen Mahajan	—	Chairperson (CBEC)
3. Ms. J.M. Shanti Sundharam	—	Member (Central Excise and Computerization), CBEC
4. Shri Rajiv Talwar	—	Joint Secretary (Drawback)
5. Shri Najib Shah	—	Director General, DRI
6. Shri J.K. Singh	—	Joint DGFT

2. At the outset, the Convenor welcomed the Members and the Audit Officers to the first sitting of the Sub-Committee. The Convenor then apprised the Members that the sitting was convened to take oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on the points arising out of Chapter—II of the C&AG Report No. 15 of 2011-12 relating to 'Duty Drawback Scheme'. Thereafter, the representatives of the Ministry of Finance (Department of Revenue) were called in. Before commencing the examination, the convenor made it clear that the deliberations of the Sub-Committee were confidential and were not to be divulged to any outsider until the Report on the subject was presented to the Parliament. The Sub-Committee then proceeded with the examination of the subject.

3. During the course of examination, the Members sought clarifications on various issues which *inter-alia* included the delay in export remittances,delay in realization of export proceeds, inadequacy of internal Audit Wing in the Ministry to detect deficiencies in Duty Drawback Scheme and the steps taken to strengthen the same. The Members also sought information regarding break-up of total volume of duty drawback, percentage of duty drawback abuses that had come to the notice of the Ministry, the products in which this was more rampant, the ports in which duty drawback cases were more pronounced and the steps taken by the Ministry to plug the loopholes in the Duty Drawback Scheme. Further, the Sub-Committee also wanted to know about the best international standards that cound act as benechmark and help in minimising the misuse of the Scheme.

4. At the end, the Convenor thanked the representatives of the Ministry of Finance (Department of Revenue), Ministry of Commerce and Industry and also asked them to furnish the requisite information on the various points raised by the Members. The Convenor also thanked the representatives of the Office of the C&AG of India for providing valuable assistance to the Sub-Committee in the examination of the subject.

The witnesses, then, withdrew.

A copy of the verbatim proceedings of the sitting was kept on record.

The Committee, then, adjourned.

APPENDIX II

MINUTES OF THE NINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2014-15) HELD ON 25TH NOVEMBER, 2014

The Committee sat on Tuesday the 25th November, 2014 from 1500 hrs. to 1730 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Prof. K. V. Thomas—*Chairperson*

MEMBERS

Lok Sabha

2. Shri Nishikant Dubey
3. Shri Gajanan Kirtikar
4. Shri Bhartruhari Mahtab
5. Shri Janardan Singh Sigriwal
6. Dr. Kirit Somaiya

Rajya Sabha

7. Shri Bhubaneswar Kalita
8. Shri Shantaram Naik
9. Shri Sukhendu Sekhar Roy

SECRETARIAT

1.	Shri A.K. Singh	—	*Joint Secretary*
2.	Smt. Anita B. Panda	—	*Director*
3.	Shri Jayakumar T.	—	*Additional Director*

Representatives from the Office of the Comptroller and Auditor General of India

1.	Shri P. Shesh Kumar	—	Director General
2.	Ms. Tanuja Mittal	—	Principal Director
3.	Ms. Gurveen Sidhu	—	Principal Director
4.	Shri N. Goswami	—	Principal Director
5.	Shri P. Tiwari	—	Principal Director

2. At the outset, the Chairperson welcomed the Members and the representatives of the Office of the C&AG of India to the sitting of the Committee. The Chairperson then apprised the Members that during the sitting, the Committee would consider the three draft Reports for adoption in the first instance. Thereafter, the Committee would take oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject '**Exemptions to Charitable Trusts and Institutions**' based on the C&AG's Report No. 20 of 2013 (Direct Taxes).

3. The Committee, than took up the following draft Reports for consideration.

(i) Draft Report on the subject '**Duty Drawback Scheme**' based on C&AG Report No. 15 of 2011-12;

(ii) *** *** ***; and

(iii) *** *** ***

4. Giving an overview of the issues contained in the draft Reports and the comments of the Committee thereupon, the Chairperson soliciated the views/ suggestions of the Members.

5. After some discussions, the Committee adopted the two draft Reports mentioned at Sl. No. (i) and (ii) with minor modifications suggested by the Members. The Committee, then, authorized the Chairperson to finalize the Reports in the light of the factual verifications, if any, made by the Audit and present them to Parliament on a convenient date.

6. *** *** ***

7. *** *** ***

8.*** *** ***

The witnesses then withdrew.

A copy of the verbatim proceeding of the sitting was kept on record.

9. *** *** ***

The Committee then adjourned.

***Matter does not pertain to this Report.

GMGIPMRND—3599LS—28-01-2015.