

LEVY OF ANTI-DUMPING DUTY ON IMPORTS

MINISTRY OF FINANCE

**PUBLIC ACCOUNTS COMMITTEE
(2021-22)**

FORTY-EIGHTH REPORT

SEVENTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

PAC NO. 2276

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PUBLIC ACCOUNTS COMMITTEE
(2021-22)

(SEVENTEENTH LOK SABHA)

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IMPORTS**

MINISTRY OF FINANCE



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05/04/2022

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05/04/2022

**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2022 /Chaitra, 1944 (Saka)

CONTENTS

	PAGES
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2021-22)	(iii)
COMPOSITION OF THE SUB-COMMITTEE – IV (FINANCE) OF THE PUBLIC ACCOUNTS COMMITTEE (2021-22)	(iv)
INTRODUCTION	(vi)
 REPORT 	
PART - I	
I Introductory	1
II Directorate General of Trade Remedies (DGTR)	1
III Lacunae in the system based assessments in levying ADD	8
IV Levy of ADD even after lapse of validity of ADD Notification	12
V Non-compliance with the conditions of the ADD notifications	15
VI Non levy of ADD in contravention to the condition of country of origin	54
VII Non levy of ADD on account of contravention of product specific conditions	65
VIII Incorrect computation of ADD	82
IX Incorrect resorting to provisional assessments	84
 PART – II 	
OBSERVATIONS/RECOMMENDATIONS	88-100
 APPENDICES 	
I. Minutes of the First sitting of the Sub-Committee – IV (Finance) of Public Accounts Committee (2021-22) held on 08-09-2021.	102-104
II. Minutes of the Third sitting of the Sub-Committee – IV (Finance) of Public Accounts Committee (2021-22) held on 28-09-2021.	105-108
III. Minutes of the Fourth sitting of the Sub-Committee – IV (Finance) of Public Accounts Committee (2021-22) held on 06-10-2021.	109-112
IV. Minutes of the Seventh sitting of the Sub-Committee – IV (Finance) of Public Accounts Committee (2021-22) held on 03-03-2022.	113-114
V. Minutes of the Eleventh sitting of the Public Accounts Committee (2021-22) held on 28-03-2022.	115-116

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2021-22)

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri T. R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Sudheer Gupta
5. Shri Bhartruhari Mahtab
6. Shri Jagdambika Pal
7. Shri Vishnu Dayal Ram
8. Shri Pratap Chandra Sarangi¹
9. Shri Rahul Ramesh Shewale
10. Shri Gowdar Mallikarjunappa Siddeshwara²
11. Shri Rajiv Ranjan Singh alias Lalan Singh
12. Dr. Satya Pal Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabhaneni
15. Shri Ram Kripal Yadav

RAJYA SABHA

16. Shri Shaktisinh Gohil
17. Shri Bhubaneswar Kalita
18. Dr. C.M. Ramesh
19. Shri Sukhendu Sekhar Ray
20. Dr. M. Thambidurai
21. Shri V. Vijayasai Reddy³
22. Dr. Sudhanshu Trivedi⁴

SECRETARIAT

1. Shri T. G. Chandrasekhar - Joint Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Additional Director
4. Shri Girdhari Lal - Deputy Secretary
5. Ms. Pragya Nama - Assistant Committee Officer

¹ Elected w.e.f. 29.07.2021 vice Smt. Darshana Jardosh, MP appointed as Minister of State w.e.f. 07.07.2021.

² Elected w.e.f. 29.07.2021 vice Shri Ajay Kumar Mishra, MP appointed as Minister of State w.e.f. 07.07.2021.

³ Elected w.e.f. 09.08.2021 vice Shri Rajeev Chandrasekhar, MP appointed as Minister of State w.e.f. 07.07.2021.

⁴ Elected w.e.f. 09.08.2021 vice Shri Bhupender Yadav, MP appointed as Union Minister w.e.f. 07.07.2021.

COMPOSITION OF THE SUB COMMITTEE-IV (FINANCE) OF PAC
(2021-22)

1.	Shri Adhir Ranjan Chowdhury	-	Chairperson
2.	Shri Bhartruhari Mahtab	-	Convenor
3.	Shri Subhash Chandra Baheria	-	Member
4.	Dr. C.M. Ramesh	-	Member
5.	Dr. M. Thambidurai	-	Member
6.	Shri V. Vijayasai Reddy	-	Member

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2021-22) having been authorised by the Committee, do present this Forty-eighth Report (Seventeenth Lok Sabha) on "Levy of Anti-Dumping Duty on Imports" based on Chapter III of C&AG Report No. 17 of 2019 relating to the Ministry of Finance.

2. The C&AG Report No. 17 of 2019 was laid on the Table of the House on 03.02.2020.

3. Public Accounts Committee (2021-2022) selected the aforesaid subject and allocated the same to Sub-Committee – IV (Finance) for examination and Report.

4. The Sub-Committee-IV (Finance) of Public Accounts Committee (2021-22) took briefing by Audit on 08.09.2021. Thereafter, Sub-Committee took oral evidence of the representatives of the Directorate General of Trade Remedies under Ministry of Commerce and Industry and the Ministry of Finance on the aforementioned subject on 28.09.2021 and 06.10.2021 respectively.

5. The Sub-Committee-IV (Finance) of PAC first considered and adopted the Draft Report on the aforementioned subject at their sitting held on 03.03.2022. Then the Draft Report was placed before the Main Committee for consideration and adoption. The Committee adopted the same at their sitting held on 28.03.2022. The Minutes of the sittings are appended to the Report.

6. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type and form Part- II of the Report.

7. The Committee would like to express their thanks to the representatives of the Directorate General of Trade Remedies under Ministry of Commerce and Industry and the Ministry of Finance for tendering evidence before them and furnishing the requisite information to the Sub-Committee-IV (Finance) in connection with the examination of the subject.

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

NEW DELHI;
31 March, 2022
10 Chaitra, 1944 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee

REPORT

PART I

I INTRODUCTORY

The C&AG Report No. 17 of 2019 for the year that ended on March 2018 contains significant results of the compliance audit of the Department of Revenue – Customs under the Ministry of Finance and Director General of Foreign Trade under Ministry of Commerce and Industry.

2. Public Accounts Committee (2021-2022), decided to examine Chapter III of the aforementioned report which deals with 'Levy of Anti-Dumping Duty (ADD) on imports' and allocated the same to one of their Sub-Committees viz. Sub-Committee – IV (Finance) for examination.

3. The Chapter contains numerous paras dealing with various issues related to Anti Dumping Duty. In Para 3.5.1 of this Chapter, Audit noticed that the bills of entry had been cleared through the system under the Custom's Risk Management System (RMS) based clearance in the ICES. It was noticed that the RMS was unable to detect the specific conditions of ADD that were not met by the imports effected under many of the bills of entry test checked. Further, in Paras 3.5.2 to 3.5.7, Audit observed several instances of escapement of levy and instances of non-compliance with the conditions of the anti-dumping which resulted in non/short levy of anti-dumping duty amounting to ₹ 86.69 crore.

4. The Sub-Committee took oral evidence of the representatives of the Director General of Foreign Trade under Ministry of Commerce and Industry and the Ministry of Finance on the subject at their Sittings held on 28th September, 2021 and 6th October, 2021 respectively.

Directorate General of Trade Remedies (DGTR)

5. Anti dumping measures in India are administered by Directorate General of Trade Remedies (DGTR), (earlier the Directorate General of Anti dumping and Allied Duties) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry. Their function is to conduct the anti dumping duty investigations and make recommendation to the Government for imposition of anti dumping measures. Such a duty is finally imposed/ levied by a notification of the Ministry of Finance, Department of Revenue. Thus, while the Department of Commerce recommends the Anti-dumping duty (ADD), it is the Ministry of Finance, which levies such duty.

6. Further, elaborating on role of the Directorate, the representative of DGTR while tending evidence submitted as follows:

"..... DGTR is quasi-judicial authority which works under the administrative control of the Department of Commerce. As the Additional Secretary mentioned, Sir, earlier we had a Directorate of Anti-Dumping which was called DGAD and we had a separate Directorate which was called DG of Safeguards and all were merged together and were brought under one umbrella which is the DGTR in the year 2018. As the Additional Secretary mentioned, we basically do three types of investigations. One is on antidumping, the other is on subsidies and third is on safeguards and I will elaborate all of them as we move along the presentation. We have also created a new wing which is called the Trade Defence Wing. The purpose of this Wing is to handhold our exporters who are facing trade remedy actions in foreign. So, that is the handholding which we provide in the Directorate."

7. The representative also submitted that a new phenomenon called circumvention has come up, which basically arises when an article is routed into India through a third country. He also submitted that the Directorate also investigates such cases for taking Anti-Circumvention measures.

8. As regards the role entrusted upon Directorate General of Trade Remedies (DGTR) to safeguard domestic industry, DGTR in their written reply mentioned as under:

"The Trade Remedial Measures are major instruments provided under WTO's framework to the member nations to protect their domestic industry from the incidence of unfair trade practices and unforeseen surge in imports. The DGTR is an integrated agency for providing the comprehensive and swift trade defence mechanism in India. The mission of DGTR is to provide a level playing platform to the domestic industry against the adverse impact of the unfair trade practices, viz., dumping, actionable subsidies, circumvention, etc. from any exporting country by using effective trade remedial measures, viz., comprehensive anti-dumping, anti-subsidy and anti-circumvention investigations and safeguard measures."

9. When asked about the parameters factored in before determining and making recommendations of Anti-Dumping Duties (ADD) by the DGTR, DoC mentioned in their written reply as under:

"The elements of analysis as per the Act and the Rules are:

- Existence of dumping, i.e., the exporter exports the subject goods to India at price lower than the normal value in its domestic market, i.e., lower than the prevailing price in the domestic market of his own country.
- Existence of injury to the domestic industry.
- Causal Link between the dumped imports and the injury to the domestic industry, i.e. the alleged dumped imports are the cause for injury to the

domestic industry.”

10. When the Committee desired to know about the average time taken in completion of the anti-dumping duty investigations conducted by DGTR, DGTR in their written reply submitted as follows:

“There has been substantial reduction in the average time taken to complete an investigation. The average time for completing an investigation and issuing the final findings has been brought down to 230 days in 2019-20 from 281 days during 2018-19 and more than 400 days in previous years. However, due to ongoing COVID-19 pandemic and restrictions imposed on physical movement, the average time to issue the final findings in 2020-21 is about 305 days.”

11. When asked about the major product categories which are generally covered under ADD, the DOC replied as follows:

“The major product categories are as under:

- i. Products of Chemical and Allied Industries
- ii. Base metals and articles
- iii. Articles of stone, plaster; ceramic prod.; glass
- iv. Textiles and articles
- v. Machinery and electrical equipment”

12. On being asked whether any review of the products covered under ADD is undertaken from time to time, DoC in their written reply responded as under:

“An anti-dumping duty may be reviewed at any time prior to the expiration of the period of duty. Before the expiration of a measure, the DGTR may initiate a sunset review, on its own initiative or as a result of a request from an interested party. The anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year. However, if the central government, in a review, is of the opinion that the cessation of the duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of maximum five years starting from the date of the order of the extension. The domestic industry must file a petition to seek extension for an anti-dumping measure, at least 270 days prior to the date of its expiry (or 240 days prior to the date of expiry of the measure, with justification for the delay). An order of initiation or rejection is generally issued within 45 days of the date of receipt of the petition. Sunset reviews may be initiated *suo motu*. However, such cases are not many as without the petition from the domestic industry, sufficient data to establish injury to the domestic industry from the alleged dumped imports is not easily available.”

13. To a specific query in regard to removal of ADD on Barium carbonate and whether views of stakeholders were taken into consideration prior to removing the same, the representative of DoR in the oral evidence taken on 06.10.2021 stated as under:

“On your question on barium carbonate, we had received findings from DGTR. They did the sunset review. The levy was in position for five years. As you are aware, Sir, at the end of five years, there is a provision for a sunset review by the DGTR. When they do a sunset review, it is almost like the original investigation. They get feedback from all the interested parties, the domestic industry, and importers. On the basis of that, they come to a conclusion. They also look at data of imports whether there is dumping or whether there is injury. So, the very same question which they addressed at the time of the original investigation, they visited it at the time of doing the sunset review.

Now, in the case of barium carbonate, during the period of investigation which DGTR looked at, there were four or five indicators on the basis of which they came to the conclusion that the duty should be terminated on completion of five years. So, first they found that the import was almost nil or negligible during the period of investigation. There was no price undercutting which is a very important indicator of injury to the domestic industry. They also concluded that there was no injury on account of imports. Normally, what happens is we also look at whether there is a threat of injury if the duty is removed. One of the factors they look at when they consider it is whether there is excess capacity in the exporting country because if there is excess capacity and we remove anti-dumping duty, even though there is no injury right now, there is a possibility that that excess capacity will be used to dump product into the country. They also found that there was no excess capacity in China. Like I said, Sir, they had taken on board the stakeholders' views in the matter and this was also not contested by the domestic industry, and that is why the recommendation was to lift the anti-dumping duty on completion of five years, which we did on 24th August, 2021.”

14. Further answer to FAQ No 6. on the website of DGTR regarding provision pertaining to Anti-Dumping Duty investigations *suo-motu*, without a petition being filed by the aggrieved party by DGTR states that:

“Normally speaking, the Designated Authority initiates the proceedings for anti dumping action on the basis of a petition received from the domestic industry alleging dumping of certain goods and the injury caused to it by such dumping. However, Rule 5(4) of the Anti Dumping Rules provides for *suo-motu* initiation of anti dumping proceedings by the Designated Authority on the basis of information received from the Collector of Customs appointed under the Customs Act, 1962 or from any other source. In such circumstances, the Authority initiates the anti dumping investigation on its

own without any complaint/petition filed in this regard, provided the Authority is satisfied that sufficient evidence exists as to the existence of dumping, injury and causal link between the dumped imports and the alleged injury. It is further clarified that after initiation, the *suo-motu* investigation follows the same procedure as the one based on a petition as mentioned in the Anti Dumping Rules.”

15. When the Committee sought to know about the existence of any assessment system to ascertain the total loss of revenue or loss caused on account of escaping or non-levy in the Directorate, the representative of the Department of Commerce in oral evidence held on 29.09.2021 stated as under:

“No, we do not do that. We do not have a mechanism to do that once we send our recommendation because that is under the domain of the Customs. Through their ICEGATE, they collect the duty. We have no access to that data.”

16. On being asked whether recommendations of ADD are made by DoC in consultation and coordination with the Department of Revenue, DGTR in the course of oral evidence conducted on 29.09.2021 replied as under:

“No. The collection of duties is under the domain of the Department of Revenue.”

17. When asked about the status of acceptance of recommendations made by DGTR, Department of Commerce during oral evidence held on 29.09.2021 mentioned the following:

“Sir, if I give figures of previous years, whatever we used to recommend that used to be accepted in almost 99.9 percent cases. Recently we had conducted an analysis. In the analysis this number has come to almost 60 percent. So we had a meeting with them also to understand their perspective as to what they are looking at and what we are missing out.”

18. As regards the number of recommendations not accepted by DoR during the last two years 2019-20 and 2020-21, DGTR furnished the details of such recommendations in their written reply as under:

“Ministry of Finance has not accepted some of the recommendations, the details of which are given below. The reasons for non-acceptance of the recommendations of DGTR are not provided by the Ministry of Finance.”

Recommendations of DGTR for imposition of Anti-Dumping Duty which have been rejected by DoR

Summary				
Year	Total Positive Recommendations (PF)	Recommendations accepted	Recommendations rejected	Pending recommendations
2019-20	61	28	33	0
2020-21	33	5	5	23

S.No.	Product	Country	Final Finding (FF)/Provisional Finding (PF)	Date of Rejection
1	Nylon Multi Filament Yarn	China PR, Korea RP, Taiwan, Thailand	FF	04-Mar-20
2	Polystyrene	Iran, Malaysia, Singapore, Chinese Taipei, UAE and USA	FF	12-Jun-20
3	Coated/Plated Tin Mill Flat Rolled Steel Products	European Union, Japan, USA and Korea RP	FF	17-Jun-20
4	Polyethylene Teraphthalate	China PR	PF	05-Aug-20
5	Dimethyl Formamide (DMF)	China PR and Saudi Arabia	PF	18-Aug-20
6	Phenol	Thailand and USA	PF	20-Aug-20
7	Soda Ash	Turkey and USA	PF	21-Aug-20
8	Choline Chloride	China PR, EU, Malaysia, Vietnam	FF	25-Aug-20
9	Acrylic Fibre	Thailand	FF	31-Aug-20

S.No.	Product	Country	Final Finding(FF)/Provisional Finding(PF)	Date of Rejection
10	Acrylic Fibre	Belarus, EU, Peru, Ukraine	FF	01-Sep-20
11	DPP Red	China PR	FF	08-Sep-20
12	HotRolledFlatproducts of Stainless Steel-304 grade	China PR, Korea RP, Malaysia	FF	29-Sep-20
13	Acetone	Korea, Taiwan and Saudi Arabia	FF	29-Sep-20
14	NTCF	China PR	FF	29-Oct-20
15	Certain Rubber Chemicals PX 13	China PR, USA and Korea	PF	11-Nov-20
16	All Fully Drawn yarn	China PR and Thailand	FF	24-Nov-20
17	Acrylonitrile Butadiene Rubber(NBR)	Korea RP	FF	24-Nov-20

19. To a specific query regarding follow-up action being taken to ascertain the extent of ADD collection made on imports as a result of recommendations made by DGTR, the DGTR, in their written reply, mentioned as follows:

“Since the DGTR only recommends the anti-dumping duties and the imposition and collection of such duties comes under the purview of the Central Government, the DGTR does not have the information on the extent of ADD collection made on the imports post imposition of the duty.”

20. When the Committee enquired whether DGTR is aware of the Audit observations regarding several instances of escaping of levy and non-compliance with the conditions of anti-dumping measures that were in force, representative of the Ministry of Commerce and Industry, Department of Commerce during the Oral evidence held on 29.09.2021 submitted as under:

“No, Sir.”

II Para No 3.5.1: Lacunae in the system based assessments in levying ADD

21. According to Audit, payment of duties of customs and any other levies and surcharges is on self- declaration basis. After the importer files a bill of entry providing details of the imported goods, the consignments are assessed by the Indian Customs EDI system or ICES. The Indian Customs EDI system or ICES uses Risk Management System, (RMS) to identify transactions which require additional scrutiny by the assessing officer.

22. In this regard, when asked about the parameters used by the RMS to flag/identify a transaction which requires additional scrutiny by the assessing officer, the Ministry replied as under:

“RMS uses a multi-layered approach to identify and flag a bill of entry/customs declaration for verification by field officers, based on a host of dynamic risk- evaluation criteria/parameters that include risky entities, risky commodities, country of origin, CTH/CTI and ADD notification. It deploys a range of tools (e.g., rule-based and risk-based), as well as modern technologies including Machine Learning, to discern and flag risky transactions including those related to ADD. These parameters and criteria are continually reviewed and refined/updated.”

23. When asked whether any mechanism is in place to ensure regular updation of business rules in ICES to deter escapement of duties, the Ministry in their written reply stated as follows:-

“Yes, there is a mechanism. ICES is a transactional platform which is designed based on Customs Act, rules, regulations and procedures which are the business rules for Electronic data Interchange required for processing of Bill of Entry and Shipping Bill for the clearance of EXIM cargo. Any change in the aforesaid rules and regulations having bearing on the processing of EXIM cargo is duly updated. For instance, Notifications are entered in the Directory Management Site (DMS) and reviewed by Peer Review Site (PRS) immediately after they are issued. Any amendment in Tariff Headings, Drawback rate etc. is similarly updated. After the annual budget, an exercise is carried out for timely updating of budgetary changes.”

24. As regards the frequency of updation of Business rules in ICES, the Ministry in their written reply added as under:

“The frequency of updation of directories is dependent on change as per when Notification, etc are issued by CBIC. The processing of EXIM cargo is on the basis of Self-declaration in terms of section 17 of the Customs Act, 1962 and verification of the assessment as mandated in the Act. The word "automatic", is not correct because duty levied is dependent on self

declaration as per Section 46 of the Customs Act, and assessment as prescribed in Section 17 *ibid*. ICES is a tool to enable the officers to do the assessment. Further, an annual exercise is also carried out for timely implementation of budgetary changes.”

25. As regards the measures taken to ensure incorporation of updated ADD Notifications into the system for automatic charging of levy, the Ministry’s response flows as under:-

“The design for self assessment as prescribed is a mechanism for the importer to correctly declare goods and claim classification, Notification, rate of duty etc. as applicable. Once claimed, the system is auto populated on the basis of duty as applicable as per Customs Notification claimed. It is reiterated that ADD is a levy and the system does not enforce this Notification automatically. It is important to note that ADD may not be leviable on all imports under a CTH and is dependent on condition such as manufactures, country of origin, description of goods etc. If the importer or the Customs Broker on behalf of the importer claims the specific Notification at the time of Self-declaration (Section 17 of Customs Act 1962) ICES IT platform will provide the procedure for processing of the same. If Bill of Entry is marked for assessment by way of suitable treatment given by the Risk management System (RMS) then the concerned assessing officer can impose or remove the Notification on the basis of applicability of said Notification at time of assessment on the basis of alerts given by the system that the item attracts the Anti Dumping Duty and officer should check the same.”

26. The Audit also pointed out that filing of Producer/Manufactures’ name is not made mandatory in the Indian Customs EDI System (ICES). The names of the ‘Producer /Manufacturer’ and ‘Supplier /Exporter’ beside country of origin are critical for deciding rates of ADD applicable on import of specified commodities because different rates are prescribed for different manufacturers/exporters or combination thereof. However, though majority of BEs filed are passed through the Risk Management System in ICES, Audit noticed that the ICES did not have the provision for mandatory filling up of the field for ‘Name of Producer/ Manufacturer’.

27. In Kandla Commissionerate, it was noticed that ‘exemption from ADD was claimed in 53 cases of import of Phenol, originating and exported from Korea RP and Singapore although these commodities are subjected to ADD when imported from Korea and Singapore. The field of ‘manufacturer’ was kept blank in the import documents filed in the system by the importer. Further, Audit could not find any comments of assessing officers in the system nor relevant files were made available to Audit, due to which correctness of admissibility of exemption of ADD of ₹ 91.28 lakh, to these imports could not be ascertained.

28. In this regard the Ministry, in their Detailed Background Note commented as under:

"Kandla

As regards, audit's recommendation for inclusion of field "Name of Exporter" and making mandatory the field for "Name of Manufacturer" for being mentioned in the EDI system, for goods which fall under Antidumping duty notifications, a request in this regard has already been made to the DG Systems, Customs & Central Excise, New Delhi on 11.10.2018. The audit has raised objection that the field of 'manufacturer' was kept blank in the import documents filed in the system by the importer i.r.o. 53 BEs and Audit could not find any comments of assessing officers in the system due to which correctness of admissibility of exemption of ADD of ₹ 91.28 lakhs, to these imports could not be ascertained. Documents were called for from the importers and after examining the replies received from the importers, it is found that the importers fulfill the condition of manufacturer-supplier combination as envisaged in the Notification No. 06/2016."

29. Further, the names of the 'Producer/ Manufacturer' and "Supplier/Exporter" beside the country of origin were found to be critical for deciding rates of ADD applicable on import of specified commodities. When asked whether the field for 'Name of Producer/ Manufacturer' had been made mandatory for filing, the Ministry in its written reply responded as follows:

- a. The Circular no. 55/2020- Customs dated 17.12.2020 mentions "in cases where duty applicability is based on manufacturers such as Anti-Dumping Duty (ADD), Safeguard Duty (SD) etc, the details of manufacturer may be provided. In case of products attracting ADD, these details would be required to be mandatorily provided."
- b. It is relevant to note that the ADD prescribed for non- specified entities is often higher than that prescribed for the specified manufacturers. Hence, it is in the interest of importer self declaring the applicability of the ADD in his BE to show the name of the manufacturer/producer.
- c. At present, non filling of manufacturer/producer field in the electronic Bill of Entry does not prevent the filing of the Bill of Entry. The reasons associated with this include-
 - Even though supplier is same as manufacturer in certain cases, it may not be so in all cases. While absence of such declaration may be considered a challenge for Customs RMS, yet making such field mandatory for all imports poses a different challenge as the importer may not always be in a position to ascertain (and declare) the name

of the manufacturer when he procures the goods from a trader abroad.

- Making producer/manufacturer field mandatory for filing bill of entry would be in conjunction with the already mandatory field for filing BE related to the Custom Tariff heading of the product. This additional system validation cannot take into account product specifications such as grade, density, thickness etc. In such a situation, adding the system validation would likely lead to higher compliance requirements for importing domestic industry as the import product may still not attract the applicability of ADD by virtue of its specifications. This will add to higher cost of doing business.
- d. As stated earlier, there are mechanisms in place to check misuse or non levy/short levy of ADD as described in comments to points 1 and 5 herein above. To reiterate, these include verification of self assessment at assessment, examination and clearance stages based on instructions in the Customs RMS and Customs Compliance Requirements (CCR). There are also different types of audit and interventions of intelligence/investigation agencies. Therefore, this entire risk management framework or ecosystem is relevant for purposes of deriving compliance in the case of ADD.
- e. Moreover, the alternative of other system-based and non-system based means for supporting the identification of ADD applicable on specified commodities have been explored and improvements in the Customs RMS, subsequent to the period of audit, have been undertaken. The capability in relation to ADD has been improved based on evolving developments. For instance-
- From the last quarter of 2017, RMS criteria were tweaked to also route Bills of Entry of low risk importers to appraisalment, so as to address the risk associated with such importers managing to avoid ADD, by adopting altered descriptions.
 - In year 2020, another beginning was made with RMS introducing Machine Learning techniques to strengthen targeting of various risks, including ADD related risks, at two levels-
 1. First involves Bills of Entry in which ADD has not been declared, where on identical Customs Tariff Heading, country of origin and supplier combination such duty had been paid, on an earlier occasion.
 2. The second matches supplier, Customs Tariff Heading and description combination in Bill of Entry with historical data of Bills of Entry, where ADD, has been levied and paid in the

past

- Other components of Risk Management are also being improved, such as Post Clearance Audit- where the potential of avoidance of ADD is also being factored and RMS is being used to identify the bills selected for audit.
- National Customs Targeting Centre (NCTC) of CBIC has issued Analytic Reports and alerts in the year 2021 aimed at detecting non compliance of ADD notifications.”

30. Moreover, regarding steps taken to address the systematic lacunae in the RMS, the Secretary, Department of Revenue, Ministry of Finance in the oral evidence taken on 06th October, 2021 mentioned the following updates in RMS :-

“In the year, 2020, RMS introduced machine learning techniques to strengthen targeting of various risks including ADD-related risks at two levels. The first bill of entry in which ADD has not been declared whereon in identical custom tariff heading country of origin and supplier combination on earlier occasion, such duty had been paid. So, when we take this person ‘A’ from Indonesia giving a particular product ‘X’, he was levied an antidumping duty may be in his last bill of entry six months or eight months or a year ago, and this this he has not declared that, and all these entries are matching, then we also pick him up for this test. So, that has been built into my machine levelling process, and it red flags that. The second match is supplier customs tariff heading and description combination and bill of entry with historical data of bills of entry having paying of ADD. This is similar to the one that I mentioned. Then there are other components of risk management compliance framework or a complementing and supplementing the continuously improving RMS.”

III Para 3.5.2: Levy of ADD even after lapse of validity of ADD Notification

31. ADD is leviable from the date of imposition by publishing of the notification by CBIC and is effective for a maximum period of five years unless revoked, superseded or amended earlier.

32. Audit had observed that Imports of Di-Isocynate classifiable under CTH 2929102 were leviable to ADD under Notification No. 25/2017-Cus (ADD) dated 5 June 2017. The Notification was valid for six months only i.e. upto 4 December 2017. Similarly, imports of Phosphoric acid, Vistamaxx 6202 propylene, Glazed/Unglazed porcelain/vitrified tiles etc. were leviable to ADD under Notifications 19/2012 dated 4 April 2012, 119/2010 dated 19 November 2010 and 12/2016-Cus (ADD) dated 29 March 2016 respectively with validity of five years and six months respectively.

33. In four Commissionerates, Audit noticed that the Department had recovered ADD of ₹1.17 crore in 72 cases of Di-Isocyanate, Phosphoric acid, vistamaxx, phenol and Glazed/Unglazed porcelain/vitrified tiles imports after expiry of the prescribed notifications which amounts to recovery of ADD without any existing notification.

34. In regard to the afore-mentioned cases the Ministry responded as under:-

“In all cases mentioned, Ministry agrees with audit objection. In future due caution will be taken while assessing the BsE by assessing officers. The duty is self assessed by taxpayer and any amount once paid against any B/E forms the part of consolidated fund of India. As per Customs Act, refund of excess payment of duty can be claimed by the taxpayer under section 27 of the Customs Act, 1962. But so far no refund claim has been filed.”

35. On being asked about the reasons for levy of ADD even after lapse of validity of ADD Notification and the remedial action taken thereon and whether the money so recovered has since been refunded, the Ministry replied as follows:-

“One of the reasons of levy of ADD even after lapse of validity of ADD notification is the absence of the end date in the System. In 29 out of the 72 cases, the importer self assessed the anti dumping duty. In 2 cases, the assessment group as a precaution collected ADD, as ordinarily, final ADD is imposed making it applicable from the date of provisional ADD. Refund in such cases is governed by Section 27 of the Customs Act, 1962 wherein, a claim has to be filed and the conditions for grant of refund are specified. The refund of unduly paid ADD shall be done on submission of refund application by the concerned importers. As on date, no refund application has been filed by the concerned importer in respect of such refund of excess ADD paid. There is no provision available in Customs Act for giving *suo moto* refund of excess paid duty by importer. In the remaining 41 cases, the recovery of ADD is covered by virtue of validity of applicable notifications (30/2011 dated 04.03.2011, 06/2011 dated 07.02.2011, 09/2013 dated 26.04.2013 and 119/2010 dated 19.11.2010) having been extended. The Directorate General of Systems has been addressed to examine the issue of having an in-built mechanism for ADD notification expiry in the System. “

36. Further, when asked if any provision could be made by the Ministry for initiating *suo-moto* refunds, the Secretary, Department of Revenue, Ministry of Finance in the oral evidence taken on 06th October, 2021 had mentioned the following:

“One of the hon. Members asked a question about why we cannot give refunds on our own if we end up collecting anti-dumping duty beyond the period of validity. As you are aware, in all our indirect tax laws, we have a provision which deals with the subject of Unjust Enrichment. Under the Doctrine Of Unjust Enrichment, it is presumed that any indirect taxes which an importer or a manufacturer pays are invariably passed on to the consumer and therefore, if you end up refunding that indirect tax to him, he will be unjustly enriched because he would have passed it on to the consumer and recovered it from him. On top of that, he will get the refund which we give him. So, that is the reason we are unable to give suo motu refunds in such situations. We normally ask for a refund claim to be filed because when the claim is filed, we verify on the basis of documentary evidence, which is normally a chartered accountant certificate and the books of accounts to come to a finding whether the duty of which the refund is being claimed has actually been passed on in their prices or not. So, there is a little bit of a disability there in giving *suo moto* refunds.”

37. As regards to the cases of levy of Anti Dumping Duty even after the lapse of validity of ADD notification, the Secretary, Department of Revenue, Ministry of Finance in the oral evidence taken on 06th October, 2021 mentioned the following:-

“Sir, the usual process is of self-assessment by the importer who has option to claim refund. So, if he, by mistakes, pays the anti-dumping duty, he can claim refund. In certain end dates, the system is not very practical as levy of this duty is dynamic in nature and is subjected to various kinds of review, which I have explained earlier. So, it does not mean that the duty would end on the date. So, to ease that process or not to have any legal complication, we do not mention the end date unless that notification itself is revoked. So, that will also create problems if we put the end date. But the refund process is available, and we expect that the exporter would be aware of what the duties are.”

38. When asked about the specific reasons for failure to detect the lapse by the internal control mechanism, the Ministry's written response went as follows:-

“In ADD, the processes involved include imposing ADD provisionally, then imposing a final duty for five years. A sunset review is made to decide on continuing the duty beyond five years. A shipper review is provided for. There are also provisions for mid-term review to examine the need for a continued imposition of the ADD or for a change in it. These aspects make the levy of ADD dynamic in nature. In the past, the end date of the ADD notifications was not specified in the System. However, as mentioned in comment to point 11 herein above, the Directorate General of Systems has

been addressed to examine the issue of having an in-built mechanism for ADD notification expiry in the system.”

IV Para No 3.5.3 of Report No 17 of 2019: Non-compliance with the conditions of the ADD notifications

39. The ADD is levied on specific commodities and is source specific. The Notification of ADD provides conditions for levy of ADD which are mainly the country of origin/country of export, name of the manufacturer, classification of imported commodity and nature of the imported good. Imports which meet all or some of these conditions, as laid down in the Notifications, are leviable to ADD.

40. Audit observed that there was Non/short levy of ADD amounting to ₹ 63.60 crore in 1205 cases imported through 15 Commissionerates due to incorrect application of ADD Notification provisions. The commodities which escaped ADD were plastics and plastic products, textile and nylon yarn, chemicals, metals and ceramics and glassware.

41. On the Audit observation, the Ministry furnished its comments in respect of each case as under:-

“(i) **Chennai:-**

Injection Moulding Machine –

As per audit, 21 consignments of Injection Moulding Machine imported by 18 importers through Chennai Sea Commissionerate were cleared without levy/short levy of ADD of ₹ 139.15 lakhs. In order to protect the revenue, SCN have been issued to 11 importers. In case of another 6 importers, the same is pending as the imported goods are used in nature (i.e. used injection moulding machine) and one importer M/s Toprun Automotive India Pvt. Ltd. has filed appeal in CESTAT (Appeal no. C/40034/2020) against the order of Commissioner of Customs for similar case and the same is pending before CESTAT.

Nylon Filament Yarn-

As per audit, 21 consignments of Nylon Filament Yarn imported by 4 importers through Chennai Sea Commissionerate were cleared without levy /short levy of ADD of ₹ 131.70 Lakhs. One importer, M/s HSI Automotive Pvt. Ltd imported 5 consignments of 100% polyester filament yarn which is declared as 'Filament yard PEF&1500 Dx1 ply, for which ADD is not applicable. The identical goods imported vide previous BE and supplied by the same supplier was tested by Textile Committee and found to be 100% polyester. The ADD Notification 03/2012 refers to Nylon Filament Yard only. Show Cause notices were issued to 3 importers in respect of 16

consignments.

Ministry's Comments: OiO has been issued in respect of other Bs/E.

Mulberry Raw Silk-

As per audit, 5 consignments of Mulberry Raw Silk imported by 4 importers through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 13.67 lakhs. SCN has been issued to all 4 importers.

Ministry's Comments: In all the cases OiOs have been issued.

Measuring Tapes-

As per audit, 1 consignment of Measuring Tapes imported through Chennai Sea Commissionerate was cleared without /short levy of ADD of ₹ 32.15 lakhs. The case was adjudicated and 0-in-0 was issued for confirming the demand.

Ministry's Comments: Recovery is under process.

Clear Float Glass:

As per audit, 2 consignments of clear float glass imported by 1 importer through Chennai Sea Commissionerate were cleared without levy of ADD of ₹ 6.07 lakhs. SCN dated 25.08.2020 has been issued to importer.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

Sodium Ascorbate:

As per audit, 5 consignments of Sodium Ascorbate imported by M/s Shree Pharma, through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 331.36 lakhs.

In this regard, the Commissionerate is not agreed with the audit objection. On perusal of ADD notification it is found that ADD under this notification shall be applicable to all synonyms of Vitamin C, including, most commonly used synonyms of Vitamin-C, namely, ascorbic acid, L-Xyloascorbic acid, 3-Oxo-L-gulofurnolactone (enol form), L-3-Ketothreohexuronic Acid Lactone, etc, as described under entry number "867" of Merck Index. Whereas on perusal of Merck index, it is seen that the Sodium Ascorbate finds a specific entry at no .8723 of Merck Index. The entry mentions sodium ascorbate as ascorbic acid sodium derivative. Hence, it is clear that Vitamin C (Ascorbic Acid) and sodium ascorbate are chemically two different compounds. Further, ADD under notification no. 67/2009 dated 16.06.2009 and 38/2015-ADD dated 06.08.2015 is applicable only to synonyms of Vitamin C (Ascorbic Acid) which

find entry under Merck Index 867. There is no reference to Sodium Ascorbate as an equivalent or synonyms of Vitamin C. Hence, levy of ADD on the products mentioned under Merck Index 8723 would amount to exceeding the scope of levy of ADD on the products which are not mentioned in the notification itself, which is legally correct.

Cable Tiles:

As per audit, 1 consignment of Cable Tiles imported by M/s El-Care through Chennai Sea Commissionerate was cleared without / short levy of ADD of ₹ 5.23 lakhs. The Commissionerate agrees with the audit objection. Action is initiated to recover the amount from importer.

Ministry's Comments: Recovery is under process.

Ceramic Wares:

As per audit, 13 consignments of Ceramic Wares imported by 12 importers through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 29.04 lakhs. The Commissionerate partially admits the audit objection. One importer, M/s Royal Palace has paid the differential duty of ₹ 3049/- with interest of ₹ 626/- in respect of 1 consignment. M/s SV Infra Developers intimated that the goods under B/E 2197699 dt22.06.17 was Basin made of ceramic which is a toilet item, for which ADD will not applicable. M/s Kalapura Impex intimated that the goods imported under B/E 4298302/15.07.17 is ceramic basin which is a toilet item, for which ADD will not applicable. In respect of other cases, action is initiated to recover the amount by issuing SCN.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

PVC (Poly Vinyl Chloride) Paste Resin.

As per audit, 8 consignments of PVC Resin imported through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 19.28 lakhs.

The Commissionerate partially admits the audit objection.

One importer, M/s Grindwell Norton Ltd has paid ₹ 78,321/- along with interest. Further, the importer M/s Soft Turf has stated vide their letter dated 29.03.2019 that their supplier have mentioned description in wrongly as PVC paste resin S65 instead of PVC resin S65 by oversight in B/E 7529473/ 21.11.2016 and submitted documents viz. Performa invoice from the supplier, LC application submitted to their Bank confirming typographical error. On perusal of the documents it is found that contention of importer is acceptable.

In another case of M/s Poly pipes India (P) Ltd has imported suspension grade resin used for pipe manufacturing vide B/E no. 8820642/06.04.2015 mentioning ADD notification no. 27/2014 Sr. No. 6 from supplier M/s Formosa plastics corporation, Taiwan for which ADD leviable is NIL.

In case of 4 importers, it is noticed that Bills of entry pertain to 2015 and were cleared after open examination order. Hence, the show cause notice can be issued under section 28(1) only and the said objection was raised only in July 2018. Hence, SCNs for these B/E cannot be issued. Further, letter was sent to M/s Salcomp Manufacturing India Pvt Ltd to pay the differential amount.

Phosphoric Acid.

As per audit, 9 consignments of Phosphoric Acid imported by 5 importers through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 14.94 lakhs.

The Commissionerate partially admits the audit objection.

In respect of 3 importers (M/s Panchi Chemicals, M/s International flavor and fragrance and M/s KCC paint India Pvt. Ltd) an amount of ₹ 2.49 lakh is recovered.

For importer M/s Padma Agencies ADD was not applicable as the ADD was applicable till 12.01.2017 and all Bills of entry were of later dates.

ADD is not applicable in case of M/s Navkar Exim also as there was no ADD notification during period 22.06.2015 to 23.08.2018 due to review of ADD notification.

One bill of entry no. 710062 dated 15.10.2016 of M/s PanchiChemicals is also not covered under ADD notification as imported item is Dimethyl Sulphoxide.

Ministry's Comments: Documents will be submitted in due course.

Dichloromethane (Methylene Chloride):

As per audit, 2 consignments of Dichloromethane imported by 2 importers through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 10.33 lakhs.

The Commissionerate admits the audit objection.

An amount of ₹ 11.16/- lakh has been recovered from both importers

Hydrogen Peroxide.

As per audit, 7 consignments of Hydrogen Peroxide imported by 5 importers through Chennai Sea Commissionerate were cleared without/short levy of

ADD of ₹ 7.20 lakhs.

The Commissionerate admits the audit objection.

An amount of ₹ 9.21/- lakh has been recovered from all 5 importers.

Melamine. As per audit, 1 consignment of Melamine imported through Chennai Sea Commissionerate was cleared without /short levy of ADD of ₹ 1.21 lakhs. The Commissionerate admitted the audit objection. The importer had paid the differential duty along with interest for ₹1,26,188/-.

Barium Carbonate.

As per audit, 1 consignment of Barium Carbonate imported through Chennai Sea Commissionerate were cleared without/short levy of ADD of ₹ 0.73 lakhs.

The Commissionerate admits the audit objection. The importer has paid an amount of ₹ 97,181/- towards differential duty along with interest.

Potassium Carbonate.

As per audit, 4 consignments of Potassium Carbonate imported through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 0.50 lakhs.

The Commissionerate admits the audit objection. The importer had paid an amount of ₹ 65,053/- towards differential duty along with interest.

Sheet Glass.

As per audit, 69 consignments of Sheet Glass imported by 16 importers through Chennai Sea Commissionerate were cleared without non /short levy of ADD of ₹ 229.34 lakhs. M/s Matrix valves and tools paid an amount of ₹ 2,94,486/- towards demanded amount with interest. Further, SCN has been issued to all importers.

Ministry's Comments: OiOs have been issued.

(ii) Mumbai:-

Elastomeric Filament Yarn

The Commissionerate agrees with the audit objection. Two out of three importers paid ADD at the time of clearance through manual challan. Third importer made the payment with applicable interest on 21.9.2017. Total amount recovered is ₹16,84,207/-.

Axle for Trailers

The Commissionerate agrees with the audit objection to the extent that ADD was not levied in case of imports by M/s King Kaveri.

In the case of M/s S.S Automobiles, the goods namely 'Axle for Trailer' covered under Bills of Entry No. 7606021 dated. 26.11.2016 was imported on 26.11.2016 (date of Entry Inward/ date of importation) whereas, the said ADD Notification No. 54/2016 dated. 29.11.2016 came into force on 29.11.2016. Therefore, the said ADD notification is not applicable on these goods.

In the case of M/s King Kaveri Trading Company, DRI, Mumbai has issued SCN vide. F. No.: DRI/MZU/E/ENQ-77(Int-79)/2017/8777 to 8783 dt. 21.11.2017 to the Importer. Accordingly they have paid all the dues of Anti Dumping vide challan no. HC-30 DT. 03.11.2017, HC-371 DT. 21.06.2017, HC-427 DT. 23.06.2017, 2018841101 DT. 05.07.2017, HCM-469 DT. 08.12.2017, 2018657009/ 2018657028/2018670522 all dated 16.06.2017.

Flat Base Wheel

The Commissionerate agrees with the audit objection.

Show cause notice 248/2020-21/CAC/JNCH dated 05/08/2020 has been issued to M/s Fiat India Automobiles Pvt Ltd, for demand and recovery of Anti dumping duty of Rs 4,66,604.80/- not levied in respect of goods imported vide 11 Bills of Entry.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

Graphite Electrodes

The Commissionerate agrees with the audit objection.

Anti-Dumping Duty of Rs 11,77,119.63/- along with applicable interest under Section 28AA of the Custom Act, 1962 thereon in case of M/s Kalyani Carpenter Special Steels Ltd.

Anti-Dumping Duty of Rs 24,57,663.77/- along with applicable interest under Section 28AA of the Custom Act, 1962 thereon in case of M/s Bharat Heavy Electricals Limited.

The Commissionerate agrees with the audit conclusion in the case of for M/s Bharat Heavy Electricals Limited. Further, M/s Bharat Heavy Electricals Limited has paid an amount of Rs 36,37,851/- which included the Anti Dumping Duty amount along with applicable interest thereon under Section

28AA of the Custom Act, 1962 vide ChallanNos HCM 358 dated 05.02.2020, HC 65 dated 05.02.2020, HCM 1913 dated 20.02.2020, HC 461 dated 20.02.2020, HCM 817 dated 14.07.2017 and HC 127 dated 07.07.2017.

The Commissionerate does not agree with the audit conclusion in the case of M/s Kalyani Carpenter Special Steels Ltd. as they have already paid the Anti Dumping Duty amounting to Rs 11,77,119/- vide Challan No. HCM-912 dated 10.03.2015 i.e. within one day of assessment. Hence, there was no short payment of Anti Dumping Duty in this case.

Compact Fluorescent Lamps(CFLs)

The Commissionerate agrees with the audit objection. Rs 12,20,444/- is recoverable along with applicable interest under Section 28AA of the Custom Act, 1962.

The Audit conclusion is accepted by the Commissionerate in respect of M/s Ledvance Private Limited and M/s Philips Lighting India Limited.

In case of M/s Ledvance Private Limited, Show Case Notice No. 241/2020-21/CAC/JNCH dated 04.08.2020 vide F.No. S/26-Misc-521/2017-18/GrVA/JNCH under Section 28(4) of the Custom Act, 1962 has been issued for Anti-Dumping duty amounting to Rs 340794.26/- along with applicable interest under Section 28AA of the Custom Act, 1962.

In case of M/s Philips Lighting India Limited, Show Case Notice No. 242/2020-21/CAC/JNCH dated 04.08.2020 vide F.No. S/26-Misc-521/2017-18/GrVA/JNCH under Section 28(4) of the Custom Act, 1962 has been issued for applicable Anti-Dumping duty amounting to Rs 194941/- along with applicable interest under Section 28AA of the Custom Act, 1962.

However, in the case of M/s Halonix Technologies Pvt. Ltd., Anti Dumping Duty of Rs 1,21,133/- vide challan HC 896 dated 25.07.2016 along with applicable interest of Rs 17,552/- vide challan HCM 717 dated 25.07.2016 for Bill of Entry No. 2614957 dated 16.09.2015 and Anti Dumping Duty of Rs 5,63,578/- vide challan HC 895 dated 25.07.2016 along with applicable interest of Rs 89,678/- vide challan HCM 716 dated 25.07.2016 for Bill of Entry No. 2282310 dated 18.08.2015 was already deposited. Hence, the Commissionerate does not agree with the audit conclusion in this case.

HOMOPOLYMER OF VINYL CHLORIDE MONOMER

The Commissionerate agrees with the audit objection.

Non levy of Anti Dumping Duty under Notification No. 26/2014 dtd. 16.06.2014.

SCN dtd. 05.08.2020 has been issued. It is pending for adjudication.

No change in system/procedure is required. The non-levy happened because of non-declaration of the goods being of suspension grade, by the importer.

INJECTION MOULDING MACHINE

As per notification no. 09/2016 ADD dated 15.03.2016

Audit observed that M/s Manisha PharmoPlastPvt Ltd, M/s The Supreme Industries Pvt Ltd and M/s Subhada Polymer Pvt Ltd have imported the said goods vide BEs Nos 4685888/23.03.2016, 5773104/27.06.2016 & 6004253/15.07.2016 respectively without levy and payment of ADD amounting to ₹ 22,00,409/-.

The Commissionerate agrees to the extent of non levy of ADD amounting to ₹ 6,48,476/- in r/o BE no. 4685888/23.03.2016 pertaining to M/s Manisha Pharmo Plast Pvt Ltd, and non levy of ADD amounting to ₹ 9,94,490/- in r/o BE no. 6004253/15.07.2016 pertaining to M/s Subhada Polymer Pvt Ltd.

In respect of M/s The Supreme Industries Pvt Ltd. the goods imported vide BE no. 5773104/27.06.2016, at the time of examination of the goods, the docks officers has ensured that the ADD of ₹ 5.57 lacs is paid vide manual challan.

In remaining two cases show cause notices have been issued for demand and recovery of short levy and nonpayment of ADD.

As per Notification no. 57/2015 ADD dated 04.12.2015

Audit observed that M/s Supreme Industries and RR Enterprises imported the said goods vide BEs No. 5281671/16.05.2016 and 5388717/25.05.2016 respectively without ADD amounting to ₹ 81,40,191/- and ₹ 23,569/- respectively.

The Commissionerate agrees, in both the cases SCNs dated 03.08.2020 have been issued to the importers for respective amounts of short levy or non levy of ADD.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

ALUMINIUM FOIL

The Commissionerate agrees with the CRA. In case of BE no. 4095328/21.11.2017 of M/s Siddhee Products, the importer at the time of clearance has paid ADD amounting to ₹ 8,62,000/- in system vide challan no. 2020544469 dated 14.12.2017.

In case of BE no. 4146084/25.11.2017 of M/s Timexbod Industries, the declared description is "color coated Aluminium Foil as per invoice thickness 0.042 mm = 42 micron)". As per Board Circular 42/2017 dated 22.11.2017,

Board has clarified that colour coated Aluminium Foil is out of the purview of the anti-dumping duty. Then audit objection is not agreed to that extent.

TOLUENE DI-ISOCYANATE (TDI)

Audit observed that non levy of ADD leviable vide Notification no. 25/2017-Cus ADD dated 05.06.2017 on TDI from China and Korea was pointed out in respect of 12 BEs pertaining to 6 importers.

The Commissionerate partially agrees with the CRA to the extent of quantification in case of BE no. 2371104/08.07.2017 of M/s Huber Group India Pvt Ltd needs revision as ADD is applicable @0.17USD/Kg in terms Sr. No.7 instead of @ 0.40 USD/Kg at Sr. No. 8 as the exporter is M/s IMS Corporation, Korea and producer is M/s Hanwha Chemical Co Ltd, Korea as per import documents, COO certificate no. K001-17-0445287 dated 16.06.2017. Hence total short levy is ₹ 43,58,094/-.

The entire amount of ₹ 43,58,094/- has been recovered. Further, DG(System) is being requested to create separate field in the BE to declare name of producer / manufacturer.

PORCELAIN TILES

Audit scrutiny revealed that M/s Theodora Impex & 10 other importers imported the aforesaid types of Porcelain tiles vide 14 BEs without levying ADD. This resulted in non levy of ADD to the extent of ₹ 34.87 lacs.

The Commissionerate partially agrees with the CRA. With regard to 12 BEs, it is submitted that ADD is not applicable in those cases, as in 09 cases the goods imported were either Full Body porcelain tiles or Micro Crystal tiles which are excluded from the purview of ADD notification. In two of the cases, ADD was paid by manual challan at the time of clearance and in remaining one case the goods were found to be manufactured by certain manufacturer excluded from the purview of ADD.

In case of BE no. 2452056/14.07.2017 filed by M/s Trishakti Trading Enterprises and BE no. 5275778/19.02.2018 filed by M/s Avtar Motels & Cine Pvt Ltd, SCNs have been issued on 04.08.2020.

SHEET GLASS

Audit scrutiny revealed that in case of 19 BEs pertaining to M/s AK Traders & other 6 importers; imported Sheet glass from China and cleared the same without levying ADD. This resulted in non levy of ADD to the extent of ₹ 41.46 lakh.

The Commissionerate does not agree with the Audit objection. In the instant case ADD is applicable on the items classified under CTH 70042011 & 70042019. Whereas, all the items of import under the 19 BEs under reference have been classified under CTH 70049099.

NYLON TYRE CORD FABRIC

Audit scrutiny revealed that in 01 case importer has cleared the goods declared as description 'Dipped Nylon Tyre Cord Fabric' and cleared the same without levying ADD. This resulted in non levy of ADD to the extent of ₹ 17,41,125.54/-

The Commissionerate agrees with the CRA. Less charge cum show cause notice dated 21.02.2019 was issued to the importer. Subsequently, order in the matter was passed on 31.12.2019. However, appeal has been filed with commissioner of Customs (Appeal), Mumbai Zone II filed for setting aside the said OiOin terms of para 5.2 of Board's circular no. 1023/11/2016 CX dated 08.04.2016. Outcome of said appeal is pending.

Ministry's further comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

GLASS FIBRE

Audit scrutiny revealed that in case of 7 BEs pertaining to M/s Kingfa Science & Technology (India) limited & 4 other importers; imported glass fibre from China and cleared the same without levying ADD. This resulted in non levy of ADD to the extent of ₹ 25.19 lakh.

The Commissionerate agrees with the CRA. In case of one BE no. 9810345/04.05.2017 of M/s O.K. Glass Fibre Pvt Ltd has paid ADD on manual challan at the time of clearance. In case of rest of the six BEs; less charge notice were issued on 01.03.2018. Adjudication is under process.

Ministry's further comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

CLEAR FLOAT GLASS

Audit scrutiny revealed that in one case M/s Navdurga Sales Corporation imported Clear Float Glass (4-12 mm) from Saudi Arabia and clear the same without levying ADD. This resulted in non levy of ADD to the extent of ₹ 4.59 lakh.

The Commissionerate agrees with the CRA. Less charge notice issued to the importer on 06.02.2019 and adjudication is under process.

Ministry's further submission: Total two Importers viz (1) M/s Navdurga sales corporation & (2) M/s Samarth. M/s Navadurga Sales Corporation has paid an Amt of Rs 4,59,310/- vide manual challan No 317 dated 17.05.2017. M/s Samarth Industries has paid an Amt of Rs 9,02,809,- vide manual challan No HC 274 dated 05.05.2015.

STYRENE BUTADIENE RUBBER

Audit observed that ADD on import of Styrene Butadiene Rubber (SBR) pertaining to 6 BEs filed by 5 importers was not paid as per ADD notification no. 43/2017 dated 30.08.2017. Non levy of ADD amounting to ₹ 22.36 lakhs

The Commissionerate does not agree with the CRA. As per notification no. 43/2017 dated 30.08.2017, ADD is applicable only on "Styrene Butadiene Rubber (SBR) of 1500 series and 1700 series". Further the ADD notification categorically excludes Styrene Butadiene Rubber of 1900 series and solution SBR. B/E wise description of goods is as below:

BE No / Date	Name of Importer	Declared description
3090937/ 04.09.2017	Hindustan colas Pvt Ltd	Styrene Butadiene Rubber Block Copolymer KUMHO KTR 401 H P
3196321/ 11.09.2017	Nortons Exim Pvt ltd	Styrene Butadiene Rubber Grade LG 4115S and are Styrene Butadiene Styrene Grade LG501S
3168085/ 09.09.2017	KLJ Polymers & Chemicals Ltd.	Styrene Butadiene Styrene Grade LG501S
3155497/ 04.09.2017	Textile Rubber & Chemical Co (India) Pvt Ltd	LIPOLAN T-24 H 70 (Copolymer of a low styrene Butadiene aqueous dispersion)
3097245/ 04.09.2017	CEAT Ltd	SBR BUNA Vsl 4526-2 HM
3194625/ 11.09.2017		Styrene Butadiene Rubber SPRINTAN SLR 4601 SCHKOPAU

It may be seen that vide B/E no. 3194625/ 11.09.2017, M/s CEAT Ltd had also imported "Styrene Butadiene Rubber – BUNA*SB1739-SCHKOPAU". As the description of the goods clearly shows these two items belonged to the 1700 series. Hence ADD was duly discharged on these items at the time of import. This also clarifies why ADD is not payable on the item under question i.e. "Styrene Butadiene Rubber SPRINTAN SLR 4601 SCHKOPAU".

On scrutiny of declared description in Bs/E and the technical write-ups of the goods in question it is noticed that the goods under question are other than SBR of 1500 or 1700 series. Hence the question of levy of ADD does not arise. Therefore the audit objections are not acceptable.

FLEXIBLE SLABSTOCK POLYOL

Audit observed that importers M/s Dow Chemical International Pvt Ltd & 4 others have imported Flexible Slabstock of Polyol having molecular weight between 3000 to 4000, having Country or Origin 'EU', 'Australia' & 'Singapore' is covered by ADD Notification No. 09/2015 dated 07.04.2015, falling under CTH 390720, where ADD has not been levied. Non levy of ADD on the above importers has led to short levy/non levy of ADD amounting to ₹ 52.82 lacs.

The commissionerate agrees with the Audit objection.

However, number of Bs/E involved in this para is 23 only which were listed in the AM No. 22 dated 27.07.2018. As per list provided by CRA in AM22, there are only 23 Bs/E of JNCH having total short levy amount of ₹ 52.82 lacs. In DAP, number of Bs/E are found mentioned as 33 but amount is ₹ 52.82 lacs (same as that of AM). Since total amount of 23 Bs/E matches with the amount mentioned in Para, it appears that mention of 33 Bs/E (instead of 23) in Annexure-II to the DAP is inadvertently typed. Hence, this requires reconciliation.

SCN to the importers covered under AM No. 22 have been issued as detailed below:

- (i) 15 Bs/E pertaining to M/s. Dow Chemical International Pvt. Ltd.-Less charge Cum Demand Notice for ₹ 47,07,647/- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued.
- (ii) 04 Bs/E pertaining to M/s. Sheela Foam Pvt. Ltd.: Less charge Cum Demand Notice for ₹ 2,86,768/- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued.
- (iii) 01 B/E pertaining to M/s. Moka Business Pvt. Ltd.: Less charge

Cum Demand Notice for ₹ 71,977/-- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued.

- (iv) 2 Bs/E pertaining to M/s. Vitrag Foam Pvt. Ltd.: Less charge Cum Demand Notice for ₹1,43,954/- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued
- (v) 1 B/E pertaining to M/s. Esdee Polymer Industries.: Less charge Cum Demand Notice for ₹ 71,977/-- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dtd. 03.08.2020 has been issued

ELECTRONIC CALCULATOR

As per Audit, goods – Electronic Calculator imported were cleared without levying Anti-dumping duty(ADD) as per Notification No. 24/2015-Customs(ADD) dated 29.05.2015. This resulted in non-levy of Anti-Dumping Duty amounting to Rs 80.09 lakhs.

Audit has observed that M/s. Pushbright Electronics Pvt. Ltd. vide Bill of Entry No. 2511886/19.07.2017. M/s. Ayre Design (OPC) Pvt. Ltd. vide B/E No. 3168063/03.10.2017 and M/s. Maxwood Industries vide B/E No. 9342165/17.04.2017 have imported goods without paying Anti-dumping Duty amounting to ₹ 8032281/-

The commissionerate agrees with the Audit objection.

- (i) Show cause Notice no. vide F.No. S/26-Misc-17221/Gr VA/JNCH under Section 28(4) of the Customs Act 1962 is issued to M/s Pushbright Electronics Pvt. Ltd. for applicable Anti-Dumping duty amounting to Rs 80.09 lakhs along with applicable interest under Section 28AA of Custom Act. 1962
- (ii) Less charge Demand was issued vide F.No. S/26-Misc-35/2018-19 Gr.II AF dated 18.03.2018. The matter was adjudicated vide O-i-O no. 975/2019-20/AC/NS-I/CAC/JNCH dated 18.03.2020 issued on 30.03.2020.
- (iii) Less charge Demand was issued vide F.No. S/26-Misc-1143/2018-19 Gr.II (H-K) dated 24.04.2018. The importer paid the ADD of ₹ 322/- alongwith interest of ₹ 193/- vide manual challan no. HC.37 and HCM145 both dated 05.08.2020

VITAMIN E

Non levy ADD on import of Vitamin E from China in terms of Notification No. 29/2015 dated 10.06.2015.

Audit has pointed out total Short levy of ADD amounting to ₹ 14,13,215/- in 7 B/Es involving 5 importers.

The Commissionerate partially agrees with audit objection.

In one B/E No. 2258181 dt. 17.08.2015 of M/s. ACE Pharma, short levy of ADD amounting to ₹ 341698.50 is agreed. ADD amount of ₹ 341698/- and applicable interest of ₹ 66898/- was paid by the importer vide Challan no. HC 538 and HCM 554 both dated 20.10.2016.

Out of remaining 6 cases, in 5 B/Es as detailed below the goods imported are declared as 'Vitamin E 50% Feed grade'. However, as per the Notification No. 29/2015 dated 10.06.2015, ADD is applicable only on 'Vitamin E 100% grade'. Hence ADD is not applicable on the B/Es mentioned in table below:

No.	B/E No & Date	Importer	Description as declared in B/Es
1	9686552/24.06.15	Medi Pharma Drug House	Vitamin E 50% Feed (Does not contain animal origin substances)
2	4074046/29.01.16	Briyosis Soft Caps Pvt Ltd	Mixed Tocopherols 50%
3	6368737/17.08.16	Briyosis Soft Caps Pvt Ltd	Mixed Tocopherols 50% (for industrial purpose only)
4	8423905/03.02.17	Mehta Vet Chem	Vitamin E 50% (Not for medical use) (Not for any kind of food preparation).
5	9889557/ 30.05.17	Briyosis Soft Caps Pvt Ltd	Vitamin Natural 50% (for industrial purpose only)

In one case having B/E No. 2554576 dated 22.07.2017 (M/s, Bio-Vet Industries) the B/E was assessed provisionally for pending Test Report. The case shall be finalized as per test results. Hence at this stage it cannot be said conclusively that there is short levy of ADD. At the time of finalization, applicable ADD shall be assessed and recovered. The matter is under active persuasion with Deputy Chief Chemist for test report.

PURIFIED TEREPHTHALIC ACID

As per Notification No. 23/2015-Cus(ADD) dated 27.05.2015 Purified Terephthalic, acid' falling under CTH 29173600 originating in or exported from the People's Republic of China, European Union, Korea RP and Thailand, would attract Anti- Dumping Duty as per the rates specified in the said notification.

M/s Alok Industries has imported 21 consignments of subject goods and paid ADD under wrong serial number which resulted into short levy of ADD to the tune of ₹ 1,54,62,592/-.

The Commissionerate agrees with the audit objection.

M/s Alok Industries was issued letter on 24.08.2017 directing them to pay differential duty but the importer has not paid the short levy. Therefore, the importer was issued Show Cause Notice No 899/2018-19/Grp-II(A-F) JNCH vide F. No. S/26/MISC-674/2018-19/Grp-II(A-F) on 05.09.2018 demanding ₹ 3,03,87,5271- in respect of total 24 Bills of Entry which include these 21 Bills of Entry also. The said SCN was adjudicated by the Commissioner of Customs, NS-I who dropped the demand vide O-in-O No. 07/2019-20/Commr/NS-1/JNCH dtd 26.04.2019 on the ground that the third entity between the producer/supplier and the importer can't be considered as supplier or exporter as their role is limited as financiers only as they have raised invoice in the name of importer and the produce/supplier had raised invoice in the name of these third entities. By virtue of their agreement with Alok Industries, these entities have opened the letter of credits to facilitate banking transactions and their status in these transactions merged with that of the importer and not the supplier/producer.

The said O-in-O has been reviewed by the Committee of Chief Commissioners vide Review Order No. 03/2019-20 on the ground that the goods in the subject case have been sold by supplier/producer to the intermediate entities and the ownership of the goods gets transferred to these entities. Thus, the intermediate entities become the exporter of the goods which were finally exported to India by raising invoices in the name of importer M/s Alok Industries, due to which exporter and producer combination become different from those eligible to avail lower rates of ADD. The department has filed appeal in CESTAT. The matter is pending in appeal.

DISODIUM CARBONATE/ SODA ASH

Vide DAP No. 98/2017-18 non levy of ADD leviable vide Notification No. 34/2012-Cus(ADD) dated 03.07.2012 on 'Soda Ash' from China, European

Union, and Iran was pointed out in respect of 18 Bills of Entry. The details are as below:

Sl. No.	B/E No & Date	COO	COC	Sl. No. of Notfn	ADD Short paid
M/s N S Ghongade					
1	2055047 dated 28.07 2015	Romani a	Romania	7	25275
M/s Arochem Industries Pvt Ltd.					
2	9462342 dated 04.06.2015	China	China	1	244809
R.R. INNOVATIVE PRIVATE LIMITED					
3	3746879 dated 29.12 2015	Iran	Iran	11	380606
COLORBOX EXIM PRIVATE LIMITED					
4	4256031 dated 15.02. 2016	Iran	UAE	10	191028
5	4503208 dated 08.03 2016	Iran	UAE	10	195757
6	4569068 dated 14.03.2016	Iran	UAE	10	118141
PB GLOBAL LIMITED					
7	8305685 dated 24.01.2017	Romania	Romania	7	324744
8	8305688 dated 24.01.2017	Romania	Romania	7	324744

Sl. No.	B/E No & Date	COO	COC	Sl. No. of Notfn	ADD Short paid
9	8579095 dated 16.02.2017	Romania	Romania	7	321454
10	8754963 dated 03.03.2017	Romania	Romania	7	317930
11	9357947 dated 18.04.2017	Romania	Romania	7	120861
12	9357956 dated 18.04.2017	Romania	Romania	7	309705
13	9358981 dated 18.04.2017	Romania	Romania	7	338410
14	9469254 dated 27.04.2017	Romania	Romania	7	246448
15	9578208 dated 05.05.2017	Romania	Romania	7	274605
16	9624260 dated 09.05.2017	Romania	Romania	7	122378
17	9624292 dated 09.05.2017	Romania	Romania	7	298484
18	9702434 dated 16.05.2017	Romania	Romania	7	244756

The Commissionerate partially agrees with audit objection.

In case of M/s RR Innovative Pvt Ltd, B/E No. 3746879 dated 29.12.2015, the importer has paid applicable ADD of Rs 3,80,606/- vide manual challan HC-946 dated 30.12.2015. Hence no short levy.

Hence the correct total short levy of ADD for 17 Bills of Entry is ₹ 40,19,530/-

In case of Ms. NS Ghongade, for one (1) Bill of Entry No. 2055047 dated 28.07.2015 for short payment of ADD to the tune of Rs 25,275/-, the importer has submitted DD No. 410899 dated 10.08.2020 for ₹ 44,944/- for payment of ADD and interest amount.

In case of Ms. Arochem Industries Pvt. Ltd, demand letter dated 03.10.2018 was issued and they have paid the principal amount of Rs 2,44,809/- and interest of ₹ 132660/- vide manual Chalan No. HCM-2696 dated 28.12.2018.

In case of Ms. Colorbox Exim Private Limited, demand letter dated 08.01.2018 was issued. The importer has admitted the short levy and ADD, the importer has paid the ADD of Rs 5,04,926/-vide manual challan HC-109 dated 13.08.2020 and interest of ₹ 3,38,835/- vide manual challan HCM-589 dated 13.08.2020 in respect of 3 Bills of entry.

In case of M/s. PB Global Limited, demand letter dated 08.01.2018 was issued. As no reply was received Show Cause notice dated 11.08.2020 for 12 Bills of Entry 8305685 dated 24.01.2017, 8305088 dated 24.01.2017, 8579095 dated 16.02.2017, 8754963 dated 03.03.2017, 9357947 dated 18.04.2017, 9357956 dated 18.04.2017, 9469254 dated 27.04.2017, 9578208 dated 05.05.2017, 9624260 dated 09.05.2017, 9624292 dated 09.05.2017 and 9702434 dated 16.05.2017 for short levy of ADD to the tune of ₹ 32,44,519/- has been issued.

GRINDING MEDIA BALL

As per Notification No. 36/2012-customs-ADD Dated 16.07.2012, Grinding Media Balls falling under chapter 73 of the first schedule to the Customs Tariff Act 1975 (51 of 1975) originating in or exported from Thailand, Peoples' Republic of China PR and imported to India would attract Anti-dumping duty (ADD) at the rates specified in the Notification.

The Commissionerate does not agree with the audit objection.

During post clearance audit the subject B/E no. 4415495 dated 29.02.2016 of M/s. JK Cement Ltd. was picked up by PCA section vide F.No. S/2 PCAO-70/2017-18/JNCH dated 02.05.2017. The Importer has complied with the payment of Anti-dumping Duty along with applicable Interest & penalty amounting to ₹23,25,666/- vide HC No. 83/06.7.2017 & HCM No. 333/06.06.2017.

MELAMINE

As per Notification no. 48/2012-Cus ADD dated 08.10.2012 'Melamine' falling under Chapter 29, originating in, or exported from, European Union, Iran, Indonesia and Japan and imported into India, would attract ADD at a rate which is equivalent to difference between the amount mentioned in the corresponding entry in column (8) of the said notification and the landed value of the goods.

Further, as per Notification No. 02/2016- Cus(ADD) dated 28.01.2016 'Melamine' falling under tariff item 29336100, originating in, or exported from, the People's Republic of China, and imported into India, would attract an anti-dumping duty at a rate specified in the said notification.

In this connection, 06 importers vide 10 Bills of Entry have imported Melamine from the subject countries as specified in the above notifications and were cleared without payment of Anti- dumping duty which resulted into short levy of ADD to the tune of ₹38.51 Lacs

The Commissionerate agrees with the audit objection.

- i) in case of BE No 9271306 dtd. 18.05.2015 of M/s Jaydeep Agencies, the applicable ADD was paid vide challan no. 2305 dated 21.05.2015 before out of charge as endorsed in examination report by OOC officer.
- ii) In02 BEs (No. 2748516 dt. 20.09 2015 & 2748521 dt. 29.09.2015) of M/sParth Chem Impex Pvt. Ltd., the assessment has been done provisionally against Bond and BG. The applicable ADD shall be levied and collected at the time of finalization of assessment. Hence, there is no short levy.
- iii) In Bill of Entry No. 5665433 dt 21.03.2018 of M/s Exim Incorporation, the assessment was done provisionally as per Notification No. 11/2018-Cus-ADD dated 20.03.2018 as the supplier was M/s Foshan Kaisino Building Material Co. Ltd. Its finalization is in process as per Notification No. 34/2019-Cus (ADD) dt 06.09.2019.
- iv) In Bill of Entry No. 8569426 dt 15.02.2017 of M/s Sonkamal Enterprises pvt ltd., the recovery of ADD is ₹ 1,35,432/-
- v) In Bill of Entry No. 8568982, 8569158 & 8569251 all dt 15.02.2017 of M/s Sonkamal Enterprises pvt ltd., SCN dated 07.08.2020 issued for recovery of ₹ 4,03,755/-, which is pending adjudication.
- vi) In Bill of Entry No. 7970647 dt.26.12.2016 of M/s Bharat Resins Pvt Ltd., ADD of ₹ 3,51,488/- along with interest of ₹ 64,279/- has been recovered.
- vii) In Bill of Entry No.9523294 dated 10.06.2015 of M/s Mehar Table ware pvt ltd. SCN dated 07.08.2020 issued for recovery of ₹ 8,68,877/-, which is pending for adjudication.

METHYLENE CHLORIDE

As per Notification No. 24/2014-Cus (ADD) dated 21.05.2014, 'Methylene Chloride' falling under CTH 290312 originating in or exported from the European Union would attract Anti-Dumping Duty as per the rates specified in the said notification.

In this case, 4 importers have imported subject goods in respect of 7 Bills of Entry from the countries Germany, Spain, China and Netherlands without payment of ADD which resulted into short levy of duty amounting to ₹5,07,176/

The Commissionerate agrees with audit objection but total Short Levy is worked out as Rs 5,08,210/- against audit quantification of ₹ 5,07,176/-

Out of 7 BEs, only 6 BEs have country of Export and COO as Europe (Germany, Spain and Netherland) hence, short levy of ADD amounting to ₹ 2,94,853/- is agreeable.

Sl. No.	Importer (M/s)	BE no & date	ADD Amount
1	Honeywell International India Pvt Ltd.	3564999 dt 10.10.2017	315/-
2	Honeywell International India Pvt Ltd.	3834833 dt 01.11.2017	377/-
3	Honeywell International India Pvt Ltd.	5121952 dt. 08.02.2018	185/-
4	Planet Science	4718566 dt. 28.03.2016	2,30,776/-
5	Planet Science	2624153 dt 27.07.2017	54,220/-
6	Keva Fragrances pvt ltd	2390987 dt 11.07.2017	8891/-

Remaining 1 BEs (4127674 dt 03.02.2016) pertaining to Ms Aarti Drugs Limited has Country of Origin as China & Country of Shipment is also China Hence, Notification No. 24/2014-Cus (ADD) dated 21.05.2014 is not applicable. However Provisional ADD on Chinese origin Methylene Chloride was imposed vide Notification No. 58/2015 dtd. 08.12 2015. Hence, ADD of Rs 2,13,357/- is applicable vide different Notification (other than that specified in DAP-98) in terms of

S.No 1 of Notification no. 58/2015 dated 08.12.2015 @USD144.41/MT
(against audit's calculation @USD143.7/MT).

Action taken in respect of above 7 is detailed as follows:

Importer (M/s)	BE no & date	SCN/OIO No. & Date	Recovery (Rs)
Honeywell International India Pvt Ltd.	3564999 dt 10.10.2017	NA	ADD ₹ 315 + Int ₹ 133.72
Honeywell International India Pvt Ltd.	3834833 dt 01.11.2017	NA	ADD ₹ 377 + Int ₹ 156.64
Honeywell International India Pvt Ltd.	5121952 dt. 08.02.2018	NA	ADD ₹ 185 + Int ₹ 69.34
Planet Science	4718566 dt. 28.03.2016	SCN dated 07.08.2020 Demand ₹ 2,30,776	No recovery. Adjudication under process.
Planet Science	2624153 dt 27.07.2017	SCN dated 07.08.2020 Demand ₹ 54,220/-	No recovery. Adjudication under process.
Keva Fragrances pvt ltd	2390987 dt 11.07.2017	SCN dated 07.08.2020 Demand ₹ 8981/-	No recovery. Adjudication under process.
Aarti Drugs Ltd	4127674 dt. 03.02.2016	SCN dated 07.08.2020 Demand ₹ 213357/-	No recovery. Adjudication under process.

AMOXYCILLIN TRIHYDRATE

Audit pointed out short levy of ADD as per Notification No. 21/2017-Cus (ADD) dated 16.05.2017 on import of 'Amoxycillin' from China and Korea. As per Audit Short levy of ADD involved is Rs 34,31,251/-.

The following importers imported 03 consignments of subject goods without payment of ADD resulting in short levy of ADD to the tune of ₹ 34,31,251/-

1. M/s. DPB Antibiotics imported (1) Bills of Entry 9732811 dated 18.05.2017 from China with a short levy of ADD to the tune of Rs 19,53,000/-
2. M/s Sagar Rubber Products Ltd imported one (1) Bill of Entry 2864424 dated 16.08.2017 from China with a short levy of ADD to the tune of ₹ 1,82,677/-.
- 3 M/s. Associated Biotech, imported one consignment vide Bill of Entry 4352133 dated 11.12.2017 from China with a short levy of ADD to the tune of ₹12,95,574/-

The Commissionerate partially agrees with the audit objection.

M/s. Associated Biotech, imported one (1) Bill of Entry 4352133 dated 11.12.2017 from China and has paid total duty of ₹ 45,70,079/- which includes the applicable ADD of ₹ 12,95,574/- and duty of ₹ 32,74,505/- vide challan no 2020838811 on 16.12.2017 before out of charge. Hence, no short levy.

1. In case of M/s DPB Antibiotics, demand letter dated 08.01.2018 and Show Cause Notice letter dated 03.08.2020 Issued for Bill of Entry 9732811 dated 18.05.2017 from China with a short levy of ADD to the tune of ₹19,53,000/-.
2. In case of M/s Sagar Rubber Products Ltd, demand letter dated 08.01.2018 and Show Cause Notice dated 03.08.2020 issued for Bill of Entry 2864424 dated 16.08.2017 from China with a short levy of ADD to the tune of ₹ 1,82,677/-

HYDROGEN PEROXIDE

Vide DAP No. 98/2017-18 non levy of ADD imposed vide Notification No. 28/2017- Cus(ADD) dated 14.06.2017 on 'Hydrogen Peroxide' has been pointed out by audit involving a total short levy of Rs 10,53,130.35 in respect of seven (7) Bills of Entry of three (03) Importers

The Commissionerate agree with audit objection in case of one (01) Bill of Entry No. 2745912 dated 08.05.2017 of M/s Oasis Capital Pvt Ltd short levy of ADD of ₹ 4,57,778/- is agreed. The importer was issued demand letter dated 08.01.2018. As no reply was received, Show Cause Notice dated 06.08.2020 was issued for demand of ADD to the tune of ₹457778/-.

In case of M/s. KJL Plasticizer, B/E No 2173929 dated 21.06.2017, the importer has paid applicable ADD of ₹ 445532/- vide manual challan HC-397 dated 22.06.2017, i.e, before out of charge. Hence no short levy occurred.

In remaining five (05) Bills of Entry of M/s. Aroma Organics Ltd. detailed below, the goods imported are declared as "Hydrogen Peroxide-Food Grade". As per Notification No. 28/2017-Cus (ADD) dated 14.06.2017 as was in force at the relevant point of time, applicability of ADD was to "Hydrogen Peroxide - other than of food grade and electronic grade having concentration of 90% and above". Hence ADD is not applicable to food grade and electronic grade having concentration of 90% and above. In this regard, attention is invited to the final findings published vide Notification 14/3/2015 DGAD (F. No. 14/03/2018-DGAD) dated 11.04.2017. Para 4 C(g) &7 of the same categorically excludes Food Grade from Scope of PUC (Relevant extracts of Notification dtd 11.04.2017 are enclosed). Para 1 of the subject Notification 28/2017 Cus(ADD) dtd. 14.06.2017 records that the same is based upon the findings of the Designated Authority vide Notification No. 14.03.2015- DGAD dtd. 11.04.2017. Hence, it is evident that Hydrogen Peroxide (food grade) is outside the purview of Notification 28/2017-Cus(ADD) dtd. 14.06. 2017. Since in this case the goods were declared to be food grade, therefore the ADD is not applicable to following Bills of Entry of M/s. Aroma Organics Ltd.:

BE no. 3776683 dtd 27.10.2017

BE no. 3665324 dtd 18.10.2017

BE no. 2040177 dtd. 10.06.2017

BE no. 3536085 dtd. 07.10.2017

BE no. 4133155 dtd24.11.2017

CABLE TIES

ADD under Notification No. 47/2014-Customs (ADD) dtd. 09.12.2014 has not been levied on 'Cable Ties' imported from China and falling under CTH 3926. Non levy of ADD on the 27 importers in 53 Bills of Entry has led to short levy/non levy of ADD amounting to ₹ 6.37 lacs, which does not include quantification of those cases where quantity is declared in pieces as ADD was per Kg basis.

the Commissionerate agrees with audit objection, regarding quantification in the cases where only number of pieces were mentioned without mentioning the weight, it is to submit that as per B/E No. 3325465 dtd. 20.11.2015 assessed by the group and pertaining to the period covered by the audit objection, total weight of 12000 pcs was declared as 12 Kgs. The same ratio i.e 1000 pcs = 1 Kg has been applied.

In 02 cases of B/E No. 8288991/ 23.01.2017 (M/s. UH Led India Inc) & 9393739 / 21.04.2017 (M/s. GE India Industries) ADD amount of ₹ 2890 & ₹ 2960/- (along with interest) been recovered.

One B/E No.3325201 dtd 21.09.2017 of M/s M.S. Trading Co. has differential duty (ADD) of ₹ 47/- Therefore, in terms of Section 28 (1) of Customs Act, 1962, where the amount involved is less than Rupees One Hundred, no SCN to be issued. Hence, SCN in the matter has not been issued and the same may be considered for closure.

In remaining 50 cases, SCNS have been issued.

PENTAERYTHRITOL:

As per Notification No. 33/2012-Cus (ADD) dated 20.06.2012, 'Pentaerythritol' falling under CTH 290542 originating in exported from the European Union (except Sweden) would attract Anti-Dumping Duty as per the rates specified in the said notification. In this case, 6 importers have imported subject goods in respect of 12 Bills of Entry from the countries (EU) without payment of ADD which resulted into short levy of duty amounting to ₹74.59 Lacs.

The Commissionerate Partially agreed. Out of 12 BsE, only 10 BsE have country of Export and COO (Germany, Italy, Belgium) hence short levy of ADD amounting to ₹ 73,95,909/- is agreeable. In remaining 2 BES (7934276 dtd. 08.01.2015 & 8367768 dtd. 30.01.2017) pertaining to M/s Colourtech Coating India Pvt. Ltd. and M/s Garware Polyester Limited have Country of Origin is China & Country of Shipment is China/Hong kong. Hence, ADD is not applicable.

Further, out of 10 BsE, in 6 BsE recovery of ₹ 70.38 lakhs has been made and in remaining 4 BsE SCNs for ₹ 10.32 lakhs have been issued and adjudication is under process.

TDQ/TMTD/MBTS

Audit observed that anti- dumping duty on import of Rubber Chemicals (MBTS covered under 98/2011-Cus (ADD) dtd. 20.10.2011) and (MBT & TMT covered under No. 35/2014-Cus (ADD) dtd. 24.07.2014), pertaining to 3 specific Bills of Entry of 3 importers was not paid which has led to non-levy of Anti-Dumping Duty amounting to ₹ 7,80,217/-. (1) Sri Pukhraj Additives LLP, (B/E No. 4653101/ 21.03.2016) involving short payment of ADD ₹ 6,69,104/- (2) Bridgestone India Pvt. Ltd (B/E No. 5877018/05.07.2016) payment of ADD ₹31,303/- (3) Yasho Industries Pvt. Ltd. 7739922/ 07.12.2016) involving short payment of ADD ₹ 79,810/-

Out of these 3 bills of entry. In bill of entry no. 7739922 dated 07.12.2016, importer M/s Yasho Industries Pvt. Ltd. Paid ₹ 84500/- (ADD Rs 79810/- and Interest - ₹ 4690/-). However, in case of remaining two bills of entry SCN has been issued on 04.08.2020 as per the following details 1. M/s SRI Pukhraj Additives LLP, (B/E No. 4653101/ 21.03.2016) for recovery of short levied ADD of ₹ 6,69,104/- (2). M/s Bridgestone India Pvt. Ltd (B/E No. 5877018/05.07.2016) for recovery of short levied ADD of ₹31,303/-

SODIUM NITRITE

As per Notification No.39/2016-Customs (ADD) dated 08.08.2016, which is an extension of principal notification No.46/2014 dated 08.12.2014, 'Sodium Nitrite' falling under Tariff Item No. 28341010 originating in or exported from China PR is subject to ADD @ US\$ 135.83 per MT. The validity of notification No.39/2016 dated 8.8.2016 was up to and inclusive of 16.08.2017.

M/s Chemexcil Corporation imported 300 MTs of 'sodium nitrite' vide bill of entry No. 2881741 dated 17.08.2017 (Entry Inward dated 13.08.2017) without levying ADD resulting in non-levy of ADD to the tune of ₹26,30,348/-. As per CERA, even if the Bill of Entry date was after the validity period of the Notification, ADD was payable as entry inward was of the period when the Notification was valid.

The ADD notification expired on 16.08.2017 whereas the BE was filed on 17.08.2017. Moreover, the said BE was not filed as an advance bill of entry, therefore, the date of entry inward is not relevant for calculating the rate of duty applicable, as provided in Section 15(i) of Customs Act, 1962. As per Section 15, rate of duty would be the one applicable on the date of filing of bill of entry i.e. rate of duty as applicable on 17.08.2017.

Proviso to Section 15 of Customs Act, 1962 provides that in case of Prior/Advance B/E (filed before arrival/entry inward of the vessel) entry inward date shall be deemed date of determination of rate of duty. Since, in the present case, B/E was filed after entry inward, therefore, inward date of 13.08.2017 is not relevant. Hence, the importer is not liable to pay any ADD under the said notification.

SYNCHRONOUS DIGITAL HIERARCHICAL EQUIPMENTS

The importer filed the various BoE as per Annexure-I for clearance of goods declared as SDH Equipment (Synchronous Digital Hierarchical Equipments) with country of origin China. As per Audit Objection, goods falling under Sl. No. 6 of Notification No. 15/2016-Cus (ADD) dated 26.04.2016, i.e. Country of Origin-China, Country of Export Any country other than People's Republic of

China with any Manufacturer and any Exporter attracted Anti-Dumping Duty @86.59% of CIF. As no Anti-dumping duty levied in these Bills of Entry, this resulted in Short levy of duty.

On scrutiny of the Bills of Entry, in ICES system, it has been noticed that in all cases the exporter is M/s. ECI Telecom Ltd., Israel and Port Code of Shipment mentioned is "HGH", which is for Hangzhou, China. Therefore, these goods would fall under SI. No. 4 of the Notification No. 15/2016-Cus (ADD) dated 26.04.2016 which is for goods having country of origin and export as People's Republic of China, Producer- Hangzhou ECI Telecommunication Co. Ltd. and exporter M/s. ECI Telecom Ltd., Israel wherein the rate of ADD is "NIL". Therefore, in these Bills of Entry ADD were not levied.

(iii) **Delhi: -**

ICD TKD: -

INJECTION MOULDING MACHINE

Audit observed that ADD on import of Injection moulding machine pertaining to 31 BEs was not paid resulting in non levy of ADD amounting to ₹ 10 lakhs

As of now duty and interest amounting to ₹ 9,15,640/- has been recovered. The requisite action is being taken in the remaining cases.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

ALUMINIUM FOIL

Audit observed that ADD on import of Aluminium foil pertaining to 4 BEs was not paid, resulting in non levy of ADD amounting to ₹ 75.11 lakhs.

The duty demand has been recovered from the importer and same is already mentioned in the said audit report.

PARTIALLY ORIENTED YARN

Audit observed that ADD on import of partially oriented yarn pertaining to 2 BEs was not paid. Non levy of ADD amounting to ₹ 8.47 lakhs.

The duty amounting to ₹ 4,11,113/- has been recovered from M/s Sogo Fashion Pvt ltd. In case of M/s Zonac Knitting machine pvt ltd, the recovery is being pursued.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

CABLE TIES

Audit observed that ADD on import of cable ties pertaining to 1 BE was not paid resulting in non levy of ADD amounting to ₹ 1.44 lakhs.

The demand has been confirmed and the adjudication order has been passed.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

PLAIN MEDIUM DENSITY MDF FIBRE BOARD

Audit observed that ADD on import of Plain medium density MDF fibre board pertaining to 2 BEs was not paid resulting in non levy of ADD amounting to ₹ 1.39 lakhs.

The importer has deposited the differential duty amount of ₹ 1,72,700/-

VITAMIN E

Audit observed that ADD on import of Vitamin E pertaining to 1 BE was not paid resulting in non levy of ADD amounting to ₹ 0.15 lakhs.

The importer has deposited the differential duty amount of ₹ 17,000/-

ICD PPG:-**INJECTION MOULDING MACHINE**

Audit observed that ADD on import of Injection moulding machine pertaining to 2 BEs was not paid resulting in non levy of ADD amounting to ₹ 30.97 lakhs.

The Commissionerate does not agree with the audit objection as the said machinery is electronically operated and energy saving/energy consumption and inverter are features and parts of the machinery and the said Electric Plastic Injection Moulding Machine is excluded from the levy of ADD in terms of exclusion specified under Sr. no. III of Customs Notification No. 9/2016-Cus (ADD) dated 15.03.2016

Ministry's Comments: The audit objection is admitted. The issue has been reexamined and it is found that this benefit is not available to the goods under reference. A demand notice has been issued to the two importers.

NYLON FILAMENT YARN

Audit observed that ADD on import of Nylon filament yarn pertaining to 2 BEs was not paid resulting in non levy of ADD amounting to ₹ 0.93 lakhs.

The Commissionerate does not agree with the audit objection as the goods are high tenacity yarn of nylon and the same are excluded from the scope of levy of anti dumping duty as per Customs Notification no. 3/2012-Cus (ADD) dated 13.01.2012 as amended by Notification no. 4/2017-Cus.(ADD) dated 19.01.2017. Further, as per the said Notification, the goods are excluded from levy of duty if their landed price is above US\$5.17. In the present case, the landed price is USD 29.31 per kg, hence covered in the exclusion clause.

CERAMIC TABLEWARE, KITCHENWARE

Audit observed that ADD on import of ceramic tableware, Kitchenware pertaining to 1 BE was not paid resulting in non levy of ADD amounting to ₹ 16.72 lakhs.

The importer has paid an amount of ₹ 18,20,096/- vide Challan dated 27.09.2018, 14.12.2018 and 01.11.2019.

(iv) **Ludhiana: -**

TEMPERED GLASS

Audit observed that ADD on import of tempered glass pertaining to 2 BEs was not paid resulting in non levy of ADD amounting to ₹ 0.29 lakhs.

The Commissionerate does not agree with the audit objection as the point of distinction is that safety glass can either be Toughened (Tempered) glass or Laminated Safety Glass. Both have a distinct chapter heading and are two different products. In fact laminated glass and toughened glass are frequently mistaken for one another and confused as being one and same product. Whereas both are types of safety glass and laminated glass and toughened glass differ from each other significantly in a number of areas.

Laminated glass is most known for being used on the windscreens of the majority of the world's cars. Toughened glass also known as tempered glass after its method of production, is a type of safety glass that is five times stronger than annealed and laminated glass of the same size and thickness.

Laminated safety glass is used in the automobiles. The description mentioned in subject BEs is "windscreen" along with the type of vehicle in which the same is to be used. Thus the goods have been declared correctly as 'Laminated safety glass' and the same cannot be classified as textured toughened (tempered) glass.

(v) **Meerut: -**

CLEAR FLOAT GLASS

Audit observed that ADD on import of clear float glass pertaining to 2 BEs was not paid resulting in non levy of ADD amounting to ₹ 6.63 lakhs.

The importer M/s Jatalia Global Ventures Ltd. has paid ADD + IGST + Interest for an amount of ₹ 9,92,974/- .

(vi) **Ahmedabad: -**

a) **Ahmedabad**

2-Ethyl Hexanol

Audit observed that there was non/short levy of ADD due to incorrect application of ADD notification provisions. As per Sr. No. 1 of Notification No. 10/ 2016-Cus (ADD) dated 29.03.2016, '2- Ethyl Hexanol' in all forms and grades covered under chapter 29051620 and imported from Malaysia (COO) and the producer and Exporter 'BASF Petrons Chemicals (BPC), Malaysia are subjected to antidumping duty @ of \$53.63/ MT (USD).

M/s. Liberty Chemtrade Pvt. Ltd had imported 2-Ethyl Hexanol vide BE No. 7232390; 7232391; 7232393; 7232394 and 7232389 all dated 25.10.2016. On being pointed out, the importer has already paid the ADD amounting to ₹ 1810015/- along with interest of ₹ 279685/- on 03.02.2018.

b) **Kandla**

2-Ethyl Hexanol

An amount of ₹ 23.10 Lakhs as per the observation raised by C&AG has already been recovered. The said amount was raised against BE No. 8610286 dated 20.02.2017 filed by M/s. Meghaaria International Ltd. The importer has paid the due ADD and interest thereon amounting to ₹ 23,09,682/- vide TR-6 Challan No. 757 dated 23.06.2017.

Acetone

Duty has already been paid i.r.o. three Bills of Entry as under

Sr. No.	BE No.	Date	ADD Leviable	Challan No. and Date
1	2324249	21.08.2015	265946	1503 dated 21.08.2015
2	2441369	01.09.2015	554054	1666 dated 04.09.2015
3	2539417	09.09.2015	177297	1731 dated 11.09.2015

Normal Butanol

In respect of ex-bond BE No. 5276903 dated 16/5/2016 filed by M/s. Shatbadhi Chemicals for import of 62 MTs. of N-Butanol from Malaysia, CRA noticed that no ADD was levied which resulted in non levy of ADD of ₹ 1,10,290/- (USD 26.59 x Ex. Rate ₹ 66.90 x 62 Mts.). The matter is under correspondence with the importer is being pursued. Appropriate action is being taken as per rules.

Methylene Chloride

Audit observed that in case of Ex bond BE No. 9943211 dated 18/7/2015 filed by M/s. Kundan Rice Mills falling under Chapter 29031200 as per Notification No. 24-Cus dated 21.5.2014 ADD is leviable @ 0.32 \$ per Kg. However, the department levied the amount supposing it is as MT. This resulted in short levy of ADD of ₹ 75,703/-.

The importer vide letter F.No. KRM L/ 18-19/ Methylene Chloride / 78 dated 07.03.2019 submitted that they have paid the differential duty along with interest, total amounting to ₹ 1,18,326/- on 06.03.2019 vide Challan No. 2026186498

Phenol

The Audit found in case of import by M/s. GNK Enterprise, a SEZ unit under KASEZ, cleared Phenol in DTA without payment of ADD vide BE No. 0016296 dated 08.10.2016 and 0016458 dated 21.10.2016. This resulted in non-levy of ADD to the tune of ₹ 18.13 Lakhs. The said amount of ₹ 18.13 Lakhs has already been recovered.

Methylene Chloride

The audit raised objection that the name of supplier is M/ s. OCI Shanghai International Trading Ltd., China and manufacturer is M/ s. Shandong LiaochengLuxi Sixth Chemical Fertilizer Co. Ltd and the ADD is levied @ of US \$122.14per MT.As the supplier is other than of Sl. No.4 it would fall under Sl. No.7 of the table where the ADD is leviable@ US \$ 279.78 per MT.

As per Sr. no. 4 of the table to Notification No. 21/2016- Customs (ADD) dated 31.05.2016, the ADD of ₹ 122.14 per MT is imposable if the goods are produced by M/s. Shandong LiaochengLuxi Sixth Chemical Fertilizer Co. Ltd and exported by M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong.

As per Certificate of Origin No. 16C3725A0305/00189R dated 16.09.2016, issued by the People's Republic of China, the producer of the goods is M/s. Shandong LiaochengLuxiSixth Chemical Fertilizer Co. Ltd.

As per letter dated 20.09.2016, issued by M/s. Shandong LiaochengLuxi Sixth Chemical Fertilizer Co. Ltd., M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong is acting as their commercial arm for marketing & export of Methylene Chloride and they (M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong) had exported the cargo to the Indian importer M/s. Aspen International Pvt. Ltd. The goods covered under BL No. ZY03LXHG dated 16.09.2016 were invoiced to M/s. LuXi Chemical Hong Kong Company Ltd., Hong Kong vide invoice No. LXWM-2016-HG4052 dated 15.09.2016.

M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong has also issued a certificate dated 20.09.2016 wherein it is certified that they are acting as commercial arm for marketing & export of Methylene Chloride manufactured by M/s. Shandong LiaochengLuxi Sixth Chemical Fertilizer Co. Ltd. It is also certified that cargo covered under BL No. ZY03LXHG dated 16.09.2016 was exported to Indian importer through M/s. OCI (SHANGHAI) INTERNATIONAL TRADING LTD. The goods were invoiced to M/s. OCI (SHANGHAI) INTERNATIONAL TRADING LTD vide invoice No. LXWM-2016-FGY-2085 dated 16.09.2016. The said invoice No. is also reflected in Country of Origin Certificate No. 16C3725A0305/00189R dated 16.09.2016.

In the Bill of Lading No. ZY03LXHG DT 16.09.2016 also, M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong is mentioned as shipper to Indian importer M/s. Aspen International Pvt. Ltd.

In view of above, it transpires that M/s. Shandong LiaochengLuxi Sixth Chemical Fertilizer Co. Ltd are producer of the goods. They have appointed M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong as their commercial arm for marketing & export of Methylene Chloride. The goods were sold to M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong. The goods were exported by M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong to Indian importer under BL No. ZY03LXHG DT 16.09.2016 through M/s.OCI Shanghai International Trading Ltd., China.

The goods were manufactured by M/s. Shandong LiaochengLuxi Sixth Chemical Fertilizer Co. Ltd and were exported by M/s. Lu Xi Chemical Hong Kong Company Ltd., Hong Kong to Indian importer M/s. Aspen International Pvt. Ltd through M/s. OCI Shanghai International Trading Ltd., China.

To ascertain the actual supplier of the goods, the matter is taken up with the importer. Necessary action to safeguard the govt. revenue will be taken by way of issuing demand notice, required, if any.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

c) Mundra

Flexible Slab stock Polyol

Audit raised objection that Sr. No.7 of the table given in Notification No. 9/2015-Cus (ADD) dated 07.04.2015 provided for levy of ADD @ USD 67.79 per MT on import of Flexible Slab stock Polyol falling under Chapter 390720 originated and exported from Singapore. M/s. Kanabar Foam Pvt. Ltd had imported the goods vide BE No. 8836059 dated 07.04.2015. The importer has paid duty amounting to ₹ 71,977/- along with interest of ₹ 3,9881 - vide GAR-7 Challan No. 449 dated 27.07.2015.

Plain Medium Density Fibre Board

M/s HKS International had imported Plain Medium Density FibreBoard vide BE No. 3349838 and 22.09.2017. The importer has paid ADD of ₹ 80,4301 - along with interest of ₹ 10055/- and penalty of ₹ 14236/-.

TDI

M/s KanabarFoamPvt. Ltd had imported the goods vide BE No. 2942771 dated 22.08.2017. The importer has paid the ADD of ₹ 2,54,085/ - along with interest of ₹38,115/ - (Total ₹ 2,92,200/ -).

Ministry's Comments: The above comment of audit has been erroneously given by Audit as recovery in this case is complete.

CLEAR SHEET GLASS

There are 155 Bills of Entry pertains to Mundra Commissionerate.

In above Para, it was highlighted that Notification No. 07/2015- Cus (ADD) issued by the Ministry covered only two CTHs viz., 70042011 and 70042019 of Sheet Glass. However, The Director General of Anti-dumping and Allied Duties vide its final findings published vide Notification No. 14/22/2013-DGAD dated 19 December 2014 on ADD investigation had recommended levy of ADD on "Sheet Glass" falling under CTH 70042011 and 70042019. Further, in this notification, DGAD stated that the subject goods also being imported under other tariff heading and inter alia mentioned CTH 70049099 clearly in it and clearly held that the customs classification is inductive only and not binding on the scope of investigation.

In this regard, earlier, the demands were raised for all such importers cleared without payment of ADD against which M/s Ajanta Pvt Ltd (One of the importer of "Sheet Glass" falling under CTH 70049099) approached the Hon'ble High

Court of Gujarat. In SCA No. 13496/2015, vide judgement dated 04.11.2015, Hon'ble High Court after hearing the said matter, upheld the appeal and set aside the demand stating that ADD on import of Glass Sheet from China PR classified under Tariff item 70049099 is without jurisdiction and without authority of law. Further, no appeal has been filed against the abovementioned Hon'ble High Court judgement. Therefore, the judgement of Hon'ble High Court prevails.

(vi) **Visakhapatnam: -**

RUBBER CHEMICAL MOR:

M/s Nagarjuna Agrichem Ltd filed Bill of Entry (B.E) No. 4680675 dt. 04.01.2018, for import of 16MTS of goods declared as '2-HYDRAZINE-4-METHYL-BENZO THIAZOLE 98%(HMBT)' from People's Republic of China.

The issue has been examined in detail and it is submitted that ADD is not leviable on the above goods

As per Notfn. 54/2017, ADD is leviable Rubber on Chemical MOR: 2-(4-Morpholinothio) benzothiazole (MBS) imported from PR China. However, the item imported under BE No.4680675 dated 04.01.2018 is '2-HYDRAZINE-4-METHYL-BENZO THIAZOLE 98%(HMBT)' which is chemically a different product from the above rubber chemical. The item under import is used in manufacture of agricultural insecticides by the importer who is manufacturer of agricultural insecticides.

GRAPHITE ELECTRODE:

It is informed that BE No. 6456028 dated 23.08.2016 was filed by M/s Bhushan Steel Limited, for clearance of Graphite Electrodes. ADD is chargeable on the item in terms of CN 04/2015-Cus-ADD dated 13.02.2015.

The point raised by the Audit is that ADD is chargeable on the item as per Sl. No. 14 of the said notification @ USD 922.03 PMT whereas the Department charged ADD under Sl. No. 12 @ USD 391.84 PMT, resulting in short collection of Rs 29,72,052/-.

It is informed that the Graphite Electrodes imported against BE no. 6456028 dated 23.08.2016 by M/s Bhushan Steel were manufactured by M/s CIMM Donghai Advanced Cabon Co. Limited and exported by M/s CIMM Group Co Limited, satisfying the requirements of SI no. 12 of CN 04/2015-Cus-Add dated 13.02.2015. The importers submitted Inspection Test Certificate for the items covered by Invoice No. 16CIMM-087/098 dated 07.07.2016, issued by the Manufacturers M/s CIMM Donghai Advanced Carbon Limited in this regard, as proof of

their claim for levy of ADD under Sl. No. 12 of Notification 04/2015-Cus-ADD dated 13.02.2015.

(vii) **Kolkata: -**

Jute yarn/Twine

On the basis of audit objection raised on the issue of Non Levy of Antidumping Duty in terms of Notification No. 1/2017-ADD dated 05.01.2017, SCNS were issued on 27.02.2018 for all the cases. The adjudicating authority has dropped all the cases on the basis of findings that Anti Dumping Duty was levied w.e.f. 06.01.20217 but the audit objection was raised for the goods imported on 05.01.2021.

It is also mentioned that in response to an RTI application, reply received from the Government of India, Press, Ring Road, Mayapuri, New Delhi-110006 through letter vide A-43013/RT/492/2017/Est/35S dated 13.07.2018 stated that the date of publication of the Notification No. 01/2017-Customs (ADD) is 06.01.2017 at 14.28.58 hours. Therefore, it has become clear from the above information that the demanded anti dumping duty against impugned goods was not leviable on 05.01.2017 as the anti dumping duty was imposed w.e.f. the date and time of publication of the said notification ie. 06.01.2021 at 14.28.58 hours.

JUTE PRODUCTS

Audit observed that Non / Short levy of Antidumping Duty on 'Jute Products to the tune of ₹5.49 lakhs has been noticed against 2 manual Bill of Entry Nos. 30/17 dated 04.01.2017 and 39/17 dated 05.01.2017 of importer viz. M/s Bengal Jute & Bag Co. and M/s Kolkata Trade Centre respectively.

Para 2 of the Notification No.01/2017- Customs (ADD) dated 05.01.2017 states that "The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be paid in Indian Currency" and the same was published in the gazette of India on 06.01.2017 at 14.28.58 hours. So, the effective date of Notification No, 01/2017-Customs (ADD) dated 05.01.2017 is from the date of its publication in the Official Gazette i.e. from 14.28.58 hours of 06.01.2017 whereas the date of OOC of the above mentioned 2(two) Bill of Entries is 05.01.2017

GLAZED / UNGLAZED PORCELAIN TILES

Entire recoverable amount of ₹ 1,51,322/- has been recovered in r/o 4 BsE.

PORCELAIN TILES

Demand cum pre-consultation notice u/s 28 of the Customs Act, 1962 for an amount of ₹ 1,15,323/- issued to the importer.

JUTE FABRIC

Same as para 3.5.5 (ii)

(viii) KOCHI CUSTOMS**VITAMIN E**

According to Notification 29/2015 Cus (ADD) dated 10.06.2015, import of 'Vitamin E in all forms excluding natural form' from china is subjected to Anti- Dumping duty of USD 1.77/Kg with effect from 10.06.2015 for a period of Five years.

During the period from 01.04.2015 to 31.03.2018 M/s. Synthite industries Ltd. had Imported, 600 kg of DL-Alpha Tocopherol (Vitamin)' Entry through seaport, Kochi without levying ADD of ₹ 71,207/-.

Duty amounting to ₹ 71207/- along with interest ₹ 53025/- is recovered from importer.

FIBRE BOARD MDF

According to Sl. No. 11 of Notification 48/2015-Cus (ADD) dated 21.10.2015, import of 'plain MDF of thickness 6mm and above' from Sri Lanka where the goods is manufactured and exported by M/s. Merbok MDF Lanka Pvt Ltd, is subjected to ADD of USD 11.83/ cubic meter with effect from 21.05.2015 for a period of 5 years.

M/s. Falcon Glass Palace has imported, 257.495 Cubic meters of Plain MDF of thickness more than 6mm manufactured and exported by M/s. Merbok MDF Lanka Pvt LTD, from Sri Lanka vide three BsE without levying ADD of ₹2,06,547/-.

Duty amounting to ₹ 2,06,547/- along with applicable interest of ₹ 1,44,354/- is recovered from importer.

CLEAR FLOAT GLASS

The audit objection is partially admitted. For notification no. 19/2017Cus (ADD) dated 12.05.2017 show cause notice has been issued to all importers. However, for notification 47/2015 – Cus ADD dated 08.09.2015 the audit objection is not admitted. As a matter of abundant precaution a protective demand has been issued.

(ix) **BENGALURU****WALL TILE**

The importer M/s. Multi Impex had imported various items including "Wall Tiles" under the CTH 69072300 vide BOE No. 5390147 dated 28.02.2018 through ICD, Bengaluru. The country of origin on consignment was declared as People's Republic of China (PRC). Out of 20 imported items, item Sl. No. 5,6,7,8 and 16 were wall tiles and wall cladding of 963.28 sqm. The same was declared and assessed under CTH 69072300 for zero ADD quoting Sl.No. 1 of Customs Notification (ADD) 29/2017 dated 14.06.2017. On verification, it was noticed that the name of the exporter M/s. Guangdong Jingqi Trading Co.ltd., China does not figure at Sl. No. 1 of Notfn.No.29/2017 dated 14.06.2017. Therefore, ADD is leviable at the rate \$1.87/sqm as per Sl. No. 8 of the ADD Notfn. No. 29/2017 dated 14.06.2017.

A Show Cause Notice vide No. 30/2021 dated 04.06.2021 has been issued to the importer M/s. Multi Impex for the payment of differential duty of ₹1,16,816/-.

OPAL GLASS

Audit observed that there was non-levy of ADD on 'Opal Glass' amounting to 2.93 lakhs in 2 cases imported through Bangalore Customs Zone during 2015-16 to 2017-18, due to incorrect application of ADD notification provisions.

The Commissionerate does not agree to the Audit conclusion. The anti-dumping duty imposed as per Notf. No. 37/2017(ADD) dated 09.08.2017 is for opal glassware and not for all glassware under CTH 7013 Opal glass is milky white in colour and is used more in light fittings and in glass tableware like dinner plates. Hence, anti-dumping duty would not apply on such goods.

INJECTION MOULDING MACHINES

One Bill of Entry bearing No.3330207 dated 21.09.2017 has been cleared without levying ADD in terms of Notification No.9/2016 Cus (ADD) dated 15.03.2016. On being pointed out by the Audit, a letter to importer issued for payment of ADD of ₹18,49,080 along with interest @ 15%. The importer vide letter dated 01.09.2018 informed payment of ADD of ₹18,49,080 along with interest of ₹44,834/- vide challan No. 1790 dated 28.11.2017.

However, it has come to notice that the importer has not included BCD in the landed value for calculating ADD as per the notification 09/2016 dated 15.03.2016 which has resulted in short payment. The ADD payable is arrived at ₹19,87,761/-. The importer has been informed vide letter dated 05.06.2021 for payment of balance ADD of ₹1,38,681 along with interest up-to date.

(x) **Tuticorin Sea Customs**

CERAMIC TILES

Audit has observed that Ceramic Tiles imported from China by M/s.Kailas Ceramic Pvt. Ltd., which was classified under CTH 69072300 was subject to levy of ADD at 1.87 US\$ per Square Meter and levy of ADD was imposed on similar goods in BE No.3930749 dated 09.07.2017 and BE No.3675982 dated 19.10.2017

As per the ADD Notification ADD leviable on Soluble salt, Double Charge, GVT and PGVT porcelain/verified tiles with less than 3% water absorption and all sizes. As it evident that the applicability of ADD is only with reference to the Soluble Salt, Double Charge, GVT and PGVT Porcelain/Vitrified Tiles and further applicability of ADD on these tiles is further dependent on the percentage of water absorption i.e. if the water absorption is less than 3% only then these tiles shall attract ADD. Further it is understood from the trade that the water absorption of ceramic tiles are usually more than 3% as it is very porous and are different from those mentioned in the Notification. It is submitted that as the subject item imported vide the Bs/E referred to in the Audit findings are only Ceramic Tiles and the water absorption is more than 3% as per Quality Inspection Report for the Purchase Invoice No:171018 dated 18-10-2017 pertaining to the subject Bs/E, no ADD is leviable on it.

SHEET GLASS

Audit has contended that "Sheet Glass" falling under heading 70042011 or 70042019 originating in or exported from PR China and imported into India is subject to Anti Dumping Duty(ADD) @ USD 63 per MT in terms of Notification No.07/2015-Cus(ADD) dt 13.03.2015.

Sheet Glass Imported vide 7 Bills of Entry through Tuticorin Port were mis classified under 70049099 resulting in non-levy of ADD of ₹ 16.34 Lakhs. In this regard it is submitted that as per Customs Tariff (Glass with description- glass, coloured throughout the mass (Body tinted), opacified, flashed or having an absorbent, reflecting or non reflecting

layer") falls under CTH 700420 and all other items falling under 7004 can be classified as " others" under CTH 700490.

The cargo imported under the above said Bill of Entries are not shown to have the characteristics specifically mentioned in CTH 70042011 or 70042019. The description of the imported goods does not indicate the feature viz "having an absorbent reflecting or non reflecting layer".

In this regard the chapter Notes 2(c) to Chapter in 70 is reproduced below: "the expression absorbent, reflecting or non reflecting layer" means a microscopically this coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting and qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass"

Since the glass under import does not have the complete characteristics of absorbent, reflecting or non reflecting layer, the goods are rightly classified under the heading CTH 700490 and hence no Anti dumping duty would be leviable. "

42. In this context, the Committee were keen to know about the efforts taken to identify reasons for incorrect application of ADD Notifications for levy and follow-up action taken there on. The Ministry, in its written reply, responded in the following manner:-

"While ADD is imposed based on a pin pointed identification of the specific import, the criteria used to identify the item are multi-dimensional, such as descriptive names read with specifications of grade, density, dimensions etc. The item is also rarely a simple Customs Tariff Heading based description. It is normally a subset of a Customs Tariff Heading. The description may also contain exceptions. Besides there may be exclusions within the description or even outside. The source of the item may involve the country of origin to be read with the country of export in combination with a producer and an exporter. The rates of duty may also vary depending on the combination. ADD on non-specified entities is often higher than on specified producers/manufacturers. Further, the applicability may also need to be restricted to import value below a specified threshold. Certain exporters that give a price undertaking to the Directorate General of Trade Remedies (DGTR) may be excluded from the scope of the levy.

The above parameters lead to a complex and intricate matrix of factors relevant to the imposition of ADD which vary from case to case. This implies

that each case of levy of ADD is unique and requires a separate logic to be incorporated in the ICES directory. For this reason, it is not feasible to fully automate ADD for foolproof compliance at stage of filing of the bill of entry (through appropriate system validations) or at the initial stage of assessment.

Keeping the relevant aspects in view, an incomplete or changed declaration of the description by the importer or omission, at self assessment stage, of the application of ADD could lead to incorrect application.

Accordingly, some degree of separate intervention, including human intervention, is necessary. As such, compliance with correct application for levy of ADD notifications needs to be viewed in the context of the entire, multi-pronged Risk Management framework or ecosystem described earlier that enables the balance between facilitation and enforcement.

Further, the Risk Management System, which is a targeting mechanism, bases itself on continuous feedback into profile building from various sources and it has been attempting to make steps towards adoption of more intelligent techniques.”

43. For cases in which ADD was not levied despite imports fulfilling specified conditions for levy of ADD, the Ministry replied as under:-

“In line with the legal provision for self-assessment, the system is a mechanism for the importer to correctly declare goods and claim classification, Notification, rate of duty etc as applicable. Once claimed, the system auto populates on the basis of the self- declaration. When importer or Customs Broker suppresses or makes an incorrect/inaccurate declaration then system cannot enforce an ADD Notification automatically, particularly because ADD is leviable only in case of specific country of origin, manufacture etc.

On the basis of the declaration under section 46 of the Customs Act, 1962 and Self - assessment as per Section 17 of the Customs Act, 1962, a Bill of Entry is marked for assessment or out of Charge. The concerned assessing officer can impose or remove the Notification on the basis of applicability of said Notification at time of assessment. Also the Out of Charge officer can mark such Bills of Entry to assessing group for assessment for verification of assessment.

Based on CTH/CTI and country of origin/shipment mentioned in each ADD notification, RMS had interdicted bills in which ADD was not applied, for the verification by field officers. Afterwards, it left to field officers to examine such cases and make a determination whether or not ADD is to be levied.

It is pertinent to mention here that RMS is not required to carry out validation of ADD notification conditions. In terms of the provisions of Section 17 of Customs Act, RMS is meant for the selection of bills of entry for verification by an assessing officer on the basis of risk evaluation through appropriate selection criteria; not for validating each and every BE for ensuring compliance to numerous conditions of various notifications (including ADD) claimed therein, For all the cases on non-levy cited in the audit report, RMS had specific custom tariff level interdictions created specifically for ADD.

The only possible escape from RMS targeting could have been that some AEO importers who, being trusted operators, were provided enhanced facilitation, as per the government policy. Such non-compliances, if any are tackled through Premise- Based Audit (PBA) of AEOs.

In order to plug this potential gap, RMS criteria was tweaked (in 2017/2018) to interdict all bills with custom tariff items (at 6/8-digit level as mentioned in the relevant ADD notification) covered in anti-dumping duty notification and where anti- dumping duty has not been levied, and route to field officers to verify the applicability or otherwise of anti-dumping duty.”

44. To a pointed question whether any action has been taken against the erring officials which resulted in loss to the exchequer due to incorrect application of ADD Notification provisions, the Ministry replied as under:-

“As regards, non/short levy of ADD amounting to ₹ 63.60 crore in 1205 cases, it is to submit that the Ministry has accepted approx 500 cases out of which ₹ 5.52 crore has been recovered and for remaining cases corrective action for safeguarding the Govt. revenue has already been taken. In remaining approx 700 cases Ministry is contesting the objection.

As regards, action against erring official for causing loss to the exchequer it is to submit that there is no loss of revenue. Further, the competent disciplinary authority takes suitable action wherever it is deemed necessary after detailed investigation.”

V Para No 3.5.4 : Non levy of ADD in contravention to the condition of country of origin

45. The levy of anti-dumping duty is both exporter specific and country specific. It extends to imports from those countries in respect of which duty has been notified by the Customs on recommendation by the designate authority.

46. Several instances of non-levy of ADD on imports from countries in respect of which ADD was leviable were noticed. The products were Machinery and Mechanical appliances, Textiles, Fabrics and Yarn Metals and Articles of Metals,

Chemicals and chemical products and others. The instances as well as the Ministry's response thereto were as under:-

“(i) Machinery and Mechanical appliances

All kinds of Plastic Processing machines or Injection moulding machines also known as injection presses having clamping force not less than 40 tonnes and equal to or less than 3200 tonnes falling under CTH84771000 originating in or exported from PR China, Chinese Taipei, Philippines, Malaysia and Vietnam attract ADD at 29 per cent of landed value.

In five Commissionerates, 24 consignments of injection moulding machines imported from China, Taiwan and Vietnam although correctly classified under CTH84771000 were cleared without levy of ADD of ₹2.95 crore in contravention to the aforesaid notifications.

This was brought to the notice of the department in January/August 2018; their reply is awaited (October 2019).

Ministry's Comments:

(a)Trichy- The Commissionerate had submitted reply to CRA, Chennai vide their office C. No. VIII/22/12/2018-Audit dated 08.11.2018 recommending closure of para at SOF stage.

The audit has contended that Plastic processing machines or injection moulding machines originating in PR China and exported from PR China to India falling under CTH 84771000 attracts ADD at 29 percent of landed value vide notification No.57/2015-Cus(ADD) dt 04.12.2015 and Notification no.9/2016-Cus (Add) dt 15.03.2016. The importer M/s Sakthi Polymers, a manufacturer and supplier of PVC & HDPE Pipes had imported two number of injection press and Clamping Units in one consignment from China through Bill of Entry no.9492398 dt 28.04.2017 were incorrectly classified under CTH 84779000 as “Parts”. Due to the mis-declaration of the imported goods by the importer. Anti-dumping duty was omitted to be levied and which had resulted in non-levy of ADD of Rs 6.19 Lakhs.

In this regard, it is submitted that the importer M/s Sakthi Polymers are having 18 injection Moulding machines for the manufacture of PPR fittings, in their production line which are either purchases in India or imported from China and such injection Moulding machines are having the following major components among other parts:

- Servo Hydraulic Motor
- Machine base
- PLC control
- Hydraulic Pump
- Clamping Unit
- AC drives

- Heaters & Thermocouples
- Electronic Control Panel
- Injection Unit
- Hydraulic Valves
- Gear Wheels
- Machine enclosures
- Hopper
- Ejector Unit
- Electrical Accessories and many others.

The importer has stated that since, the Clamping Unit and Injection unit are bound to get more wear and tear during the production of PPR fittings, they had to replace the various parts of Clamping Unit and injection Units for their existing 200-250 Tons capacity injection Moulding machines

As such clamping unit and injection unit alone cannot be considered as a whole injection moulding machines, since the injection moulding machine comprises of so many other parts as stated above.

As such the imported cargo Viz a) Injection unit and (b) Clamping Unit have been correctly classified under CTH 84779000 "Parts" of injection Moulding machine and the audit Para seeking to levy ADD on the said goods is not sustainable.

(b)Chennai:- As per audit, for 21 consignments of Injection Moulding Machine imported through Chennai Sea Commissionerate were cleared without levy/ short levy of ADD of ₹ 139.15 lakhs. In order to protect the revenue, SCN have been issued. Upon verification of all documents and specification of technical parameters, these cases would be adjudicated on merit.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

(c)JNCH: -Audit observed that M/s Manisha Pharmo PlastPvt Ltd, M/s The Supreme Industries Pvt Ltd and M/s Subhada Polymer Pvt Ltd have imported the said goods vide BEs Nos 4685888/23.03.2016, 5773104/27.06.2016 &6004253/15.07.2016 respectively without levy and payment of ADD amounting to ₹ 22,00,409/-.

The Commissionerate agrees to the extent of non levy of ADD amounting to ₹ 6,48,476/- in r/o BE no. 4685888/23.03.2016 pertaining to M/s Manisha Pharmo PlastPvt Ltd, and non levy of ADD amounting to ₹ 9,94,490/- in r/o BE no. 6004253/15.07.2016 pertaining to M/s Subhada Polymer Pvt Ltd.

In respect of M/s The Supreme Industries Pvt Ltd. the goods imported vide BE

no. 5773104/27.06.2016, at the time of examination of the goods, the docks officers has ensured that the ADD of ₹ 5.57 lacs is paid vide manual challan.

In remaining two cases show cause notices have been issued for demand and recovery of short levy and nonpayment of ADD.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

(d) ICD Patparganj: - CRA observed that ADD on import of Injection moulding machine pertaining to 2 BEs was not paid resulting in non levy of ADD amounting to ₹ 30.97 lakhs.

The Commissionerate does not agree with the audit objection as the said machinery is electronically operated and energy saving/energy consumption and inverter are features and parts of the machinery and the said Electric Plastic Injection Moulding Machine is excluded from the levy of ADD in terms of exclusion specified under Sr. no. III of Customs Notification No. 9/2016-Cus (ADD) dated 15.03.2016

(e) Bengaluru: - Thereply in this regard shall be submitted in due course on receipt of the same from field formation.

(i) Textiles, Fabrics and Yarn

(a) Nylon filament yarn produced by any producer originating in, or exported from China, Taiwan, Malaysia, Thailand, Korea RP and Indonesia and imported into India is liable to ADD¹⁶ at the rate varying between USD 0.20 to 1.51 per kg depending upon combination of producer and exporter.

Twenty three consignments of Nylon filament yarn imported (July 2015 to January 2018) from PR China, Korea RP and Indonesia through Chennai Sea Commissionerate and ICD, Patparganj although correctly classified under Chapter heading 54 were cleared without levy of applicable ADD of Rs 1.33 crore.

This was brought to the notice of the department in June 2018; their reply is awaited (October 2019).

Ministry's Comments:

(i) Chennai:- As per audit, 21 consignments of Nylon Filament Yarn imported through Chennai Sea Commissionerate were cleared without levy /short levy of ADD of ₹ 131.70 lakhs. One importer, M/s HSI Automotive Pvt. Ltd imported 5 consignments of 100% polyester filament yarn which is declared as 'Filament yarn PEF&1500 Dx1 ply, for which ADD is not applicable. The identical goods imported vide previous BE and supplied by the same supplier was tested by Textile Committee and found to be 100% polyester. The ADD Notification 03/2012 refers to Nylon Filament Yarn only. Consultative letters

have been sent to remaining importers.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

(ii) ICD Patparganj:-Not accepted as the goods are high tenacity yarn of nylon and the same are excluded from the scope of levy of anti-dumping duty as per Customs Notification No. 3/2012-Cus(ADD) dated 13.01.2012 as amended by Notfn. No. 4/2017-Cus.(ADD) dated 19.01.2017. Further, as per the said Notfn, the goods are excluded from levy of duty if their landed price is above US\$5.17. In the present case, the landed price is US\$ 29.31 per kg., hence covered in the exclusion clause.

(b) Mulberry Raw Silk Grade 3A grade and below with any specification falling under CTH 50020010, originating in or exported from China by any producer/exporter is subject to ADD at 1.85 US Dollar per kg.

In Chennai Sea Commissionerate, 5 consignments of Mulberry Raw Silk Grade 3 imported from China were cleared without levying applicable ADD of 13.67 lakh although similar imports through the same port were subjected to ADD.

This was brought to the notice of the department in March 2017; their reply is awaited (October 2019).

Ministry's Comments:

Chennai:-As per audit, 5 consignments of Mulberry Raw Silk imported through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 13.67 lakhs. Consultative letters have been issued to the importers.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

(iii) Metals and Articles of Metals

Import of 'Aluminium foil' from China is leviable to ADD at the rate of USD 1.63 per Kg if the combination of producer and exporter was 'any' other than those prescribed under notification dated May 2017.

Eight consignments of aluminium foil were imported through ICD-Tughlakabad and JNCH, Mumbai Commissionerates, from China. The imported goods were facilitated clearance through RMS without levying ADD. Non-adherence to provisions of notifications resulted in non-levy of ADD of ₹ 1.12 crore. On this being pointed out, ICD, Tughlakabad authorities reported recovery of entire non-levy of ₹ 75.11 lakh from three importers. Reply from

JNCH, Mumbai is awaited (October2019).

Ministry's Comments:

(a) Mumbai-II agrees with the Audit Para for the imposing of anti-dumping duty in the case of Bill of Entry No. 4095328 dt. 21.11.2017 of M/s Siddhee Products. However, the importer at the time of clearance has paid Anti-dumping duty amounting to ₹ 8,62,000/- in the system vide challan no. 2020544469 dt.14.12.2017 along with applicable interest on delayed payment of duty amounting to ₹ 19669/-.

In case of B/E No. 4146084 dt. 25.11.2017 of M/s Timexbod Industries, the declared description is "color coated Aluminium foil as per invoice thickness 0.042.mm= 42 micron)". As per Board Circular 45/2017 dt. 22.11.2017, Board has clarified that color coated Aluminium foil is out of the purview of the anti-dumping duty.

In case of Bills of Entry No. 9715255 dt. 16.05.2017 & 9715267/16.05.2017 of M/s. Blue Star Ltd., the matter was adjudicated vide Order No. 165/2018-19/JC/NS-III/CAC/JNCH dt. 18.05.2018 and the importer has made payment of Anti-dumping duty along with interest amounting to ₹ 7,15,702/- vide HC no. 450/29.12.2017 & HCM No. 29.12.2017 and ₹2,92,278/- vide HC No. 45/29.12.2017 & HCM No.1913/29.12.2017. Penalty amount is recoverable from the importer. Efforts are being made to recover the pending dues from the importer.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

In case of Bill of Entry No. 9714415 dt. 16.05.2017 of M/s. Asawa Insulation Pvt. Ltd., the matter was adjudicated vide Order No. 03/2018-19/JC/NS-III/CAC/JNCH dt. 02.04.2018 and the importer has made payment of Anti-dumping duty along with interest and penalty amounting to ₹ 27,30,473/- vide DD No. 011389/21.08.2017, vide HCM No. 282/04.05.18 & 283/04.05.2018

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

In case of Bill of Entry No. 9714097 dt. 16.05.2017 of M/s Futuristic Marketing Solutions, the matter was adjudicated vide Order No. 1201/2018/JC/NS-III/CAC/JNCH dt. 20.03.2019 wherein Anti-dumping duty was ordered for recovery along with penalty. Efforts are being made to recover the pending dues from the importer.

(b) ICD TKD: - The duty demand has been recovered from the importers and same is already mentioned in the said Audit Report.

Audit's vetting comment is awaited.

IV Chemicals and chemical products

- (a) 2 Ethyl Hexanol (2EH) falling under CTH 29051620, where country of origin of the imported goods is European Union attracts ADD¹⁹ at prescribed rate of USD 113.47 per MT.

300 MT of 2EH imported from Romania were cleared without levy of Customs duty from Kandla Commissionerate though Romania is a member of the European Union. Imported goods were cleared without levy of ADD of ₹ 23.10 lakh.

On this being pointed out, the department reported recovery of ₹ 23.10 lakh.

Ministry's Comments:

Kandla

An amount of ₹ 23.10 Lakhs as per the observation raised by C&AG has already been recovered. The said amount was raised against BE No. 8610286 dated 20.02.2017 filed by M/s. Meghaaria International Ltd. The importer has paid the due ADD and interest thereon amounting to ₹ 23,09,682/- vide TR-6 Challan No. 757 dated 23.06.2017.

- (b) Imports of 'Phenol' classified under CTH 29071110, originating in or exported from USA, attracts ADD at the prescribed rate of USD 159.63 per MT. As per Section 30 of Special Economic Zone (SEZ) Act, 2005, any goods removed from an SEZ to Domestic Tariff Area (DTA) shall be chargeable to duties of customs including antidumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported.

Audit noticed that an SEZ Unit under Development Commissioner, Kandla Special Economic Zone (KASEZ) cleared 168 MT of Phenol (October 2016) in DTA without payment of ADD. Audit further noticed that the Phenol cleared in DTA was imported from USA which attracts anti-dumping duty. Therefore ADD was required to be levied in terms of aforesaid notification on DTA clearances. This resulted in non-levy of anti-dumping duty to the tune of ₹ 18.13 lakh.

On this being pointed out (June 2017), the department reported (June 2017) recovery of ₹ 18.13 Lakh.

Ministry's Comments:

Kandla

The Audit found in case of import by M/s. GNK Enterprise, a SEZ unit under KASEZ, cleared Phenol in DTA without payment of ADD vide BE No.

0016296 dated 08.10.2016 and 0016458 dated 21.10.2016. This resulted in non-levy of ADD to the tune of ₹ 18.13 Lakhs. The said amount of ₹ 18.13 Lakhs has already been recovered.

(v) Others

(a) Graphite electrodes

Imports of Graphite Electrodes of all diameters falling under CTH8545, originating in or exported from China PPR are leviable to ADD @USD 922.03 Per MT.

In JNCH, Mumbai and Vishakhapatnam Commissionerate, four consignments of Graphite Electrodes imported from China PR were cleared without levying ADD of ₹ 66.07 lakh.

Ministry's Comments:

(i) Visakhapatnam:-

It is informed that BE No. 6456028 dated 23.08.2016 was filed by M/s Bhushan Steel Limited, for clearance of Graphite Electrodes. ADD is chargeable on the item in terms of CN 04/2015-Cus-ADD dated 13.02.2015.

The point raised by the Audit is that ADD is chargeable on the item as per SI. No. 14 of the said notification @ USD 922.03 PMT whereas the Department charged ADD under SI. No. 12 @ USD 391.84 PMT, resulting in short collection of Rs 29,72,052/-.

It is informed that the Graphite Electrodes imported against BE no. 6456028 dated 23.08.2016 by M/s Bhushan Steel were manufactured by M/s CIMM Donghai Advanced Carbon Co. Limited and exported by M/s CIMM Group Co Limited, satisfying the requirements of SI no. 12 of CN 04/2015-Cus-Add dated 13.02.2015. The importers submitted Inspection Test Certificate for the items covered by Invoice No. 16CIMM-087/098 dated 07.07.2016, issued by the Manufacturers M/s CIMM Donghai Advanced Carbon Limited in this regard, as proof of their claim for levy of ADD under SI. No. 12 of Notification 04/2015-Cus-ADD dated 13.02.2015.

(ii) JNCH, Mumbai: The Commissionerate agrees with the audit objection.

Anti Dumping Duty of Rs 11,77,119.63/- along with applicable interest under Section 28AA of the Custom Act, 1962 thereon in case of M/s Kalyani Carpenter Special Steels Ltd.

Anti Dumping Duty of Rs 24,57,663.77/- along with applicable interest under Section 28AA of the Custom Act, 1962 thereon in case of M/s Bharat Heavy Electricals Limited.

The Commissionerate agrees with the audit conclusion in the case of for M/s Bharat Heavy Electricals Limited. Further, M/s Bharat Heavy Electricals Limited has paid an amount of Rs 36,37,851/- which included the Anti Dumping Duty amount along with applicable interest thereon under Section 28AA of the Custom Act, 1962 vide ChallanNos HCM 358 dated 05.02.2020, HC 65 dated 05.02.2020, HCM 1913 dated 20.02.2020, HC 461 dated 20.02.2020, HCM 817 dated 14.07.2017 and HC 127 dated 07.07.2017.

The Commissionerate does not agree with the audit conclusion in the case of M/s Kalyani Carpenter Special Steels Ltd. as they have already paid the Anti Dumping Duty amounting to Rs 11,77,119/- vide Challan No. HCM-912 dated 10.03.2015 i.e. within one day of assessment. Hence, there was no short payment of Anti Dumping Duty in this case.

(b) Measuring tapes (Steel tapes)

Imports of 'Measuring tapes' classifiable under Customs tariff heading (CTH)90178090, originating in, or exported from Malaysia is leviable to ADD at the prescribed rate of USD 2.60 perKg

One consignment (18250 kgs) of "Measuring Tapes (Steel tapes)" classifiable under CTH '90178090-Other instruments' imported from Malaysia (September2016) through Chennai Sea Customs was cleared without levying ADD of ₹ 32.15lakh.

On this being pointed out (February 2017) the department stated (November 2017) that demand notice has been issued. Further progress is awaited (October 2019).

Ministry's Comments:

(i) Chennai:-As per audit, 1 consignment of Measuring Tapes imported through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 32.15 lakhs. The case was adjudicated and 0-in-0 was issued for confirming the demand.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation."

47. When the Committee sought the reasons for non-levy of ADD on imports from countries in respect of which ADD was leviable and whether any assessment of the resultant financial loss to the country had been made, the Ministry in a written reply, stated as follows:-

"The non-levy of ADD with respect to imports from a particular country is also closely linked to the reasons mentioned for the non-levy or incorrect application of ADD altogether in certain cases. This also has linkage to the multiple parameters involved in the imposition of ADD. These aspects have

been explained in the comments to point no. 13 herein above.

Further, while the declaration of the country of origin on the bill of entry is mandatory for imports, in cases where preferential tariffs (based on Free Trade Agreements) are claimed in respect of a particular import there is a system of verification of the genuineness of the Certificate of Origin under the Rules of Origin negotiated for the purpose. However, such a mechanism is not there for the levy of ADD alone. As such, assessment is dependent on the country of origin declared by the importer. Apart from the possibility of mis-declaration, it is also possible to circumvent ADD through manipulation of the country of origin by carrying out a small part of the value-addition in a country/ territory whose exports have not been subjected to ADD.

In cases of circumvention through manipulation of the country of origin, the domestic industry is to file a complaint with the DGTR so that a fresh investigation may be launched and a suitable modification in the levy may be made to overcome circumvention.

The levy of ADD is primarily meant to protect the domestic industry against the unfair and discriminatory trade practice of dumping through a price-equalization mechanism. It may be mentioned that the reported recovery during the period 2018-19 to August 2021 in relation to ADD through PCA is approximately ₹ 45 Crore and through the actions of Intelligence Wings is approximately ₹ 64 Crore. As per the provisions, an importer who delays the payment of ADD also pays interest thereon. An importer invites imposition of penalty in case of mis-declaration or suppression of facts. It is not possible to estimate the consequential financial loss to the country on account of the absence of requisite protection."

48. On the issue of Circumventing of Duty by not mentioning the country of origin in the BEs and also the measures taken to ensure correct identification of Country of origin, the Ministry's response has been as under:-

"In cases where preferential tariffs (based on Free Trade Agreements) are claimed in respect of a particular import there is a system of verification of the genuineness of the Certificate of Origin under the Rules of Origin negotiated for the purpose.

There is a provision for domestic industry to file a complaint with the Directorate General Trade Remedies, in the Ministry of Commerce, in cases of circumvention of ADD through manipulation of the Country of Origin by carrying out a small part of the value-addition in a country/ territory whose exports have not been subjected to ADD. This enables a fresh investigation

to be launched and a suitable modification in the levy may be made to overcome circumvention.

The RMS has also made a beginning adopting Machine Learning. One of this involves interdicting Bills of Entry in which ADD has not been declared, where on identical Customs Tariff Heading, country of origin and supplier combination such duty had been paid, on an earlier occasion. “

49. Further when asked about measures taken to prevent circumvention of Anti-Dumping Duty by routing of goods through a third country, the Chairman, Central Board of Indirect Taxes & Customs in oral evidence of representatives of Ministry of Finance taken on 6th October 2021, mentioned following provisions:-

“There are two provisions which deal with the possibility of somebody trying to evade or escape anti-dumping duty by either playing with the description of the goods or manipulating the goods in such a way that there is a technical issue that arises. I will give you an example to explain what I am saying. In order to deflect the exports through a third country, we have anti-circumvention provisions in anti-dumping law, which provides for a proper investigation, again by the DGTR, when there is a complaint filed by the domestic industry that the anti-dumping duty which is being levied is actually being circumvented. I will give you an example. Let us say we have a duty on certain type of machinery. There used to be an anti-dumping duty on axles of certain size and dimension. Now, what some of the smart importers and exporters did was that they started bringing it in CKD form, or in a semi knocked down notification. As the notification was very specific and it talked only about the axle, per se, they were able to escape anti-dumping duty. Now, this is a clear case of circumvention. Likewise, if the goods are deflected through a third country, we have imposed anti-dumping duty on goods produced by a Chinese producer although we take care in the anti-dumping notification to make sure that all possibilities are covered. So, if it is a Chinese-origin good, but being exported through any other country, the notification provides greater anti-dumping duty even for that situation. But still people can manipulate the country of origin and escape it. There is an anti-circumvention provision. A complaint can be made to the DGTR and they can carry out a fresh investigation because it is possible that when it is coming from a third source, actually the degree of dumping or the degree of injury is even more and it may warrant a higher rate of anti-dumping duty in that situation. So, that is how we deal with deflections with third countries.”

50. Regarding the manner in which the systemic lacunae in identification of country of origin and the applicable ADD associated with them were being addressed, the Ministry responded as under : -

“Due to complexity in imposition of ADD which involves numerous parameters apart from the country of origin, full automation of the scenario is difficult. The feedback from various sources including shortcomings noticed by audit or other agencies in the course of implementation have resulted in adoption of a multi-pronged approach to address the shortcomings for achieving compliance. This approach involves use of the entire larger risk management framework. It encompasses a more intelligent RMS, involving itself at assessment/clearance and post clearance stages, and other components such as post clearance audit, sharing of Analytic Reports and alerts of National Customs Targeting Centre (NCTC) with field formations, interventions of investigation & intelligence agencies and locally enhancing the working knowledge of the officers. All these prongs of the compliance mechanism, complement and supplement each other for preventing the avoidance/ escapement of ADD.

RMS interdictions have been strengthened to interdict bills of all the entities including AEOs, if ADD has not been applied when country of origin and CTH/CTI mentioned in an ADD notification is found matching.

These interdictions are reviewed from time to time, and cases of potential ADD avoidance is regularly flagged to field formations concerned through alerts/letters/analytics reports for further examination and recovery, if due.

Additionally, residual risks are tackled through post clearance audit (PCA) interdictions. PCA interdiction criteria are also updated regularly to further improve the efficacy.

The process of RMS interdictions is dynamic and undergoes changes from time to time to address new and emerging risks. “

VI Para no 3.5.5: Non levy of ADD on account of contravention of product specific conditions

51. In some cases, anti-dumping duty on the imported commodity is levied due to a specific characteristic of a product like thickness, weight or chemical composition. During test check of transactions, audit noticed that the duty was not levied on imports of these commodities even though the product specific conditions were met. The details of the cases and the action taken by the Ministry each case were reported as under:

“(i) Float Glass :As per various ADD notifications issued during the period 2014 to 2017, import of clear float glass of nominal thickness ranging from 2mm to 12 mm and imported from UAE, Saudi Arabia, Iran, Pakistan and China are leviable to ADD at the prescribed rates. The notifications prescribe that nominal thickness should be measured as per Bureau of Indian

Standard (BIS) 14900:2000. As per this BIS Standard, the nominal thickness is to be considered within tolerance level thickness ranging from ± 0.20 mm to ± 80 mm. Thus, float glass of thickness 1.80 mm to 2.20 mm will be considered as of thickness 2mm.

In three Commissionerates audit noticed imports of 42 consignments of clear float glass of thickness varying between 1.80mm to 12.80 mm and imported from specified countries which were cleared without levying ADD on the premise that nominal thickness of the glass was different from prescribed thickness of 2 mm, to 12 mm. This resulted in non levy of ADD amounting to ₹ 2.83 crore.

In two Commissionerates JNCH, Mumbai and Noida the department has not levied ADD on four consignments of Clear float glass of thickness 4 mm to 12 mm imported from Saudi Arabia and Iran respectively amounting to 20.83 lakh in contravention to the prescribed notifications (ADD notification no.48/2014-ADD and 19/2017-ADD).

Ministry's Comments:

(a). Trichy- In this regard, the closure reply was already submitted to CRA, Chennai by the concerned Commissionerate vide their office letter C.No.VIII/22/12/2018-Audit dated 08.11.2018 at SOF stage.

The audit has contended that as per Notification No.48/2014-Cus(ADD) dated 11.12.2014 as amended by Notification No.30/2017-Cus(ADD) dated 16.6.2017 and Notification No.19/2017-Cus(ADD) dated 12.5.2017, "Clear Float Glass of nominal thickness ranging from 4mm to 12mm (as per BIS 14900-2000)" originating in or exported from Saudi Arabia, UAE and Iran falling under heading 70052990 are subject to Anti-dumping duty. Further as per Table of the BIS 14900:2000, tolerance for nominal thickness of float glass of 4mm is (+) 0.3mm, thus a float glass of thickness from 3.7mm to 4.3mm shall be subjected to levy of ADD.

In this regard, it is submitted that Indian Standard Transparent Float Glass – Specification issued by the BIS, Para 4.1 states-"The thickness of glass shall be measured in accordance with Annex A, the length and width of the glass on cut sizes shall be measured in accordance with Annex B. The tolerances on thickness shall be as specified in Table 1. The tolerances on length and width on cut sizes shall be as specified in Table 2."

ANNEX A (Clause 4.1) THICKNESS MEASUREMENT

Float glass thickness shall be measured with micrometer or calipers, which is graduated to 0.01 mm or with a measuring instrument having an equivalent accuracy. Para 4.1.1 states-

"If agreed to between the purchaser and the supplier, thicknesses other than those specified in Tables 1 and 2 may be supplied. In such

cases, the tolerance on thickness as well as dimensions shall be those which are applicable to immediate lower thickness specified in Tables 1 and 2."

Table 1 Thickness and Tolerance of Float Glass (Clauses 4.1 and 4.1. 1) All dimensions in millimeters	
Nominal Thickness	Tolerance
1.9	+ 0.2
3.0	+ 0.3
4.0	+ 0.3
5.0	+ 0.3
6.0	+ 0.3
8.0	+0.6
10.0	+0.6
12.0	+0.8
15.0	+0.8
19.0	+1.2

A combined reading of the aforementioned paragraphs reveals that the tolerance has been specified for the glass of tabulated thickness and in case of other than that tabulated the tolerance shall be that which is applicable to immediate lower thickness specified in Tables 1, hence it is construed that the tolerance is for a given thickness of float glass, in case of import, of the thickness of the float glass imported.

In view of the above, it is submitted that when an importer imports glass of thickness 4mm, on which ADD is leviable, a tolerance of + 0.3 is available to supplier/importer with respect to the thickness. If the actual measurement made as per Annex A, is 3.7mm to 4.3mm, it shall be construed as 4mm and then on glass of actual thickness 3.7mm, 3.8mm or 3.9mm ADD will be levied taking into account the fact that importer has imported glass of thickness 4mm, though the actual thickness is less than that, taking into account the tolerance stipulated by BIS, ADD shall be leviable. Therefore, ADD is levied in respect of the imported goods of 4mm thickness and the tolerance in respect of the imported goods is available to the importer and supplier in case of dispute in thickness. Hence, ADD is leviable only if the imported good is of 4mm thickness subject to tolerance.

Whereas, when the imported clear float glass is of thickness 3.8mm, then as per Para 4.1.1, if agreed to between the purchaser and the supplier, thicknesses other than those specified in Tables 1, the tolerance on thickness shall be those which are applicable to immediate lower thickness specified in Tables 1 i.e., +0.3mm is available to importer, that is to say, in case of dispute between the Importer and supplier, if the actual measurement made as per Annex A, any thickness between 3.5mm to

4.1mm shall be construed as 3.8mm taking into account the tolerance specified in para 4.1, as such ADD is not leviable.

To summarize, ADD is leviable only on imported goods of thickness between 4mm to 12mm both inclusive, and the tolerance is to be subjected to only in respect of classification of imported goods and it cannot be concluded that if the importer imports 3.8mm float glass, ADD is leviable. The tolerance cannot be subjected to levy ADD, it is only subjected to classify the imported goods to specific thickness. Hence if the imported float glass is declared as 4mm and the actual thickness is anywhere between 3.7mm to 4.3mm, it is only 4mm and as such ADD is leviable, similarly if imported float glass is declared as 3.8mm, the actual thickness is anywhere between 3.5mm to 4.1mm, it is only 3.8mm, hence ADD is not leviable.

In view of the foregoing, it is submitted that clear float glass of 3.8mm shall not attract anti-Dumping Duty.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

(b) Mumbai-II has admitted the audit objection. One of the importer has paid anti dumping duty ₹ 9,40,887/- at the time of clearance vide manual challan. Less Charge cum show cause Notice dt 06.2.2019 issued to other importer and adjudication process is under way.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

(c) Meerut Zone:

In this regard, it is submitted that during the course of audit by officers of the office of the Principal Director of (Audit), Lucknow in the month of July 2018, only the issue mentioned at point 2(ii) above were brought to notice of this office that antidumping on import of clear float glass from Iran remain unpaid in BENO2314207 dated 04.07.2017 and BE no. 3151035 dated 07.09.2017 of M/s Jatalia Global Ventures Limited. In view of audit objection the department had asked M/s. Jatalia Global Ventures Ltd., 307 LUSA Tower, Azadpur, New Delhi—110033 to pay the antidumping duty in terms of Notification No. 19/2017-Cus (ADD) dated 12.05.2017 and short paid corresponding IGST duty along with applicable interest.

Ministry's further comments:

M/s. Jatalia Global Ventures Ltd. has paid short/non paid ADD along with short paid IGST duty. In respect of two other importers, show cause notice have been issued to M/s Nanda Glass Industry for demand of ADD

amounting to ₹ 10,76,448/- and to M/s R.K. Overseas for demand of ADD amounting to ₹ 90,839/-

d) Kochi:

The audit objection is partially admitted. For notification no. 19/2017Cus (ADD) dated 12.05.2017 show cause notice has been issued to all importers. However, for notification 47/2015 – Cus ADD dated 08.09.2015 the audit objection is not admitted. As a matter of abundant precaution a protective demand has been issued.

e) Tuticorin Sea:

ADD is leviable only on imported goods of thickness between 4mm to 12mm both inclusive, and the tolerance is subject to only in respect of the imported goods. The tolerance cannot be subjected to levy ADD, it is only subjected to classify the imported goods to specific thickness. Hence if the imported float glass is declared as 4mm and the actual thickness is anywhere between 3.7mm to 4.3mm, it is only 4mm and as such ADD is leviable, similarly if imported float glass is declared as 3.8mm, the actual thickness is anywhere between 3.5mm to 4.1mm, it is only 3.8mm, hence ADD is not leviable.

(i) Jute Sacks: Antidumping duty was leviable on import of Jute Products namely, Jute yarn/twine, Hessian fabric, and Jute sacking bags, in all forms and specifications, originating in, or exported from Bangladesh. In Petrapole Land Customs Station, department allowed clearance, without levy of ADD, of 416 consignments of 12766.7 MT of Jute fabrics for making sacks/bags for assessable value of ₹83.54 crore between January and June 2017 which were classified as "Sacking Fabrics" under CTH 53101012 and were imported from Bangladesh, without levying anti dumping duty amounting to ₹29.79 crore.

On this being pointed out, department did not agree with the audit contention on the ground that "jute sacking cloth" is not specifically mentioned in the notification of January 2017 quoted above. In their further reply (February 2018) the Department had forwarded test reports, in support of their contention and stated that reports revealed the goods imported were hessian cloth and not Jute product.

The department's replies are not acceptable as in Indian trade parlance "Hessian" is used synonymously with Jute and as per the findings of Designated investigating authority, the intention of Indian Industry as well as investigating

authority was to include all the major Jute products which were in product chain viz

yarn, fabrics and bags of Jute that are being imported from Bangladesh in large quantity. Moreover, the ADD notification specifies CTH code only up to 4 digits implying that all items falling under the specified heading i.e. 5307, 5310, 5607 or 6305 are covered in definition "all forms and specification". Accordingly, the imported commodity "Sacking Fabrics" by virtue of being classified under CTH 53101012 by the assessing officer will be leviable to ADD.

Ministry's Comments: -

Kolkata Commissionerate has contested the audit para and submitted that vide Notification No.01/2017-Customs (ADD), dated 05.01.2017 definitive anti-dumping duty has been imposed on imports of 'Jute Products' namely, Jute Yarn/Twine (multiple folded/cabled and single), Hessian fabric, and jute, sacking bags falling under Tariff Headings 5307, 5310, 5607 or 6305. From the above it is noticed that not on all 'Jute Products' rather than specific description of 'Jute Products' namely, jute Yarn/Twine (multiple folded/cabled and single), Hessian fabric, and Jute sacking bags wherein anti-dumping duty has been imposed. It may be mentioned that in the above said Notification, the words "in all forms and specifications", as stated by the Audit are not in the first paragraph. In the said Notification rather the same are mentioned under the column 'Specifications' of the attached table and by this the meaning of the entire sentence has been changed. Under the First Schedule of the Customs Tariff Act, 1975, Sacking fabrics has been classified as 53101012 whereas Hessian fabrics is 53101013 both under heading 5310 and sub-heading 531010. The Indian Customs Tariff has 21 Sections and 98 Chapters. Section is group consisting of a number of Chapters which codify a particular class of goods. The section notes explain the scope of chapters/headings, etc. The Chapters consist of chapter notes, brief description of commodities arranged at four digit, six digit and eight digit levels. Every four-digit code is called a 'heading' and every six digit code is called a 'sub-heading' and 8-digit code is called a 'Tariff Item'. For legal purposes the text of the Section Notes, Chapter Notes, Sub-heading Notes, Supplementary Notes, Headings, Sub-headings, and the General Rules for Interpretation of Import Tariff (GIR) should be relied upon to determine the classification of an item. The GIR is a set of 6 rules for classification of goods in the Tariff Schedule. The rules have to be applied sequentially. Rule 1 gives precedence to the Section note: Chapter notes while classifying a product. Rule 2(a) applies to goods imported in incomplete/finished condition and assembled/unassembled condition. Rule 2(b) is applicable to 'mixtures' and 'composite goods'. Goods which cannot be classified by application of Rule 2(b), will be classified by application of Rule 3, i.e., by application of 'most specific description' as per Rule 3(a) or by ascertaining the 'essential character' of the article as per Rule 3(b) or by taking into consideration the heading that occurs last in the numerical order as per Rule 3(c). Rule 4 states that goods which cannot be classified by application of

the preceding rules may be classified under the heading appropriate to the goods to which they are most akin. Rule 5 applies to packing materials/articles in which the goods are carried. Rule 6 is applied to arrive at the appropriate 5-1.4)-heading within a heading and for that purpose the provisions of Rules 1 to 5 apply mutatis mutandis on the understanding that sub-headings at the same levels are comparable. From the above GIR, as per application of 'most specific description' under Rule 3(a) as well as H.S.N. code it is crystal clear that Sacking fabrics and Hessian fabric are not the same and those are distinctive in nature.

Samples were tested of all the importers, who are importing jute sacking fabric from Bangladesh at Textile Committee Lab, Kolkata to ascertain whether it is hessian (fabric or not and in all the cases Textile Committee Lab, Kolkata reported that the sample goods are Hessian fabric in nature

Moreover Directorate of Revenue Intelligence, Delhi on the basis of specific intelligence on 08.11.2017 has thoroughly checked all the consignments of sacking fabrics but they did not find any irregularities of the said consignments.

Furthermore it is also to state that on the basis of recommendations of the DGAD&AD Published vide F.No.7/3/2018-DGAD dated 19.03.2019 in Paragraph 114(i) mentioned that the Anti-Dumping duty on PUI (Product under investigation) i.e Jute Sacking cloth will be applicable from the date of issuance of notification i.e 24/2019-Customs (ADD) dated 18.06.2019 by the Ministry of Finance i.e Central Government, which is 18.06.2019. In view of the above, it is stated that subject Audit objection is not sustainable by any way.

(II) Flexible slab stock of Polyol is a polyether which forms polyurethane foams on reaction with catalysts and additives, which are then used in packaging, pillows, mattresses, transport seating. Import of flexible slab stock of polyol of molecular weight of 3000 to 4000 originating from European Union, Australia and Singapore is leviable to ADD²⁶ at the rate varying between USD 67.79 MT to 154.94/MT.

Thirty four consignments of Flexible slab stock of Polyol of molecular weight of 300 to 4000 under the description of Arcol Polyol 5613 and VoranolEP 1900 Polyol imported from Singapore and Spain were cleared without levy of ADD by two Commissionerates even though, the department had levied ADD on the similar items with same grade and nomenclature in other import consignments. This resulted in short levy of ₹ 53.54lakh.

Ministry's Comments:

Mundra: - Audit raised objection that Sr. No.7 of the table given in Notification No. 9/2015-Cus (ADD) dated 07.04.2015 provided for levy of ADD @ USD 67.79 per MT on import of Flexible Slab stock Polyol falling

under Chapter 390720 originated and exported from Singapore. M/s. Kanabar Foam Pvt. Ltd had imported the goods vide BE No. 8836059 dated 07.04.2015. The importer has paid duty amounting to ₹ 71,977/- along with interest of ₹ 3,9881 - vide GAR-7 Challan No. 449 dated 27.07.2015.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation i.e. JNCH

JNCH:

Audit observed that importers M/sDow Chemical International Pvt Ltd & 4 others have imported Flexible Slabstock of Polyol having molecular weight between 3000 to 4000, having Country or Origin 'EU', 'Australia' & 'Singapore' is covered by ADD Notification No. 09/2015 dated 07.04.2015, falling under CTH 390720, where ADD has not been levied. Non levy of ADD on the above importers has led to short levy/non levy of ADD amounting to ₹ 52.82 lacs.

The commissionerate agrees with the Audit objection.

However, number of Bs/E involved in this para is 23 only which were listed in the AM No. 22 dated 27.07.2018. As per list provided by CRA in AM22, there are only 23 Bs/E of JNCH having total short levy amount of ₹ 52.82 lacs. In DAP, number of Bs/E are found mentioned as 33 but amount is ₹ 52.82 lacs (same as that of AM). Since total amount of 23 Bs/E matches with the amount mentioned in Para, it appears that mention of 33 Bs/E (instead of 23) in Annexure-II to the DAP is inadvertently typed. Hence, this requires reconciliation.

SCN to the importers covered under AM No.22 have been issued as detailed below:

- (i) 15 Bs/E pertaining to M/s. Dow Chemical International Pvt. Ltd.- Less charge Cum Demand Notice for ₹ 47,07,647/- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued.
- (ii) 04 Bs/E pertaining to M/s. Sheela Foam Pvt. Ltd.: Less charge Cum Demand Notice for ₹ 2,86,768/- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued.
- (iii) 01 B/E pertaining to M/s. Moka Business Pvt. Ltd.: Less charge Cum Demand Notice for ₹ 71,977/- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued.
- (iv) 2 Bs/E pertaining to M/s. Vitrag Foam Pvt.Ltd.: Less charge Cum Demand Notice for ₹ 1,43,954/- under Section 28 has been issued

to the importer on 27.12.2018. No reply has been received. SCN dated 03.08.2020 has been issued

- (v) 1 B/E pertaining to M/s. Esdee Polymer Industries.: Less charge Cum Demand Notice for ₹ 71,977/-- under Section 28 has been issued to the importer on 27.12.2018. No reply has been received. SCN dtd. 03.08.2020 has been issued

iv) Homo polymer of vinyl chloride is used in flooring, packaging sheets, bottles etc. Homo polymer of Vinyl Chloride Monomer (Suspension grade), classifiable under CTH3904, when originating and exported from European Union, Mexico and Taiwan is leviable to ADD²⁸, at the rate varying between USD 39.65/ MT to 189.99/MT.

In two Commissionerates two consignments of PVC Resin Norvinyl Grade (Suspension grade) Lacovyl PVC AxiallCT-1110 Mass PVC Resin {synonyms for Homo polymer of Vinyl Chloride Monomer (Suspension grade)} were cleared without levy of ADD although the department had levied ADD on the similar item with same grade and nomenclature in other import consignments. The literature from the website of the producer revealed that all these grades are polyvinyl chloride homo polymer produced by suspension process. This resulted in non levy of ADD of ₹ 13.19lakh.

Ministry's Comments: -

(a). Trichy- In this regard the closure reply was already submitted to CRA, Chennai by the concerned Commissionerate vide their office letter in C.No. VIII/22/12/2018-Audit dated 05.12.2018 at SOF stage.

Audit contention is "Homopolymer of Vinyl Chloride Monomer (Suspension Grade)" falling under heading 3904 originating in or exported from European Union and USA by any producer/exporter is subject to Anti-dumping duty (ADD) in terms of Notification No.26/2014-Cus(ADD) dt 13.06.2014 and No.27/2014-Cus(ADD) dated 13.06.2014 respectively.

M/s DCW Ltd., have imported "Lacovyl PVC RB8030S GRVS MASS Polymerization PVC Resin and Lacovyl PVC Axiall CT-1110 Mass PVC Resin" from France and USA and classified under 3904 of CTH vide 6 BEs. Audit pointed out that "Mass PVC Resin" is suspension grade, but ADD was not levied to the tune of Rs 1,54,93,044/-

The final findings of Directorate General of Anti-dumping duty & Allied duties on the subject "Anti-dumping investigation on import of PVC Suspension Resin from European Union and Mexico" was published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification number 14/1012/2012-DGAD, dated the 4th April, 2014. Based on this

finding, Customs Notifications No. 26/2014(ADD)- and 27/2014 Customs (ADD) both 13-06- 2014 were issued for imposing Anti-dumping duty on "Homopolymer of vinyl chloride monomer (suspension grade)" falling under Heading 3904.

As per Para 155 of the said findings, it was reiterated that "the product considered for investigation by the designated authority is homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification no. 3904, known as PVC suspension resin. The product under consideration excludes specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin."

The subject product imported under CTH 3904 by M/s DCW Ltd are "Mass polymerization PVC Resin", which was not the product considered for investigation by the designated authority vide above said Notification. Customs Notification No.26/2014 and 27/2014 dt 13.06.2014 imposed Anti-dumping duty on "Homopolymer of Vinyl Chloride monomer (Suspension grade) and not the product " Mass Polymerization PVC Resins" hence the same is excluded from the scope of the imposition of Anti-dumping duty vide Customs Notification No. 26/2014 & 27/2014(ADD) dt 13.06.2014.

Audit pointed out from supplier website that the imported item Mass polymerization PVC resin is a vinyl chloride homopolymer suspension grade. Similar such item "Mass PVC Resin" imported and declared as "Suspension grade" vide BE No.4980780/20.04.2016 by the importer M/s. Ponnore Enterprises LLP. But in the instant case, the importer M/s DCW Ltd., has declared the cargo as "Mass Polymerization PVC resin" and not declared as "Suspension grade"

Further, the importer M/s DCW Ltd., have contested the issue of Anti-dumping duty on "Mass Polymerisation PVC resin" before Authority for Advance Rulings, New Delhi vide Application No. AAR/44/Cus-1/11/2015 during April 2016. The Authority for Advance Rulings (Central Excise, Customs, & Service Tax) vide its ORAL ORDER No. AAR/CUS/14/2016 dt 01.04.2016, ordered that material named "Mass Polymerisation PVC Resin" will not carry any Anti-dumping duty.

Therefore, the Anti-dumping duty was not levied on "Mass Polymerisation PVC Resin", imported by M/s DCW Ltd.

(b)JNCH Mumbai:- Commissionerate agrees with the audit objection. SCN dtd. 05.08.2020 has been issued. After submission by the noticee, the case shall be adjudicated.

Ministry's Comments: Further reply in this regard shall be submitted in due course on receipt of the same from field formation.

(v) Ascorbic Acid: Import of Vitamin C , and commonly used synonyms of Vitamin C like Ascorbic Acid, L-Xylo ascorbic Acid, 3-Oxo-L gulofuranolactone (Enol form), L-3-Keto threohexuronic Acid Lactone etc., as described under entry number" 867 of MERCK INDEX30 classifiable under CTH 29362700 originating and exported from China is leviable to ADD31 @ USD 3.74 per Kg.

Five consignments of Sodium Ascorbate a 'synonym of Vitamin C' imported from China through Sea Customs Chennai, were cleared without levying ADD of ₹ 3.31 crore.

On this being pointed out, the department contested that Sodium Ascorbate could not be construed as a synonym of Vitamin C, because as per the Merck Index these were classified as two distinct compounds.

Reply of the department is not tenable because the notification clearly states that the ADD is applicable to all synonyms of Vitamin C including the most commonly used synonyms of Vitamin C as described under entry number 867 of Merck Index, meaning there by, that ADD is leviable on import of all forms of Vitamin C. Moreover, sodium ascorbate is one of the minerals salts of ascorbic acid (Vitamin C).

Similar non levy on Sodium Ascorbate imports was pointed out in the Audit Report No. 8 of 2015 (Para No. 4.9), wherein Ministry had admitted the audit observation and issued demand notices.

Ministry's Comments: -

As per audit, 5 consignments of Sodium Ascorbate imported by M/s Shree Pharma, through Chennai Sea Commissionerate were cleared without /short levy of ADD of ₹ 331.36 lakhs.

In this regard, the Commissionerate is not agreed with the audit objection. On perusal of ADD notification it is found that ADD under this notification shall be applicable to all synonyms of Vitamin C, including, most commonly used synonyms of Vitamin-C, namely, ascorbic acid, L-Xyloascorbic acid, 3-Oxo-L-gulofurnolactone (enol form), L-3-Ketothreohexuronic Acid Lactone, etc, as described under entry number "867" of Merck Index. Whereas on perusal of Merck index, it is seen that the Sodium Ascorbate finds a specific entry at no. 8723 of Merck Index. The entry mentions sodium ascorbate as ascorbic acid sodium derivative. Hence, it is clear that Vitamin C (Ascorbic Acid) and sodium ascorbate are chemically two different compounds. Further, ADD under

notification no. 67/2009 dated 16.06.2009 and 38/2015-ADD dated 06.08.2015 is applicable only to synonyms of Vitamin C (Ascorbic Acid) which find entry under Merck Index 867. There is no reference to Sodium Ascorbate as an equivalent or synonyms of Vitamin C. Hence, levy of ADD on the products mentioned under Merck Index 8723 would amount to exceeding the scope of levy of ADD on the products which are not mentioned in the notification itself, which is legally correct.

As regards, "Similar non levy on Sodium Ascorbate imports was pointed out in the Audit Report No. 8 of 2015 (Para No. 4.9), wherein Ministry had admitted the audit observation and issued demand notices," reply would be submitted in due course.

Ministry's Comments:

NOIDA CUSTOMS

(A) Injection Moulding Machines:

Audit raised an objection where ADD was applicable on 4 bill of entries but ADD was not paid. The comments are as under:

- (i) Bill of Entry no. 8237391 dated 18.01.2017: The ADD is leviable under Notification no. 09/2016-Cus (ADD) dated 15.03.2016 on Injection Moulding machine having Clamp forcing between 40 to 3200 tonnes. On perusal of the BOE, it is observed that the goods imported vide BOE no.8237391 dated 18.01.2017 are having Clamping force of 20 tonnes i.e. less than 40 tonnes, Hence, no anti-dumping duty is leviable on the goods imported vide this BOE.
- (ii) Bill of Entry No. 7682314 dated 02.12.2016: The Anti-dumping duty is leviable under Notification No. 09/2016-Cus (ADD) dated 15.03.2016 on Injection Moulding machine having Clamp forcing between 40 to 3200 tonnes. But "Vertical Injection Moulding Machine" is excluded from the levy of Anti-Dumping Duty vide Sl. No. ii of the said notification, which had been imported vide the BOE no. 7682314 dated 02.12.2016.
- (iii) Bill of Entry No.6930930 dated 30.09.2016: A SCN was issued to the importer under C.No.VIII(30) Adj-Cus/ICD-DD/Simon/20/2019/4402-4404 dated 26.08.2019 to deposit of anti dumping duty and said SCN was decided by the Joint Commissioner vide O-I-O No. 08/ JC/Noida-Customs/2019-20 dated 29.11.2019.
- (iv) Bill of Entry No. 6913351 dated 29.09.2016: The party has deposited Anti-dumping duty amounting of ₹ 11,07,652/- (₹ 6,89,632/- vide Challan No. 1710 dated 22.12.2016 and ₹ 4,18,020/- vide Challan No. 3048 dated 15.03.2019). Besides ADD,

party have also deposited Interest of ₹ 1,40,777/- and Penalty of ₹ 62,703/- vide Challan No. 3048 dated 15.03.2019.

(B) Plain Medium Density Fibre Board –

Audit raised an objection regarding non-payment of anti dumping duty of ₹1.54 lakh on import of Plain Medium Density Fibre Board. On examination, it is found that the objection related to BOE no.5855960 date 04.07.2016 which was under RMS and after reappraisal approval; it was re-assessed with levy of Anti Dumping Duty in terms of Notification No.48/2015. The Anti Dumping Duty of ₹1,55,253/- along with the applicable interest (total amount of ₹2,16,413) had been deposited by the party vide challan no.2026475429 dated 29.03.2019.

JNCH, MUMBAI-II

GLASS FIBRE ROVINGS

Non levy of ADD on Glass fibre including glass roving falling under CTH 7019 of the first schedule to the Customs Tariff Act, 1975 originated from China. Audit scrutiny revealed that in 01 case goods declared as E-Glass Woven Rovings imported from China and same was clear without levying Anti Dumping Duty. This resulted in non levy of ADD to the extent of ₹ 7,17,864/-

Less charge cum show cause notice was issued to the importer on 22.02.2019. The importer given their reply to the above SCN, contesting the applicability of Anti Dumping Duty on their imported goods which they claim specifically excluded from the category of Glass Woven Roving. Adjudication is in process.

KOLKATA

SEWING MACHINE

Demand notice u/s 28 of Customs Act, 1962 has been issued to the importer for an amount of ₹ 2,39,257/-

NYLON TYRE CORD FIBRE

The importer has submitted demand draft amounting to ₹ 9000/- Anti dumping duty and applicable interest.

SODIUM CITRATE

Demand cum Pre consultation notice u/s 28 of the Customs Act, 1962 issued on 17.09.2021 for an amount of ₹ 99,364/-.

AHMEDABAD

EXTRA WHITE PAINTED GLASS- Amount for ₹ 0.81 lakhs

The Extra processed glass as imported vide above Bill of Entry is processed glass made for decorative purpose and is 4MM Extra White Back Painted Glass which is prepared by coating white colour on the extra clear glass.

The Notification No. 47/2015(ADD) dated 08.09.2015, ADD is applicable only on float glass and tinted glass but does not include Extra white black glass meant for decorative purpose. The para has not been accepted by the Commissionerate.

PARA NITRO ANILINE – Amount for ₹ 3.29 lakhs

M/s. Rohan Dyes and Intermediates Pvt. Ltd filed Bill of Entry No. 7859204 dated 17.12.2016 for clearance of 18431 kgs of Para Nitro Aniline under Advance Authorisation Licenses registered at ICD, Sabarmati. On examining the issue, it came to notice that at first the bonds under the licenses were debited for amount of ₹ 13,23,403/- and ₹ 2,85,392/- on 17.12.2016 which was without the levy of ADD.

Later the party got its bond debited equal to the amount of ADD to be levied at the rate of 0.26 USD/kg as per Sr. No. 4 of Notification No. 88/2011-Cust(ADD) dated 09.09.2011 amounting to ₹1,04,007/- and ₹ 2,24,969/- on 07.01.2017. Therefore, the recovery has been made.

SAND BLASTED GLASS: Amount for ₹ 3.82 lakhs

The para raised regarding non levy of ADD is not acceptable. As per description in the Bill of Entry No. 4761838 dated 31.03.2016, the goods imported are "Sandblasted Glass with Strips", The sandblasted glass is prepared by sandblasting a normal glass either by machine or by hand which involves blasting high pressure sand particles at the glass, which erodes the surface of the glass. Removal of minute amounts of glass in this way creates the characteristic rough surface and translucent quality of frosted glass.

As goods fall under the category of processed glass, and hence it comes out of the provision of Notification No. 47/2015(ADD) dated 08-09-2015 as ADD is not applicable on processed glass.

Similarly, it may also be noted that the ADD is applicable only on Float Glass and Tinted Glass but does not include reflective glass, processed glass meant for decorative, industrial or automotive purposes. The para has not been accepted by the Commissionerate.

RUBBER CHEMICALS: Amount for ₹ 44.4 lakhs

Non-Depiction of ADD on the face of BE may result in non-payment of ADD when EOU clears such imported goods into DTA. Importer being 100% EOU, ADD was not leviable / payable. The para is not applicable in the present case of import.

RUBBER CHEMICALS: Amount for ₹ 28.22 lakhs

Non-Depiction of ADD on the face of BE may result in non-payment of ADD when EOU clears such imported goods into DTA. Importer being 100% EOU, ADD was not leviable/payable. The para is not applicable in the present case of import.

CARBON BLACK: Amount for ₹ 1027.7 lakhs

Non-Depiction of ADD on the face of BE may result in non-payment of ADD when EOU clears such imported goods into DTA. Importer being 100% EOU, ADD was not leviable/payable. The para is not applicable in the present case of import.

METHYLENE CHLORIDE: Amount for ₹ 78.54 lakhs

Non-Depiction of ADD on the face of BE may result in non-payment of ADD when EOU clears such imported goods into DTA. Importer being 100% EOU, ADD was not leviable/payable. The para is not applicable in the present case of import.

BENGALURU

PLASTIC INJECTION, MOULDING MACHINE: Thereply in this regard shall be submitted in due course on receipt of the same from field formation.

COLD ROLLED SEAMLESS PIPES: Thereply in this regard shall be submitted in due course on receipt of the same from field formation."

52. Regarding measures taken by Department to prevent escapement of levy such as in case of Jute Sacks and Vitamin C and its related compounds due to confusion and scope of misinterpretation with respect to product specific conditions in the relevant Notifications, the Ministry in their response stated as under:-

"Jute Sacks issue

Vide Notification No. 01/2017-Customs (ADD), dated 05.01.2017 Anti-Dumping duty was imposed on imports of 'Jute Products namely, Jute Yarn/ Twine (multiple folded/cabled and single), Hessian Fabric, and Jute sacking bags. ADD was imposed on specific 'Jute Products' i.e Jute Yarn/ Twine (multiple folded/cabled and single), Hessian Fabric, and Jute sacking bags rather all the products of the Jute.

Designated Authority vide Notification No. 7/3/2018-DGAD dated 20.03.2018 in the matter of circumvention of the anti-dumping duty imposed on imports of Jute Sacking Bags had initiated an investigation to determine the need for

extending Anti- Dumping Duty imposed on the imports of Jute sacking bags originating in or exported from Bangladesh (vide Notification No. 01/2017 - Customs (ADD) dated 05.01.2017) to the imports of Jute sacking cloth falling under heading 5310 of the First Schedule to the Customs Tariff Act, Originating in or exported from Bangladesh.

The designated Authority in its final findings vide Notification No. 7/3/2018-DGAD dated 19.03.2019 came to the conclusion that

- (i) Imports of sacking cloth have increased post levy of anti-dumping duty.
- (ii) The value addition in converting sacking cloth to sacking bag is much less than the prescribed threshold in the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
- (iii) The import of sacking cloth has undermined the remedial effect of existing anti-dumping measures of on sacking bags imposed vide Notification No. 01/2017-Custosm (ADD) dated 05.01.2017

And has recommended extension of the existing anti-dumping duty on sacking bags imposed vide aforesaid Notification 01/2017-Custosm (ADD) dated 05.01.2017 on Jute Sacking cloth. Appropriate Anti-Dumping Duty was levied by Customs vide Notification No. 24/2019- Customs (ADD) dated 18.06.2019.

Field formation had assessed all the Bills of Entry of the similar imports provisionally apart from the audit objection raised and also finalised the same after issuance of Notification No. 24/2019-Customs (ADD) dated 18.06.2019.

Designated Authority have carried the examination on the issue of liability of imposition of Anti-Dumping on Jute sacking cloth and have recommended for extension of Anti-Dumping duty on sacking bags to sacking cloth, on the basis of which appropriate Anti-Dumping Duty was levied by Customs vide Notification No. 24/2019-Customs (ADD) dated 18.06.2019. Hence, it is evident that ADD was not leviable on Jute Sacking Cloth, prior to 18.06.2019. Thus, Audit para 3.5.5 (ii) of Chapter III of Compliance Audit Report No. 17 of 2019, Levy of Anti-Dumping Duty on Import is not sustainable.

Sodium Ascorbate issue

- In the instant case, the goods imported was "Sodium Ascorbate" which is a form of Vitamin C and one of the number of mineral salts of ascorbic acid. It is to be noted that under entry number "867" of Merck Index there is an exhaustive list of its various synonyms of Vitamin C namely L-Xylo ascorbic acid, 3-Oxo- Lgulofuranolactone (enol form), L-3-

Ketothreohexuronic Acid Lactone and such others. However, there is no mention of sodium ascorbate in the Note.

- On perusal of the items mentioned in the Merck Index, it is seen that the Sodium Ascorbate finds a specific entry at No. "8723" of MERCK INDEX and not under "867". The entry mentions sodium ascorbate as ascorbic Acid sodium derivative. Hence, it clear that Vitamin C (Ascorbic Acid) and sodium ascorbate are chemically two different compounds.
- From the above, it is quite apparent that Vitamin C, whose most common nomenclature is Ascorbic Acid, is entirely different from Sodium Ascorbate. By implication, all forms and grades of Vitamin C refers to only the various compounds as mentioned under CAS No. 867 of Merck Index as discussed. Hence, it cannot be construed that "Sodium Ascorbate" is a form, grade or synonym of "Vitamin C, when the authority on the classification of chemical compound, viz. The Merck Index, itself has classified the two as distinct compounds.
- Also in view of the said audit objection, sample from the goods imported vide Bill of Entry No. 7939411/09.01.2015 filed by M/s Shree Pharma for the import of Sodium Ascorbate was drawn and tested vide TM No. S33/949/2014-15- group-2. The test report confirms that the goods imported was Sodium Ascorbate and it is a Sodium salt of Ascorbic Acid.
- Thus, ADD under 38/2015-ADD dated 06.08.2015 is applicable only to synonyms of Vitamin C (Ascorbic Acid) which find entry under Merck Index 867. Hence, levy of ADD on the products mentioned under Merck Index 8723 would amount to exceeding the scope of levy of ADD on the products which are not mentioned in the notification itself, which is legally not correct.

Therefore, the audit objection/Para is not sustainable.

Above submissions has the backing of following case laws: M/s. Nicholas Piramal India Ltd Vs Commissioner of C. Ex, Pune11, 2018 (364) ELT 1035 (Tri-Mumbai) and Commissioner of Customs (EP), Mumbai Vs Kalgov Labs Ltd 2019(365) ELT 145 (Tri-Mumbai)."

53. With regard to inability of RMS to detect the specific conditions of ADD especially if the product name or description varied from the Notification or if the levy of ADD depended on product specifications like thickness or weight, the Ministry in their written reply commented as under:-

"RMS is not designed to validate specific conditions of ADD such as product name or description or specification. It interdicts bills on the basis of a host of parameters for verification by field officers.

That said, the additional measures have been taken in the recent past to strengthen ADD-related targeting/flagging in cases of potential avoidance including introduction of machine learning based interdictions and further strengthening of post clearance interdictions for audit-based verification.

Moreover, it needs to be understood that, RMS is only a decision support system for the assessing officers and field formations; the verification of RMS interdicted bills, mitigation of ADD related risks flagged by RMS and the final determination concerning ADD are done by field officers."

VII Para no 3.5.6: Incorrect computation of ADD

54. Cases of incorrect computation of ADD in respect of imports of (i) Plastic processing or injection moulding machines and (ii) Purified Terephthalic Acid were noticed.

- (i) Plastic processing or injection moulding machines imported under CTH 8477 1000 from People's Republic of China/Taiwan attract ADD, at 29 per cent of the "Landed Value". Landed value means Assessable value plus Basic customs duty.

In two Commissionerates, in 37 consignments the Department incorrectly computed the ADD at the assessable value instead of landed value. This resulted in short levy of ADD of ₹15.24 lakh. Of 37 consignments, in 31 consignments imported through ICD, Tughlakabad ADD was calculated by the system and the clearance was also facilitated through the system.

- (ii) Imports of "Purified Terephthalic Acid" classifiable under CTH '29173600' originating in and exported from Thailand and Korea RP is leviable to ADD⁵ at the rate of USD 45.43 per MT (PMT) when the producer and exporter combination is Indorama Petrochem or TPT Petro Chem Public Ltd. and at the rate of USD 62.55 PMT in any other combination of producer and exporter.

Twenty one consignments of "Purified Terephthalic Acid" imported through JNCH were cleared levying ADD at the rate of USD 45.43 PMT instead of USD 62.55 PMT as the producer and exporter were other than mentioned aforesaid. This resulted in short levy of ADD amounting to ₹ 1.55 crore.

55. For cases of incorrect computation of ADD in different Commissionerates, the Ministry in their written reply pointed out following reasons:-

"In the matter pertaining to Mumbai, It is to submit that in ADD notifications

⁵Notification No. 23/2015-Cus. (ADD) dated 27 May 2015.

like Notification No. 09/2016-Customs (ADD) dated 15.03.2016, the additional differential duty as percentage of landed value varies depending upon the combination of 4 parameters of the imported goods, which are:

- i. Country of Origin
- ii. Country of Export
- iii. Producer
- iv. Exporter

Depending upon the combination of these parameters, the ADD ranges from Nil to 44.74% of the landed value. Any error in selecting the serial no. as per the notification while levying the ADD would result in incorrect computation of ADD.

In the matters pertaining to Delhi zone, it is to submit that, "In 2 cases the party declared imported goods as plastic injection moulding machines which were having conditional exemption of ADD under Notification No. 57/2015-Cus (ADD) dated 04.12.2015. Based on importer declaration and self assessment, the bills of entry were facilitated by RMS. The condition of conditional exemption being not available to machines with hydraulic unit got noticed during audit based on catalogue of imported goods. So, the ADD was not levied due to incomplete description given by the importer at time of import. Show Cause Notice demanding ADD have been issued to importer.

The ICD-Import, Tughlakabad Commissionerate informed that "Demand Cum Show Cause Notice has been issued to importers to safeguard the government revenue and the duty difference along with interest from importers have been recovered. From the above, both commissionerates is agreed on Audit objection and remedial action has been initiated for safeguard of Govt. revenue."

56. The Ministry's response to the Committee's concerns over measures being taken to prevent such incorrect computation errors in future follows as under:-

"In the matter pertaining to Mumbai, It is to submit that, due care is being taken, when such goods get noticed at the time of assessment, proper scrutiny w.r.t. applicability of ADD is done, and proper officers have been sensitized to prevent incorrect computation errors in future.

The officers have been sensitized and instructed to scrutinize goods falling in CTH where ADD is leviable with more care. They have been advised to

identify the manufacturer/producer, exporter, country of origin etc. from the supporting documents on E-sanchit, even if some of these details are not available in the Bill of Entry, and arrive at the correct ADD applicable as per the combination of these details so that no error creeps in computation of applicable ADD.

The ICD-Import, Tughlakabad Commissionerate has informed that "all field officer have been sensitized to examine and assess the bills of entry carefully keeping strict awareness about latest ADD Notification and their applicability".

57. Further, the Ministry were asked whether other classes of imports where there is possibility of incorrect computation of ADD in different Commissionerates were identified and whether the Commissionerates had been sensitized of such imports. In this regard, the Ministry have responded as under:-

"In the matter pertaining to Mumbai, It is to submit that, no such case has been noticed except that of Injection moulding machine and proper officers have been sensitized to prevent incorrect computation errors in future.

No other classes of imports have been observed where there is incorrect computation of ADD, apart from Purified Terephthalic Acid. As stated above in reply to question no.22, officers have been advised to identify the manufacturer/producer, exporter, country of origin etc. to ascertain correct ADD applicable as per the combination of these details so that no error creeps in computation of applicable ADD.

In the matters pertaining to Delhi zone, it is to submit that "Import goods covered under ADD leviability with conditional exemption may be picked for Audit by Audit Commissionerate. Ports have been sensitised about similar cases of non-levy of ADD for taking corrective action.

The ICD-Import, Tughlakabad Commissionerate informed that "As per available records no other case has been found in respect of possibility of incorrect computation of Anti-Dumping Duty. "

VIII Para no 3.5.7: Incorrect resorting to provisional assessments

58. As per Chapter 7 of Customs Manual, the Finance Act, 2011 introduced self-assessment under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by the proper officer of Customs if it is found to be incorrect.

However, in terms of Section 17(1) of the Customs Act, 1962 in case an importer or exporter is not able to make self-assessment, he may, request in writing to the proper officer for assessment. Also, in terms of Section 18 of the Customs Act, 1962, in case, the proper officer is not able to verify the self-assessment or make re- assessment of duty or he deems it necessary to subject any imported or export goods to any chemical or other tests or where necessary documents havenot been produced or information has not been furnished and it is necessary to make further enquiry, he may direct that the duty leviable on such goods be assessed provisionally. Audit has mentioned in its report that para 3.1 of the same chapter of Customs Manual states that provisional assessments must be finalized expeditiously, well within six months.

59. Cases of incorrect resorting to provisional assessments in respects of imports of (i) Purified Terephthalic Acid and (ii) Vinyl Chloride Monomer (Suspension Grade). (i) Under Proviso to Section 15 of the Customs Act, 1962, the date for determination of rate of duty and tariff valuation of imported goods is the date of entry inward of the vessel, even if the bill of entry has been filed before the date of entry inwards of the vessel.

60. An importer imported (July 2016) through JNCH, Mumbai two consignments of Purified Terephthalic Acid from China. Two advance bills of entry were filed on 4 July 2016 while the date of entry inward of the vessel was 5 July 2016. Import of Purified Terephthalic acid classifiable under CTH 29173500 is leviable to ADD⁶ from 5 July 2016 at prescribed rate of USD 97.60 per MT, if the country of origin and export is China PR.

61. Both the consignments of Purified Terephthalic Acid from China were provisionally assessed and cleared without levy of ADD and with departmental comments "till further clarification of applicability of ADD".

62. Despite clear provisions in Section 15 of Customs Act, 1962 to consider the date of entry inward of the vessel (i.e. 5 July 2016) as the date of presentation of the BE, these consignments were provisionally assessed without levying applicable ADD. As the date of entry inward of the vessel was 5 July 2016 and notification No.28/2016 was issued with effect from 5 July 2016, ADD was required to have been levied. This resulted in postponement of ADD of ₹ 1.34 crore in provisional assessments. Moreover, audit noticed that the provisional assessments have not been finalised despite expiry of more than six months (October 2018). Ministry's reply is awaited.

⁶ Notification No.28/2016-Cus (ADD),Sl. No.2 dated 5 July 2016).

63. Import of Vinyl Chloride Monomer (Suspension Grade) classifiable under CTH 3904 attract ADD⁷ at the prescribed rate, if the country of origin and export is Indonesia. Two consignments of "PVC Resin Grade FJ-65R" imported (September 2016) through JNCH (BsE No.6571736 and 6622177 dated 1 and 6 September 2016 respectively) by M/s Kriti Industries India Ltd. were provisionally assessed pending test reports and were cleared without levy of ADD of ₹ 48.15 lakh. These assessments were pending finalisation despite expiry of more than 6 months.

64. Audit also noticed that similar imports by other importers through JNCH, Mumbai were subjected to ADD during the relevant period.

65. Reasons for non-finalisation of the provisional assessments within stipulated period of six months and status of the test report was enquired from department in July 2018.

66. As regards reasons for non-finalisation of the provisional assessments within the stipulated period of six months, the Ministry in their written reply stated as follows:-

"The matter pertains to Mumbai zone and in this regard it is to submit that, there are 2 BEs of M/s Alok Industries which were provisionally assessed. The importer had been continuously contesting the applicability of ADD and steadfast in reluctance to pay the demanded ADD. Therefore, the final assessment could not be done within the stipulated period of six months. Finally, the importer submitted a detailed defence and in the interest of natural justice, Personal Hearing was granted on 08th Oct 2021 before finalising the provisionally assessed BE. The speaking order (final assessment) is under process. No such similar cases are there wherein provisional assessment has been resorted to.

In Bills of Entry Nos. 6571736 dated 01.09.2016 and 6622177 dated 06.09.2016 under which Polyvinyl Chloride Resin Grade FJ-65R' were imported by M/s Kirti Industries (India) Ltd. sample were sent to CIPET, Ahmedabad. Test reports were not received. The CIPET, Ahmedabad was requested vide letter dated 04.08.2020 to forward the test reports. In response to the same test reports from CIPET, Ahmedabad were received in October, 2020.

Based on test reports, SCN dated 05.03.2021 was issued to the importer proposing finalization of provisional assessment by levying ADD. Confiscation under Section 111(m) and penalty under Section 112(a) and/or Section 114A were also proposed in the SCN. In response to the SCN,

⁷notification No.27/2014-Cus (ADD) dated 13 June 2014, SI No.29

importer has paid ADD along with interest of ₹81,67,786/- vide challan No. HCM-149 and HCM-829 both dated 15.04.2021. Adjudication for the said SCN is under process.”

67. When asked whether any review of the similar imports from other Ports apart from the cases test checked by Audit was carried out by the Ministry, their reply went as under:-

“In the matter of items like, Injection moulding, Mulberry raw silk, Nylon fish net, Fibre glass measuring tape, Ascorbic Acid etc. Chennai Zone has that it has carried out a review of similar cases apart from those test checked by Audit. In the exercise, 118 cases were taken up for test check and it was found that in respect of all these consignments, there was no case of loss of Anti-Dumping Duty.

Further in the matter of Levy of ADD even after lapse of validity of ADD Notification. Mundra Commissionerate carried out the review of similar import and nothing adverse was found.”

PART-II

OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

Introductory

Anti-Dumping duty is a tariff. The Government imposes anti-dumping duty on foreign imports when it believes that goods are being 'dumped' through low-pricing in the domestic market. Anti-Dumping duty is imposed to protect local businesses and markets from unfair competition by foreign imports. Anti-Dumping duty is, thus, a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. The purpose of Anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade.

Chapter III of Report no.17 of 2019 deals with Subject Specific Compliance Audit on Levy of Anti-Dumping Duty (ADD) on imports. Audit observed *inter-alia* that although the Bills of Entry (BE) had been cleared through the system under the Customs' Risk Management System (RMS) based clearance in the ICES, RMS was unable to detect the specific conditions of ADD that were not met by the imports effected under many of the bills of entry test checked. Moreover, several instances of escapement of levy and instances of non-compliance with the conditions of the anti-dumping were noticed which, as per audit, resulted in non/short levy of anti-dumping duty amounting to ₹ 86.69 crore. The Committee note that Directorate General of Trade Remedies (DGTR), (earlier the Directorate General of Anti dumping and Allied Duties) functioning in the Department of Commerce in the Ministry of Commerce and Industry conduct the anti - dumping duty investigations and make recommendations to the Government for imposition of anti-dumping measures. Such a duty is finally imposed/levied through a Notification issued by the Ministry of Finance, Department of Revenue (DoR). Thus, while the Department of Commerce recommends the Anti-dumping duty (ADD), it is the Ministry of Finance, which levies such duty. To examine various issues as discussed in Chapter III of the aforementioned report thoroughly, the Committee sought clarifications from both DGTR, and Department of Revenue (DoR). The observations and recommendations of the Committee are enumerated in the succeeding paragraphs.

Risk Management System

2. Payment of duties of customs and any other levies and surcharges is on self-declaration basis. After the importer files a bill of entry providing details of the imported goods, the consignments are

assessed by the Indian Customs EDI System or ICES. The ICES uses Risk Management System (RMS) to identify transactions which require additional scrutiny by the assessing officer. The Committee note that the RMS was unable to detect the specific conditions of ADD especially if name of the product or description varied from the Notification or if the levy of ADD depended on product specifications like thickness or weight. Further, filing of Producer/Manufactures' name was not made mandatory. In this regard, DoR have informed that the Circular No.55/2020- Customs dated 17.12.2020 mentions "in cases where duty applicability is based on manufacturers such as Anti-Dumping Duty (ADD), Safeguard Duty (SD) etc. the details of manufacturer may be provided. In case of products attracting ADD, these details would be required to be mandatorily provided." The Committee trust that appropriate action has been taken for updating ICES to this effect which would be in line with the stipulations of the Circular.

3. Further, for making the field, producer/manufacturer mandatory in all BEs, the DoR have submitted that it would be in conjunction with the already mandatory field for filing BE related to the Custom Tariff heading of the 'product'. However, this additional system validation cannot take into account product specifications such as grade, density, thickness etc. The DoR further added that in such a situation, adding the system validation was likely to lead to higher compliance requirements for importing domestic industry as the import product may still not attract the applicability of ADD by virtue of its specifications and will add to higher cost of doing business. As regards the efforts made for enhancing the efficiency of the RMS to detect the specific conditions of ADD, machine learning techniques have been introduced to RMS in the year 2020 to strengthen targeting of various risks including ADD-related risks at two levels. The Committee, while acknowledging the initiatives taken by the DoR to improve the RMS, feel that latest developments in Machine learning and Artificial Intelligence such as Cognitive Computing also need to be pursued to develop a robust flagging mechanism which will further assist officers at the field level for efficiently detecting cases which will attract ADD.

4. The Committee also note that RMS was not being updated in a timely manner to give alerts on the specific conditions of ADD as mentioned in some of the Notifications which lead to escapement of ADD when the BE passed through the system. The Committee are of the considered opinion that the Business Rules i.e. Customs Act, Rules, Regulations and Procedures should invariably be updated in ICES on real time basis so that the applicable duty and levies are charged accordingly.

Levy of ADD even after lapse of validity of ADD Notification

5. The Committee note that ADD is leviable from the date of imposition by way of publication of the related Notification by CBIC and is effective for a maximum period of five years unless revoked, superseded or amended earlier. The Committee note in this regard that imports of Di-Isocyanate classifiable under CTH 29291020 are leviable to ADD under Notification No.25/2017-Cus (ADD) dated 5 June 2017 and was valid for six months only i.e. upto 4 December 2017. Similarly, imports of Phosphoric acid, Vistamaxx 6202 propylene, Glazed/Unglazed porcelain/vitrified tiles etc. are leviable to ADD under Notifications 19/2012 dated 4 April 2012, 119/2010 dated 19 November 2010 and 12/2016-Cus (ADD) dated 29 March 2016 respectively with validity of five years and six months respectively. However, in four Commissionerates, the Department had recovered ADD of ₹ 1.17 crore in 72 cases of Di-Isocyanate, Phosphoric acid, vistamaxx, phenol and Glazed/Unglazed porcelain/vitrified tiles imports after expiry of the prescribed Notifications. During the course of examination of the subject matter, the DoR while making an admission of this irregular recovery of ADD stated that in future, due caution will be exercised while assessing the BEs by assessing officers. The DoR have further stated that the Directorate General of Systems has been addressed to examine the issue of having an in-built mechanism for ADD Notification expiry in the system. While emphasizing upon the need for urgently bringing out the mechanism for ADD Notification expiry in the system to prevent irregular recovery of levies, the Committee, desire that the assessing officers may be duly sensitized to keep themselves abreast of all updates in regard to imposition/expiry of duties to ensure that duties are invariably levied correctly.

6. The Committee note that Section 27 in the Customs Act, 1962 deals with claiming of refund of duty, and as such, there is no provision for automatic refund of excess payment of duty in the Customs Act. Further as per DoR, the duty is self assessed by taxpayer and any amount once paid against any BE forms the part of Consolidated Fund of India. In this regard, the DoR have also submitted that the doctrine of unjust enrichment hinders creation of a system that may initiate automatic refunds. Under the doctrine of unjust enrichment, it is presumed that any indirect taxes which an importer or a manufacturer pays are invariably passed on to the consumer and therefore, refunding that indirect tax to him, leads to unjust enrichment because the

manufacturer would have passed on the same to the consumer. The DoR added that as per the Customs Act, refund of excess payment of duty can be claimed by the taxpayer under section 27 of the Customs Act, 1962. However, no refund claim has been filed. In the opinion of the Committee, refunds, wherever due, if initiated, would go a long way in building confidence in the minds of the assesseees. However, keeping in view the inability of the DoR to initiate *suo-motu* refunds owing to the doctrine of unjust enrichment and that no refund claims have been filed by the taxpayers despite the enabling provision under the Customs Act, 1962, the Committee are of the view that creating awareness regarding the refund process can guide the assesseees in filing for refund in cases where the costs have not been passed on to the consumers. The refunds so initiated will serve as a trust building exercise for the law abiding citizens and in-turn contribute towards increased compliance of such Notifications.

Internal Control and Monitoring Mechanism

7. The Committee note that there are a number of shortcomings i.e., lacunae in the system based assessments in levying ADD; levy of ADD even after lapse of validity of ADD Notification; non-compliance with the conditions of the ADD Notifications; non levy of ADD in contravention to the condition of country of origin; non levy of ADD on account of contravention of product specific conditions; incorrect computation of ADD; incorrect resorting to provisional assessments; etc. The Committee are of the view that one of the important pre-requisites for effective administration is to ensure proper monitoring of the system in place. Monitoring involves ensuring proper maintenance of prescribed records by the concerned authorities and to keep a close and continuous watch on the working of the system and also initiating timely and effective action in cases of default. As regards the monitoring mechanism in place in DoR, the DoR submitted that it *inter alia* includes different types of audit processes such as Post Clearance Audit (PCA) and involvement of Agencies such as the Directorate of Revenue Intelligence (DRI), Customs Preventive formations, Special Intelligence and Investigation Branches (SIIBs) etc. of the Custom Houses. Further, the selection of cases for such internal audit is also done on the basis of risk-assessment ensuring that the import in question was compliant with all legal and statutory requirements including the assessment and payment of all duties including ADD. Further, the DoR stated that any misuse leading to non-levy/short levy of applicable ADD noticed by audit leads to remedial measures for recovery under the relevant provisions of the Customs Act, 1962 which are attended to by the Customs Commissionerates dedicated for such audit work.

Notwithstanding the comprehensive monitoring mechanism in place in the DoR, the Committee are surprised to note that they failed to detect the shortcomings pointed out by the C&AG. The Committee opine that the PCA should play an important role in the implementation of an effective Customs risk management strategy by making it easier for the Department to gauge the level of risk corresponding to each trader by measuring compliance with the rules and to fine-tune future controls based on the result. However, failure of Post Clearance Audit to detect lapses in the levying of ADD, points to the need for improved parameters to ascertain the sample for scrutiny. The Committee opine that the Department must opt for a proactive approach for detection of lapses by strengthening the internal control mechanism. The Committee recommend that DoR should take necessary action to study the best practices followed by Post Clearance Audit across the world and through continuous analysis of the ICES database, create feedback for further refinement of the parameters for internal audit process. The Committee would like to be apprised of the tangible action taken by the DoR within six months of presentation of this Report.

Non-compliance with the conditions of the ADD Notifications

8. The Committee note that the ADD is levied on specific commodities and is source specific. The Notification of ADD provides conditions for levy of ADD which are mainly the country of origin/country of export, name of the manufacturer, classification of imported commodity and nature of the imported goods. Imports which meet all of these conditions, as laid down in the Notifications, are leviable to ADD. The Committee note that there was non/short levy of ADD amounting to ₹ 63.60 crore in 1205 cases of import through 15 Commissionerates during 2015-16 to 2017-18, due to incorrect application of ADD Notification provisions. The commodities which escaped the duty assessing fell under product categories like plastics and plastic products, textile and nylon yarn, chemicals, metals and ceramics and glassware. The DoR stated that compliance with correct application for levy of ADD Notifications needs to be viewed in the context of the entire, multi-pronged Risk Management framework or ecosystem that enables the balance between facilitation and enforcement. Furthermore, the DoR are attempting to take steps towards adoption of more intelligent techniques in the Risk Management System which is based on using continuous feedback for profile building from various sources. The Committee are of the considered view that the existing monitoring mechanism to ensure compliance with the conditions of the ADD Notifications needs further improvement. The Committee, therefore, while appreciating the steps taken by the DoR

towards adoption of more intelligent techniques in the Risk Management System opine that apart from the technological aspects, the role of personnel of the DoR also needs to be addressed. The Committee also opine that an internal mechanism may be devised for Field Officers of DoR to share their experiences. This will enable brainstorming and will help not only in improving RMS but also enable Assessing officers in resolving cases in a timely and appropriate manner.

9. As regards the recovery of amounts involved owing to lapses arising due to non-compliance with the conditions of the ADD notifications, the DoR has so far recovered a meager amount of ₹ 5.52 crore out of ₹ 63.60 crore, while a large number of cases are under 'contesting stage'. In reply, DoR informed the Committee that the DoR have accepted approximately 500 cases out of which ₹ 5.52 crore has been recovered and for remaining cases corrective action for safeguarding the Government revenue has been taken. In the remaining approximate number of 700 cases DoR are contesting the objection. The Committee desire that efforts towards revising the recovery mechanism should also be made. In view of the fact that a huge sum amounting ₹ 58.08 crore remains to be recovered as yet, the Committee would also like to be apprised of the concrete steps taken by the DoR to recover the remaining balance with due promptitude. The DoR should further ensure that such cases are reduced and kept to a minimum.

Non levy of ADD in contravention to the condition of country of origin

10. The levy of anti-dumping duty is both exporter specific and country specific. It extends to imports from those countries in respect of which duty has been notified by the Customs on recommendation by the designate authority. However, Audit scrutiny revealed several instances of non-levy or short levy of ADD on imports from countries in respect of which ADD was leviable like on imports of Machinery and Mechanical appliances from PR China, Chinese Taipei, Philippines, Malaysia and Vietnam, Textiles, Fabrics and Yarn from China, Taiwan, Malaysia, Thailand, Korea RP and Indonesia, Metals and Articles of Metals, Graphite electrodes from China, Chemicals and chemical products from European Union Measuring tapes (Steel tapes) from Malaysia. The Audit observations were also brought to the notice of CBIC in 2017. During the course of examination, the Committee noted that agreeing with majority of the Audit objections on the subject matter, DoR have already made recovery of applicable anti-dumping duty along with penalty in several cases or initiated efforts to recover pending dues, while in some cases, they are still in the process of issuing consultative letters to the importers concerned or verifying the documents. It was also noticed

that consignments of Nylon filament yarn imported from PR China, Korea RP and Indonesia through Chennai Sea Commissionerate although correctly classified under Chapter heading 54 were cleared without levy of applicable ADD. Similarly, in Chennai Sea Commissionerate, 5 consignments of Mulberry Raw Silk Grade 3 imported from China were cleared without levying applicable ADD of ₹ 13.67 lakh although similar imports through the same port were subjected to ADD. The Committee observe that even after a lapse of more than 3 years, the Commissionerates concerned are still in the process of issuing consultative letters. The Committee feel that the DoR should have taken a pro-active role and closely monitored the disposal of cases on a case to case basis with respect to each Commissionerate. The Committee observe that the issue seems to have been neglected by the Department until Audit conducted a review on the working of Commissionerates and Public Accounts Committee took up the subject for detailed examination. The Committee recommend that the DoR should immediately direct the concerned Commissionerate to act swiftly in the matter to ensure early disposal of the cases. A definite time limit should be fixed for this purpose and any delay in this regard should be taken seriously and responsibility fixed on the concerned officials of the respective Commissionerates.

Incorrect resorting to provisional assessment

11. As per Chapter 7 of Customs Manual, The Finance Act, 2011 introduced self- assessment under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the officer concerned of the Customs and may lead to reassessment if it is found to be incorrect. However, in terms of Section 17(1) of the Customs Act, 1962 in case an importer or exporter is not able to make self-assessment, he may make a request in writing for assessment. Also, in terms of Section 18 of the Customs Act, 1962, in case, the customs officer is not able to verify the self-assessment or make re-assessment of duty or he deems it necessary to subject any imported or export goods to any chemical or other tests or where necessary documents have not been produced or information has not been furnished and it is necessary to make further enquiry, he may direct that the duty leviable on such goods be assessed provisionally. As per para 3.1 of the afore-mentioned chapter of Customs Manual, provisional assessments must be finalized expeditiously, well within six months. Under Proviso to Section 15 of the Customs Act, 1962, the date for determination of rate of duty and tariff valuation of imported goods is the date of inward entry of the vessel, even if the bill of entry has been

filed before the date of entry of the vessel. The Committee note that despite clear provisions in Section 15 of Customs Act, 1962 to consider the date of entry of the vessel (i.e. 5 July 2016) as the date of presentation of the BE, two consignments of Purified Terephthalic Acid imported from China were provisionally assessed without levying applicable ADD at prescribed rate of USD 97.60 per MT. As the date of inward entry of the vessel was 5 July 2016 and Notification No.28/2016 was issued with effect from 5 July 2016, ADD was required to have been levied. This resulted in postponement of ADD of ₹1.34 crore in provisional assessments. Moreover, the provisional assessments were not finalised despite expiry of more than six months till October 2018. Similarly, in the case of import of Vinyl Chloride Monomer (Suspension Grade) classifiable under CTH 3904 which attracts ADD at the prescribed rate, if the country of origin and export is Indonesia, two consignments of "PVC Resin Grade FJ-65R" imported (September 2016) through JNCH (BE No.6571736 and 6622177 dated 1 and 6 September 2016 respectively) by M/s Kriti Industries India Ltd. were provisionally assessed pending test reports and were cleared without levy of ADD of ₹ 48.15 lakh. These assessments were pending finalisation despite expiry of more than 6 months. As regards the latter case, DoR in its reply stated that the Party has paid ADD along with interest for an amount of ₹ 81,67,786/, while for the former case, the Committee note that the Commissionerate agreed with the audit objection and as part of recovery process, Show Cause Notice was issued on 05.09.2018 demanding ₹ 3,03,87,5271. However, said SCN was adjudicated by the Commissioner of Customs, NS-I who dropped the demand vide O-in-O No. 07/2019-20/Commr/NS-1/JNCH dtd 26.04.2019. The Department is reported to have filed appeal in CESTAT. The Committee desire that reasons for non- finalization of the provisional assessments within stipulated period of six months be ascertained and the responsibility fixed against the erring officials. The DoR should also follow up on cases of provisional assessment and flag those cases which have been delayed so that they may be highlighted and necessary steps are taken for them to be expedited. The Committee would also like to be apprised of the efforts made by the Department for disposal of the aforementioned cases and also to expedite the recovery process.

Need for better coordination between DOC and DOR

12. Anti-dumping measures in India are administered by Directorate General of Trade Remedies (DGTR), under the administrative control of the Department of Commerce in the Ministry of Commerce and Industry. The DGTR conducts antidumping duty investigations and makes recommendations to the Government for imposition of anti-dumping

measures. Such a duty is finally imposed/ levied by Notification of the Ministry of Finance, Department of Revenue. However, the Committee note that there is no mechanism in place to hold consultations with DGTR before deciding on imposition of ADD by the Department of Revenue. In this regard, Department of Revenue explained that DoR examine the findings issued by DGTR on anti-dumping duty which are self-contained and duly supported by data obtained from the domestic industry during the process of investigation. If need arises for further clarification, or in the case of any discrepancy or error apparent on record, inputs/clarifications related to the findings are sought by DoR from DGTR before taking a decision in the matter. Further, inputs from other stakeholders, Ministries and other entities as deemed relevant are also considered to assess overall impact of the proposed measure on the economy. Further, in case the recommendations made by DGTR to impose ADD are accepted by the Central Government, a Notification to this effect is published in the Official Gazette. And if the recommendations of the DGTR to impose ADD are not accepted, a communication intimating the same is sent to the DGTR. As regards response of the DoR to the recommendations made by DGTR, during the course of evidence, it was submitted that over the years, there has been a marked reduction in the number of recommendations accepted by DoR out of the recommendations made by DGTR – which was almost to the extent of 100 percent in the earlier years to around 60 percent in the recent times. DGTR admitted that while they only look at facts and figures, DoR takes into account the bigger picture while accepting recommendations of DGTR. From the fact that in the present system, the reasons for non-acceptance of the recommendations are not communicated to DGTR and that there has been a remarkable fall in the number of recommendations of DGTR accepted by DoR, the Committee are inclined to believe that there is a communication gap between the two Departments. The Committee, therefore, recommend that present dispensation should be reviewed by devising a mechanism wherein DGTR is communicated with the reasons for non-acceptance of their recommendations or difference of views on the application of Notifications. This will not only help DGTR to channelise its resources for carrying out investigations in tune with the feedback received from the DoR but would also enhance coordination between DGTR and DoR and remove any confusion and scope of misinterpretation as regards the product specific conditions. The Committee feel that such a measure will also result in gainful utilization of the efforts of DGTR.

13. The Committee further note that there have been instances such as in the case of Hessian cloth which is jute sacking fabric, where the ADD was not levied by DoR as the same was not considered a jute

product. The representatives of DGTR, however, during evidence submitted that it involved the issue of identification of the product at implementation level and that the related Notification covers Hessian cloth as well. The Committee are of the opinion that in such cases also there is a need for proper communication between the agencies involved so as to ensure correct interpretation of the Notifications issued.

Need for reduction in time taken for investigation by DGTR

14. Regarding efforts made to reduce the average time taken to complete their investigation with a view to imposing anti dumping measures as well as to provide safeguards to the domestic industry, the Committee have been apprised by DGTR that time taken for completing an investigation and issuing the final findings has been reduced to 230 days in 2019-20 from more than 400 days in previous years. The Committee take note of the fact that the whole process of conducting anti dumping duty investigations and making recommendation to the Government by DGTR for imposition of anti dumping measures, and thereafter levy of duty by a Notification by Department of Revenue is time consuming and this may sometimes turn out to be a futile exercise, as by the time Notification is issued by the DoR for levy of duty, injury is already caused to the domestic industry. The Committee feel that swift and timely implementation of trade remedial actions have an important role in protection of the domestic industry. The Committee, therefore, desire that DGTR may make earnest efforts for further reduction in the number of days to complete the investigation so that domestic industry may be protected from injury as and when it is wanted the most. The Committee would like to be apprised of the tangible efforts taken by the DGTR in this regard.

Accountability of DGTR

15. The Committee have been apprised that the mission of DGTR is to provide a level playing platform to the domestic industry against the adverse impact of the unfair trade practices, viz., dumping, actionable subsidies, circumvention, etc. from any exporting country by using effective trade remedial measures, viz., comprehensive anti-dumping, anti-subsidy and anti-circumvention investigations and safeguard measures. The Committee believe that since the DGTR is an integrated agency for providing comprehensive and swift trade defense mechanism in India, they must keep themselves apprised of the Reports of C&AG as well as other specialized agencies that relate to their domain. The Committee note from the submission made in the oral

evidence, that DGTR were not aware of the Audit observations with respect to ADD despite the audit report being in public domain. The Committee are disappointed that the DGTR had not kept themselves informed of the Audit Recommendations until they were called for evidence by PAC. The Committee feel that since imposition of ADD by DoR is based on recommendations of DGTR and the same has been examined by Audit, DGTR cannot take the plea of considering themselves as merely a recommending authority. The Committee desire that all agencies concerned must keep themselves informed of the observations made by Audit or any other specialized agency in their Reports and carry out their endeavours keeping in mind the observations of the Audit.

Suo-motu initiatives by DGTR for MSMEs

16. The Committee have been informed by DGTR that the major product categories which are generally covered under ADD are (i) Products of Chemical and Allied Industries; (ii) Base metals and articles; (iii) Articles of stone, plaster; ceramic prod.; glass ;(iv) Textiles and articles; and (v) Machinery and electrical equipment. Further, to initiate an investigation showing injury to the industry, DGTR needs representations filed by representatives of at least 25% of the domestic industries alongwith relevant data. The Committee feel that few industries affected by dumping especially MSMEs being at nascent stage may not be able to reach DGTR owing to lack of proper resources to highlight the injury caused to them. The Committee also note that Rule 5(4) of the Anti Dumping Rules provides for *suo-motu* initiation of anti- dumping proceedings by the Designated Authority i.e. DGTR on the basis of information received from the Collector of Customs appointed under the Customs Act, 1962 or from any other source. In such circumstances, the Authority initiates the anti- dumping investigation on its own without any complaint/petition filed in this regard, provided the Authority is satisfied that sufficient evidence exists as to the existence of dumping, injury and causal link between the dumped imports and the alleged injury. It is further clarified that after initiation, such an investigation follows the same procedure as the one based on a petition as mentioned in the Anti- Dumping Rules. However, in this regard, DGTR during the oral evidence informed that while the provision of *suo-motu* investigation exists, the cases taken up are far and few. DGTR has also mentioned that while initiating investigations *suo-motu*, lack of data from domestic industry poses a significant challenge for them to prove causal link between dumping and injury to Domestic Industry. The Committee feel that such industries may not be able to collect necessary data that reflects the impact of dumping, especially in the

midst of Covid-19 Pandemic when most MSMEs are struggling with the problem of resource crunch. With a view to providing safeguards to such MSMEs, the Committee, recommend that DGTR should create an easily accessible platform for MSMEs to register their grievances. DGTR being a specialized body may lay out guidelines for MSMEs to submit their applications on the said platform in a prescribed format with parameters that such enterprises can measure so that DGTR may acquire relevant data and investigations may be conducted *suo-motu*.

17. The Committee note that ADD is revoked, superseded or amended within a maximum period of 5 years from the date of imposition of the notification by CBIC and at the end of five years, there is a provision for a sunset review by the DGTR. The Committee were apprised that feedback from all the interested parties, the domestic industry, and importers are taken into consideration during the review. However, in the case of Barium Carbonate which is widely used in the ceramics industry as an ingredient in glazes and having significant production in India, ADD was revoked by DoR. As regards removal of anti-dumping duty on a product, the Committee believe that owing to their limitations, small industries may not be able to present their cases at the time of Mid-term review and Sunset review of ADD which may lead to removal of ADD without having adequate representation from such industries. The Committee would like to emphasize that to protect the domestic industry, for decisions regarding revocation of anti-dumping duty especially on a product having significant production in India, involvement of industry stakeholders may be ensured through the platform, as suggested for in the previous paragraph.

Data Sharing between DGTR and DoR for impact assessment

18. The Committee note that the Directorate General of Trade Remedies (DGTR) conducts *inter alia* Safeguard Quantitative Restrictions investigations by way of recommending quantitative restrictions under the legislative framework for Safeguard Measures contained in the Foreign Trade (Development and Regulation) Act, 1992, amended in 2010, and the Safeguard Measures (Quantitative Restrictions) Rules, 2012. Further, DGTR also critically analyses the submissions made by the interested parties and thereafter recommends the appropriate measures for imposition, if necessary, to the central government. The Committee however observe that as the role of the DGTR is confined to merely recommending the anti-dumping duties and the imposition and collection of such duties comes under the purview of the DoR, the DGTR does not have the information on the extent of ADD collection made on the imports post imposition of the duty. The

Committee feel that absence of this data renders the DGTR devoid of valuable information that may help them ascertain the impact of their recommendations and also guide them for course correction in future investigations. In light of very important responsibility of investigating and recommending various WTO compliant trade remedial measures bestowed upon DGTR, the Committee recommend that data, as required by the DGTR, may be shared with them to facilitate assessment of the impact of duties levied on the basis of their recommendation.

NEW DELHI;
31 March, 2022
10 Chaitra, 1944 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee

Confidential**MINUTES OF THE SITTING OF SUB-COMMITTEE – IV (FINANCE) OF PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 8th SEPTEMBER, 2021.**

The Sub-Committee - IV (Finance) met on Wednesday, the 8th September, 2021 from 1100 hrs. to 1230 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - **Convenor**

MEMBERS***LOK SABHA***

2. Shri Subhash Chandra Baheria
RAJYA SABHA

3. Dr. C.M Ramesh

4. Shri V. Vijayasai Reddy
LOK SABHA SECRETARIAT

1. Shri TG Chandrasekhar - Joint Secretary

2. Shri Tirthankar Das - Director

3. Smt. Bharti S. Tuteja - Additional Director

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1.	Shri K. R. Shriram	-	Dy.CAG
2.	Ms. Monika Verma	-	DG
3.	Shri Kartikay Mathur	-	DG
4.	Shri S. V. Singh	-	PD

2. At the outset, Hon'ble Convenor, Sub-Committee - IV (Finance) welcomed the Members and Officials from C&AG Office to the Sitting of the Sub-Committee convened to have briefing by Audit on the subjects; i) "Assessment of Assesseees in Entertainment Sector" based on C&AG Report No. 1 of 2019; (ii) Exemption without verification of supporting documents"; "Incorrect reflection of agricultural income in ITD Database"; "Status of Verification by the Department" and "Compliance issues - Mistakes in Assessments" based on Paras 5.9.2, 5.9.3, 5.9.4 and 5.9.5 of C&AG Report No. 9 of 2019 respectively; and (iii) "Levy of Anti - Dumping Duty (ADD) on imports" based on Chapter III of C&AG Report No. 17 of 2019.

3. Thereafter, the officials of C&AG of India briefed the Sub-Committee about the observations contained C&AG Report No. 1 of 2019 on ""Assessment of Assesseees in Entertainment Sector". The Committee were apprised that the Ministry of External Affairs had accepted the irregularity in granting income tax exemption to the Registrars and had brought out a notification to rectify the same.

4. The Members then sought clarifications on issues like rationale behind granting the income tax exemption to the Registrars, recovery of the amount with retrospective effect, amount recovered till date, fixing of accountability and responsibility etc.

5. Thereafter, Audit officers briefed the Committee on important observations made in Paras 5.9.2, 5.9.3, 5.9.4 and 5.9.5 of C&AG Report No. 9 of 2019 on "Exemption without verification of supporting documents"; "Incorrect reflection of agricultural income in ITD Database"; "Status of Verification by the Department" and "Compliance issues - Mistakes in Assessments" respectively. Audit briefed the Committee on the need to harmonize and optimize use of spectrum, re-farming of spectrum from Defence Services and Ministry of Railways for commercial telecommunication use, need to review the provision of additional guard band by Department of Telecommunications etc. Audit also highlighted that additional guard band provided to ensure interference free operation of networks, remained unutilized. Audit also highlighted issues like idling of administratively assigned spectrum surrendered by Teleservices Ltd., delay in withdrawal of excess spectrum from BSNL, inequitable allotment of Microwave Access spectrum to

Telecommunications Service Providers (TSPs), Non-updation of National Frequency Register (NFR) etc. Audit also expressed the need to update and modernize telecommunication equipment to facilitate better monitoring.

6. The Members, while acknowledging the suggestions of Audit, sought clarification on issues like settlement of spectrum charges receivable from Defence, review of Defence and Railways spectrum band, withdrawal of excess spectrum from BSNL etc. The Committee also pointed out the need for a third party monitoring in distribution and management of spectrum etc.

7. Thereafter, Audit officers briefed the Committee on important observations made in Chapter III of C&AG Report No. 17 of 2019 on "Levy of Anti -Dumping Duty (ADD) on imports". Audit highlighted issues like construction of LHS at places where diversion road already existed, non-provision of drainage system, inadequate survey and verification of construction site which led to water logging, non maintenance of constructed LHS, accidents at Level Crossings where LHS could not be used etc.

8. The Members, while noting that the responsibility of maintenance of constructed LHS lies with the State Government and the local municipal bodies, stressed on the need for the Ministry of Railways to play a more active part in the matter. The Members also noted that there was lack of proper planning and physical verification/survey of LHS construction sites. The Members also desired that General Managers of the Zonal Railways may be called to appear before the Committee for oral evidence along with the representatives of the Ministry of Railways.

9. The Convenor thanked the officials of C&AG of India for assisting the Sub-Committee during the deliberations.

The Sub-Committee, then, adjourned.

Confidential**MINUTES OF THE SITTING OF SUB-COMMITTEE – IV (FINANCE) OF PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 28th SEPTEMBER, 2021.**

The Sub-Committee - IV (Finance) met on Tuesday, the 28th September, 2021 from 1100 hrs. to 1230 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - **Convenor**

MEMBERS**LOK SABHA**

2. Shri Subhash Chandra Baheria

LOK SABHA SECRETARIAT

1. Shri TG Chandrasekhar - Joint Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Additional Director

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri K. R. Shriram - Dy.CAG
2. Shri Kartikay Mathur - Principal Director
3. Shri S. V. Singh - Principal Director

**REPRESENTATIVES OF THE MINISTRY OF COMMERCE AND INDUSTRY
(DEPARTMENT OF COMMERCE) AND DIRECTORATE GENERAL OF
TRADE REMEDIES (DGTR)**

- | | | | |
|----|------------------------|---|-----------------------------------|
| 1. | Sh Sanjay Chadha | - | Additional Secretary |
| 2. | Sh Anant Swarup | - | Joint Secretary, DoC and DG, DGTR |
| 3. | Sh Vinod Kumar Jindal | - | Pr. Advisor (Cost), DGTR |
| 4. | Sh Rajiv Arora | - | Additional Director, DGTR |
| 5. | Sh Satyam Sharda | - | Additional Director, DGTR |
| 6. | Sh Satish Kumar | - | Additional Director, DGTR |
| 7. | Sh Mithileshwar Thakur | - | Additional Director, DGTR |
| 8. | Sh P. K. Upadhyay | - | Advisor (Cost), DGTR |

2. At the outset, Hon'ble Convenor, Sub-Committee - IV (Finance)) welcomed the Members and Officials from C&AG Office to the Sitting of the Sub-Committee convened to take oral evidence of representatives of Ministry of Commerce and Industry (Department of Commerce) and Directorate General of Trade Remedies (DGTR) on issues relating to administration of Anti-Dumping measures in connection with the examination of the subject "**Levy of Anti - Dumping Duty (ADD) on imports**" based on Chapter 'III, of C&AG Report No. 17 of 2019.

3. The Convenor then asked Dy. C&AG to share updated information on the action taken by the Ministry on the shortcomings pointed out and suggestions made by the Audit on the subject under examination.

4. Members sought certain clarifications regarding the Audit findings which were replied to by the officials of C&AG.

5. Thereafter, the representatives of the Ministry of Commerce and Industry (Department of Commerce) and DGTR were called in.

6. The Convenor then, welcomed the representatives of the Ministry of Commerce and Industry (Department of Commerce) and DGTR. In his Introductory remarks, the Convenor pointed out that during the compliance audit of levy and collection of anti-

dumping duties in Customs, Audit found a number of shortcomings i.e., lacunae in the system based assessments in levying ADD, levy of ADD even after lapse of validity of ADD notification, non-compliance with the conditions of the ADD notifications, non levy of ADD in contravention to the condition of country of origin, non levy of ADD on account of contravention of product specific conditions, incorrect computation of ADD, incorrect resorting to provisional assessments, etc. The Convenor also observed that anti dumping measures in India are administered by Directorate General of Trade Remedies (DGTR), under the administrative control of the Dept. of Commerce in the Ministry of Commerce and Industry. The DGTR conducts the anti dumping duty investigations and makes recommendations to the Government for imposition of anti-dumping measures. Such a duty is finally imposed/ levied by a notification of the Ministry of Finance, Department of Revenue. Impressing upon the witnesses to treat the proceedings of the Committee as confidential, the Convenor asked the representatives of Ministry of Commerce and Industry (Department of Commerce) to apprise the Sub-Committee by giving an overview of the institutional arrangement and policy framework governing anti dumping measures for a better understanding of the related issues on the subject under examination.

7. The Additional Secretary of the Ministry of Commerce and Industry (Department of Commerce) sought permission to give a brief overview of the various related issues through a PowerPoint presentation by the Joint Secretary, DoC and the Director General, DGTR. During the presentation, various aspects were covered which *inter- alia* included legal framework governing anti-dumping duty measures; usage and distribution of trade remedy measures; contemporary scenario, fundamentals of anti-dumping investigations; key systemic/procedural changes undertaken by DGTR.

8. The Convener and Members of the Committee raised some questions which included *inter-alia* number of recommendations made by DGTR and approved, not incorporated etc. by DoR; seeking of opinion of the ADD products users in addition to manufacturers; any recommendation for ADD on finished products in addition to raw material; the kind of role entrusted upon Directorate General of Trade Remedies (DGTR) to safeguard domestic industry; major product categories which are generally covered under ADD; any review of the products covered under ADD undertaken from time to time and the frequency thereof; operational autonomy earmarked under the statute; whether the recommendations made by DGTR were binding on the Ministry of Finance; worked out in consultation and coordination with the Department of Revenue and the observations made by Audit were flagged during the ADD investigations conducted by DGTR.

9. The representatives of the Ministry of Commerce and Industry (Department of Commerce) and DGTR responded to some of the queries raised by Members, which included, *inter-alia* procedure followed in issuing the notification and questionnaire to users' associations to assess the impact of injury to the industries, rules of origin and anti-circumvention investigation, flagging components in the Risk Management System- a welcome suggestion by Audit for better scrutiny,

10. The Convenor asked the Ministry to furnish written replies to the queries raised by the Members as well as to the list of points provided by the Committee Secretariat within 15 days. The Convenor also thanked the Ministry of Commerce and Industry (Department of Commerce) and DGTR for appearing before the Committee and furnishing valuable information on the subject.

The witnesses, then, withdrew.

11. The Chairperson thanked the officials of the C&AG for assisting the Committee during the deliberations.

A copy of the verbatim proceedings of the sitting has been kept on record.

The Sub-Committee, then, adjourned.

Confidential**MINUTES OF THE SITTING OF SUB-COMMITTEE – IV (FINANCE) OF
PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 6th OCTOBER, 2021.**

The Sub-Committee - IV (Finance) met on Wednesday, the 6th October, 2021 from 1100 hrs. to 1300 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - **Convenor**

MEMBERS**LOK SABHA**

2. Shri Subhash Chandra Baheria

RAJYA SABHA

3. Shri V. Vijaysai Reddy
4. Dr. M. Thambidurai

LOK SABHA SECRETARIAT

1. Shri T. G. Chandrasekhar - Joint Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Additional Director

**REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND
AUDITOR GENERAL OF INDIA**

1. Shri K. R. Shriram - Dy.CAG
2. Shri Kartikay Mathur - Principal Director
3. Shri S. V. Singh - Principal Director

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) AND CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1. Sh Tarun Bajaj - Secretary (Revenue)
2. Sh M. Ajit Kumar - Chaiperson, CBIC
3. Sh Vivek Johri - Member (Tax Policy)
4. Sh Rajiv Talwar - Member (Customs)
5. Sh G. D. Lohani - Joint Secretary TRV-I
6. Smt. V. Sangeeta - Commissioner (PAC)
7. Sh Rajiv Ranjan - Director (PAC)

2. At the outset, Hon'ble Convenor, Sub-Committee - IV (Finance) welcomed the Members and Officials from C&AG Office to the Sitting of the Sub-Committee convened to take oral evidence of representatives of Ministry of Finance (Department of Revenue) and Central Board of Indirect Taxes and Customs (CBIC) on the subject "**Levy of Anti -Dumping Duty (ADD) on imports**" based on Chapter 'III, of C&AG Report No. 17 of 2019.

3. The Convener then asked Dy. C&AG to share updated information on the action taken by the Ministry on the shortcomings pointed out and suggestions made by the Audit on the subject under examination.

4. Members sought certain clarifications regarding the Audit findings which were replied to by the officials of C&AG.

5. Thereafter, the representatives of Ministry of Finance (Department of Revenue) and Central Board of Indirect Taxes and Customs (CBIC) were called in.

6. The Hon'ble Convener then welcomed the Secretary and officials of Ministry of Finance (Department of Revenue) and Central Board of Indirect Taxes and Customs (CBIC). In his Introductory remarks, the Convenor pointed out that during the compliance audit of levy and collection of anti-dumping duties, Audit found a number of shortcomings i.e., lacunae in the system based assessments in levying ADD, levy of ADD even after lapse of validity of ADD notification, non-compliance with the conditions of the ADD notifications, non levy of ADD in contravention to the condition of country of origin, non levy of ADD on account of contravention of product specific conditions, incorrect computation of ADD, incorrect resorting to provisional assessments, etc. Impressing upon the witnesses to treat the proceedings of the Committee as confidential, the Convenor asked the representatives of Ministry of Finance (Department of Revenue) to apprise the Sub-Committee of the remedial action taken on the Audit observation on the subject.

7. Thereafter, the Secretary of the Ministry of Finance (Department of Revenue) briefed the Committee about the various aspects related to ADD which *inter- alia* included consideration of multiple parameters before imposition of ADD; efforts made to maintain balance between facilitation and enforcement of ADD; working of Risk Management System (RMS), ICES as well as post-clearance audit, analysis of reports of National Customs Targeting Centre as well as work done by intelligence and investigation branches of CBIC; and remedial actions taken so far in respect of audit objections.

8. The Convener and Members of the Committee asked a number of questions which included *inter-alia* mechanism in place if any, for automatic calculation and processing of incorrectly levied amount for refund; financial data of ADD levied by the country vis a vis other countries; views of stakeholders sought before removing Anti dumping measures on Barium Carbonate; need for charging

of countervailing duty on countries like China which are offering considerable subsidies/ tax benefits and hence creating price difference; imposition of ADD on solar glass; difficulties being faced by MSMEs due to ADD; overall effectiveness of anti-dumping measures; systemic lacunae in RMS and ICES.

9. The representatives of the Ministry of Commerce and Industry (Department of Commerce) responded to some of the queries raised by Members which included *inter-alia* determining of ADD after detailed investigations carried out by DGTR, doctrine of unjust enrichment of the manufacturer wherein burden of indirect taxes eventually passes on to the end customer.

10. The Convener asked the Ministry to furnish written replies to the queries raised by the Members as well as to the list of points given by the PAC Secretariat within 15 days. The Convener then thanked the representatives of Ministry of Finance (Department of Revenue) and CBIC for appearing before the Committee and furnishing valuable information on the subject.

The witnesses, then, withdrew.

11. The Convener thanked the officials of C&AG of India for assisting the Sub-Committee during the deliberations.

A copy of the verbatim proceedings of the sitting has been kept on record.

The Sub-Committee, then, adjourned.

MINUTES OF THE SITTING OF SUB-COMMITTEE – IV (FINANCE) OF PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 3RD MARCH, 2022.

The Sub-Committee - IV (Finance) met on Thursday, the 3rd March, 2022 from 1100 hrs. to 1130 hrs. in Committee Room. 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - **Convenor**

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria

LOK SABHA SECRETARIAT

1. Shri TG Chandrasekhar - Joint Secretary
 2. Shri Tirthankar Das - Director
 3. Smt. Bharti S. Tuteja - Additional Director

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri Shailendra Vikram Singh - Director General
 2. Shri Kartikaye Mathur - Principal Director

2. At the outset, Hon'ble Convenor, Sub-Committee - IV (Finance) welcomed the Member and Officials from C&AG Office to the Sitting of the Sub-Committee convened for consideration and adoption of two draft Reports on the following subjects:

- (1) "Levy of Anti-Dumping Duty on Imports"
 (2) "Assessment relating to Agricultural Income".

3. The Committee firstly took up the Draft Report on "Levy of Anti-Dumping Duty on Imports" and adopted the same without any modification. The Committee then considered the second Report on the subject "Assessment relating to Agricultural Income" and after some deliberations, adopted the Report with minor modifications.

4. The Committee also authorized the Chairperson to finalise the aforesaid Reports on the basis of factual verification and present the same to the Hon'ble Speaker/ Parliament.

The Committee then adjourned.

CONFIDENTIAL**MINUTES OF THE ELEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2021-22) HELD ON 28th MARCH, 2022.**

The Committee sat on Monday the 28th March, 2022 from 1500 hrs. to 1610 hrs. in Committee Room "B", Parliament House Annexe, New Delhi.

PRESENT

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS**LOK SABHA**

2. Shri T.R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Bhartruhari Mahtab
5. Shri Vishnu Dayal Ram
6. Shri Rajiv Ranjan Singh *alias* Lalan Singh
7. Dr. Satya Pal Singh
8. Shri Jayant Sinha
9. Shri Vallabhaneni Balashowry

RAJYA SABHA

10. Shri Shaktisinh Gohil
11. Shri Bhubaneswar Kalita
12. Dr. C.M. Ramesh
13. Shri V. Vijayasai Reddy
14. Dr. Sudhanshu Trivedi

LOK SABHA SECRETARIAT

1. Shri T.G. Chandrasekhar - Joint Secretary
2. Shri Tirthankar Das - Director
3. Smt. Bharti S. Tuteja - Additional Director

**REPRESENTATIVES FROM THE OFFICE OF THE COMPTROLLER AND
AUDITOR GENERAL OF INDIA**

Sl. No.	Name	Designation
1.	Ms. Sangita Choure	Dy. CAG
2.	Shri Rakesh Mohan	Dy. CAG
3.	Shri Sanjay Kumar	Director General
4.	Shri Manish Kumar	Director General
5.	Ms. Monika Verma	Director General
6.	Shri S.V. Singh	Director General

2. At the outset, the Chairperson, welcomed the Members and Audit Officers to the Sitting of the Committee, convened to take oral evidence of the representatives of the Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation on the subject "Ground Water Management and Regulation" based on C&AG Report No. 9 of 2021 and to consider the following three draft Reports:-

- (i) "Levy of Anti-Dumping Duty on imports";
- (ii) "Assessments relating to Agricultural Income" and
XXXXXXXX

3. Following some deliberations, the Committee adopted the afore-mentioned draft Reports without any modification. The Committee also authorized the Chairperson to finalise the aforesaid Reports on the basis of factual verification and present the same to Parliament.

XXXX

XXXXXXXX

4.	XXX	XXX	XXX	XXX.
5.	XXX	XXX	XXX	XXX.
6.	XXX	XXX	XXX	XXX.
7.	XXX	XXX	XXX	XXX.
8.	XXX	XXX	XXX	XXX.
9.	XXX	XXX	XXX	XXX.
10.	XXX	XXX	XXX	XXX.

A copy of the verbatim proceedings of the sitting has been kept on record.

The Committee then adjourned.