

**PERFORMANCE OF 100 % EXPORT ORIENTED
UNIT (EOU) SCHEME**

MINISTRY OF COMMERCE AND INDUSTRY (DEPARTMENT OF
COMMERCE) AND MINISTRY OF FINANCE (DEPARTMENT OF
REVENUE)

**PUBLIC ACCOUNTS COMMITTEE
(2015-16)**

FORTY-FIFTH REPORT

SIXTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

PAC NO. 2077

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(DEPARTMENT OF COMMERCE) AND MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)



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**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2016 /Vaisakha, 1938 (Saka)

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**COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2015-16)**

Prof. K.V. Thomas

Chairperson

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SECRETARIAT

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INTRODUCTION

1. I, the Chairperson, Public Accounts Committee (2015-16) having been authorised by the Committee, do present this Forty-fifth Report (Sixteenth Lok Sabha) on "Performance of 100 % Export Oriented Unit Scheme" based on C&AG Report 9 of 2015 related to Ministry of Commerce and Industry (Department of Commerce) and Ministry of Finance (Department of Revenue).

2. The above-mentioned Report of the Comptroller and Auditor General of India was laid on the Table of the House on 5th May, 2015.

3. The Public Accounts Committee (2015-16) took up the subject for detailed examination and report. The Committee held informal discussion with the representatives of the Ministry of Commerce and Industry (Department of Commerce) and Ministry of Finance (Department of Revenue) on the subject during their sitting held on 31st December, 2015. Accordingly a Draft Report was prepared and placed before the Committee for their consideration. The Committee considered and adopted this Draft Report at their sitting held on 25th April, 2016. The Minutes of the Sitzings are appended to the Report.

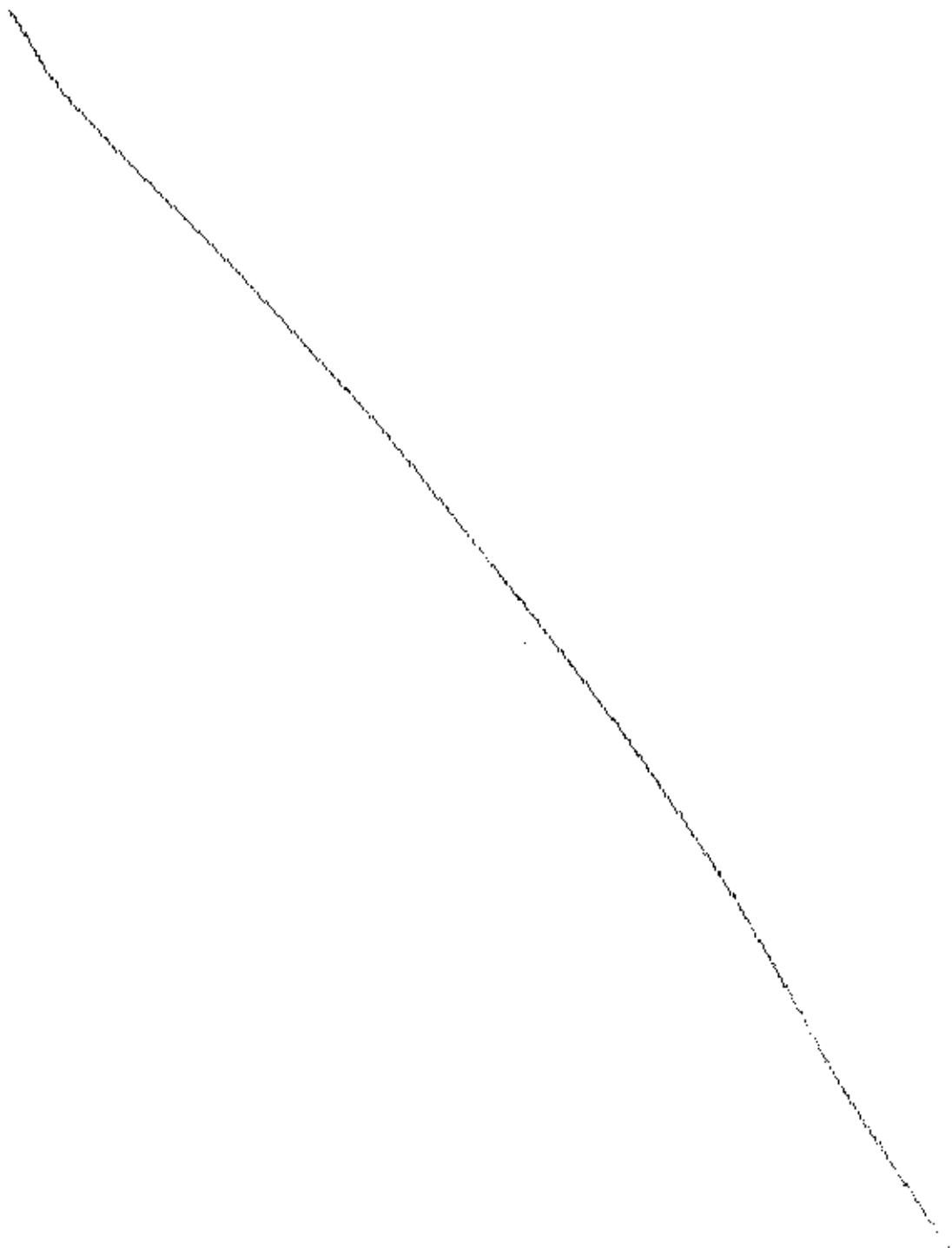
4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type and form Part- II of the Report.

5. The Committee would like to express their thanks to the representatives of the Ministry of Commerce and Industry (Department of Commerce) and Ministry of Finance (Department of Revenue) for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

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

NEW DELHI;
25 April, 2016
5 Vaisakha, 1938 (Saka)

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



2000

2001

REPORT PART-I

INTRODUCTION

Export Oriented Units (EOU) Scheme was introduced vide Ministry of Commerce Resolution dated 31-12-1980. The purpose of the scheme was basically to boost exports by creating additional production capacity. It was introduced as a complementary scheme to the Free Trade Zones/Export Processing Zone (EPZ) Scheme introduced in the sixties, which had not attracted many units due to locational restrictions. The exporters showed willingness to set up units with long term commitment to exports under Customs bond operations provided they had the freedom to locate them in places of their choice anywhere in India and given most of the benefits as provided to units set up in the Zones. It adopts the same production regime but offers a wider option in location with reference to factors like source of raw materials, port of exports, hinterland facilities, and availability of technological skills, existence of industrial base, and the need for a larger area of land for the project. Under this scheme, the units undertaking to export their entire production of goods are allowed to be set up, except permissible sales in Domestic Tariff Area (DTA) as per Exim Policy/Foreign Trade Policy. These units may be engaged in the manufacture, services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. No trading units shall be permitted.

Aims and Objectives of EOU Scheme

2. The scheme was introduced with the objective of boosting exports by generating additional production capacity. It allows the establishment of business units anywhere in the country (outside the SEZ) with the obligation to achieve a specified Export Obligation.
3. Export Oriented Units (EOUs) are allowed to be set up with the objective of exporting entire production except as provided under Foreign Trade Policy.

4. The main aims and objectives of EOU Scheme are:
- a) Promoting exports and enhancing foreign exchange earnings.
 - b) Attracting investment for export production.
 - c) Generating employment.
 - d) Attracting modern technology
 - e) Backward and forward linkage by way of sourcing of raw material from and supply of finished goods.
 - f) Upgrading skill creating source of skilled man power.
 - g) Arrest decline in exports and achieve export targets.

5. It was primarily designed for the promotion and growth of manufacture and export of value added products. In order to make these units cost efficient, facilitate their free access to foreign technology and encourage them to venture into foreign markets on a large scale, wide range of incentives have been introduced for the units operating under the scheme. The key objective of the Government was to arrest the declining exports and reverse the trend and achieve export target of US\$450 billion in 2013-14 and then to \$750 billion.

Setting up of EOU

6. Projects with a minimum investment of ₹ one crore in plant and machinery are considered for setting up of an EOU. In case of certain specified sectors, units can be set up with lower investment. Approvals for setting up a unit is given by the Unit Approval Committee, headed by the concerned Development Commissioner.

Customs Bonding

7. The units have to operate under Customs bonding as per the conditions stipulated under Foreign Trade Policy and corresponding Customs/Central Excise Notifications and follow the procedure prescribed. The unit has to obtain a warehousing licence from the concerned Central Excise authority before starting its operation.

Administrative Set-Up

8. The function of EOUs is governed by three tier administrative set up. The Board of Approval (BoA) is the apex body and is headed by the Secretary, Department of

Commerce. The Unit Approval Committee (UAC) at the Zonal level deals with the approval of the units within the jurisdiction of Development Commissioner (DC), who is ex officio chairperson of the UAC. The provisions of the Customs and Central Excise law in respect of the EOUs are administered by the Commissioner of Customs and Central Excise under the control of Central Board of Excise and Customs (CBEC), Ministry of Finance (MoF).

Provisions Governing EOU Scheme

9. The EOUs are governed by the provisions of Chapter 6 of the Foreign Trade Policy (FTP) and its procedures, as contained in the Handbook of Procedure (HBP). Provisions of the said Chapter 6 and its procedures have also been made applicable to the Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Biotechnology Parks (BTPs). Hence, the scheme is for EOU/STP/EHTP/BTP and is referred in common parlance as EOU scheme. Establishment of units and their performance is monitored by the jurisdictional Development Commissioner (DC) in accordance with the FTP provisions. Since Customs bonding is mandatory for EOUs, the Scheme envisages important role for Customs & Central Excise Department. Corresponding notifications enabling duty exemption have been issued by the CBEC under Customs Act, 1962 and Central Excise Act, 1944. Similarly other agencies like Reserve Bank of India (RBI), Central Board of Direct Taxes (CBDT), and Directorate General of Foreign Trade (DGFT) etc. have issued notifications /Circulars for proper implementation of the scheme including laying down procedures thereof. Monitoring achievement of Net Foreign Exchange (NFE) and in cases of default, levy of penalty under section 11(2) of Foreign Trade (Development and Regulation) Act, 1992 (FTD&R Act) are within the jurisdiction of the DC functioning under the Department of Commerce (DoC).

Facilities/Incentives available to EOUs

10. Following Facilities/Incentives are available to EOUs:
- (i) Duty free sourcing of inputs including capital goods.
 - (ii) Procurement of goods from Domestic Tariff Area (DTA) without payment of Central Excise Duty.

- (iii) Supplies by DTA manufacturer are eligible for deemed export benefits under Chapter 8 of Foreign Trade Policy.
- (iv) Full reimbursement of Central Sales Tax.
- (v) Central Value Added Tax (CENVAT) on service tax paid.
- (vi) Income exempted from payment of Income Tax (was upto 31.3.2011).
- (vii) DTA sale (including advance DTA Sale) upto 50% of F.O.B. value of Physical Exports permitted on payment of concessional rate of duty.
- (viii) Only positive net foreign exchange earnings to be achieved over a period upto five years.
- (ix) Export proceeds to be realized within a period of 9 months.
- (x) Retention allowed upto 100% of export earning in Exchange Earners' Foreign Currency (EEFC) account.
- (xi) Supplies made in DTA under Paragraph 6.9 of Foreign Trade Policy & supplies to other exporting units/Bonded Warehouse treated as foreign Exchange Earning of the Unit.
- (xii) Goods allowed to be supplied duty free in DTA against Advance Licence/(Duty Free Replenishment Certificate (DFRC)).
- (xiii) Job-work/subcontracting for and from DTA permitted subject to fulfilment of certain conditions.
- (xiv) Import/export of goods including precious goods permitted though personal carriage & Foreign Post Office permitted.
- (xv) FDI upto 100% permitted as per the guidelines of Department of Industrial Policy and Promotion.
- (xvi) Exemption from Industrial Licensing for manufacture of items reserved for SSI sector.

Monitoring and control of EOUs

11. The jurisdictional DC has a key role to play in respect of the EOUs right from the stage of establishment of the unit till its de-bonding. The DC monitors commencement of commercial production, studies quarterly and annual export performance, monitors the net foreign exchange earnings, grants DTA sale entitlement on the basis of FOB value of physical exports, provides permission for advance DTA sale, permits diversification / broad banding of the activities, approves duty free import of capital goods and raw materials and levies fiscal penalties under the FTDR Act, 1992.

12. Performance of EOUs is also reviewed on half yearly and yearly basis jointly by Development Commissioner and jurisdictional Commissioner of Customs / Central Excise.

13. Apart from this, EA-2000 Audit is regularly carried out on EoUs by the Central Excise field formations. CBEC has issued guidelines vide Circular No. 35/2001-Cus dated 15.06.2001 and Circular No. 41/2001-Cus dated 23.07.2001 regarding joint monitoring of EOUs.

14. EoUs execute B-17 Bond along with adequate security/Bank Guarantee with the jurisdictional Central Excise Authorities to cover duty foregone amount. Accountal of inputs in accordance with Standard Input – Output Norms (SION) is also done. In case of any contravention by the EoU is found, duty foregone amount is recoverable along with applicable interest by the jurisdictional authorities by enforcing Bond/ Bank Guarantee. In case of improper importation or procurement of goods and services, penalty proceedings under the relevant provisions of the Customs, Central Excise and Service Tax Laws are also initiated.

Audit Objectives

15. A performance Audit on the working of the EOU, corresponding to the FTP (2009-14), was conducted with a view to seek an assurance that:

- a) there exist adequate statutory provision/rules regulation, instructions/notification with regards to approval, creation, functioning and monitoring of EOUs.
- b) the EOUs fulfilled the import conditions as laid down in the relevant notifications and FTP and applicable provisions of HBP.
- c) the EOUs were able to fulfill the intended objectives as stated in the Foreign Trade Policy.
- d) the internal controls system and monitoring mechanism are effective.

Earlier Audit Report on 100 Percent Export Oriented Scheme

16. A review of the Scheme was conducted in 2007. The audit findings were included in Audit Report No. 7 of 2007 (Indirect Taxes). Some of the important findings highlighted in the report were inconsistent, incomplete and unreliable macro data on

EOUs, non fulfillment of export obligation (EO)/NFE, excess DTA sales, irregular payment of Central Sales Tax (CST)/drawback on DTA sales and mismatch of export performance recorded by DoR and DoC. Out of the nine recommendations made in the report, DoC accepted two recommendations on verification of macro data of functional/closed and debonded units in co-ordination with revenue department and strengthening of internal control mechanism to ensure that DTA sales effected are after achievement of export obligation by the units. Specific replies to other recommendations were not furnished. The two accepted recommendations of the earlier report still remain an area of concern as observed in the performance audit.

Non-Availability of the Data In EOU's Dedicated Website

17. Neither DGFT nor DCs have put up year-wise details in their websites, viz. number of EOUs functioning, number of new entrants, number of units opting out of the scheme, their exports/imports etc. Consequently this data is not available in the website of Ministry of Commerce/DGFT. Audit observed that in the dedicated website of EOU (eouindia.gov.in) some data is available only upto the financial year 2007-08. DCs do not have a data base relating to EOU similar to that of SEZs units, falling under its jurisdiction. DoC in their reply (January 2015) stated that Zonal DCs are being directed to ensure regular updation of data relating to EOUs in their respective web-sites of the Zones. DoC in the exit conference stated that (January 2015) website 'eouindia.gov.in' become non-functional and the data is now being captured in www.epces.in maintained by Export Promotion Council for EOUs and SEZs. Audit observed that only export performance of EOUs upto December 2013 is available in the website. There are no other details regarding EOUs in the aforementioned website.

18. Explaining the reasons for not maintaining such data since 2007-08 and apprising the present position of maintaining the same, the Ministry of Commerce and Industry in their written replies submitted as follows:

"All the SEZs have incorporated the upto date details of EOUs in their SEZ website. Separately, this Department is in the process of setting up separate website for EOUs with a link from SEZ website. The recommendation of audit will be kept in mind while developing the website. In addition to this, instructions have been issued to the zones to ensure regular updation of data relating to EOUs in their respective zones."

19. During the course of vetting the aforesaid replies, the Audit found that in www.epcs.in only data of export performance of EOUs since 2011-12, State-wise distribution of EOUs, export performance of SEZs, combined export performance of EOUs and SEZs and export share of EOUs and SEZ in India's export and progress of SEZs in India are available.

20. The long-term vision of the DOC is to make India a major player in the world trade by 2020. Its goal in the medium-term as outlined in the Foreign Trade Policy (FTP 2009-14) is to double India's exports of goods and services by 2014 with a long term objective of doubling India's share in global trade by the end of 2020 through appropriate policy support. The aspiration of the Department is to achieve an average annual growth of exports of 25 per cent over the next six years.

21. On being asked as to what extent those goals have been achieved, the Ministry of Commerce and Industry in their written replies submitted as follows:

"Exports from EOUs for 2013-14 is ₹ 82072.71 crore while for 2014-15, it is ₹ 98803.29 crore. Therefore, exports from EOUs have increased. EOU scheme has been fairly successful in creating manufacturing capabilities, increasing exports and generating employment. It has helped in setting up of manufacturing units, at various places at a geographical location suitable to the exporter and duty free access to capital goods and raw materials without repeated licensing. Exports from EOUs in the year 2014-15 was ₹ 98,803 crore and EOU provides direct employment to 3,09,000 people (approx.)"

22. Audit Scrutiny revealed that outcome budget of DOC does not have any specific targets to boost exports through EOUs. Outcome study of the scheme has not been conducted during 2009-10 to 2013-14.

23. Apprising the Committee of the reasons for the same, the Ministry of Commerce and Industry replied as under:

"Department of Commerce does not fix export target with reference to a particular scheme. Export targets are fixed in totality keeping in mind various factors including the International economic scenario. However, export in particular scheme is regularly monitored. Similarly in respect of EOU also export, employment etc are regularly monitored by Department of Commerce and necessary feasible steps taken for review/revamp of the scheme. Panda Committee was constituted in the year 2011. Certain recommendations of the Panda Committee have already been incorporated in 5 year FTP announced on 01.04.2015. These recommendations have been incorporated in consultation with Department of Revenue."

24. Audit observed that the declining number of EOUs and its exports indicate that with the advent of SEZs, the Export Oriented Units could not retain interest of the entrepreneurs inspite of having locational advantage.

25. The Committee desired to know the comparative study, if undertaken by Government; of the benefits under EOU Scheme vis-a-vis SEZ units and export sale by DTA. In response, the Ministry of Commerce and Industry submitted as follows:

"The differences between EOU, SEZ and DTA is fairly well known and no study is required. The major differences between SEZs and EOUs are as follows:

S. No.	SEZ	EOU
1.	SEZ units are entitled for duty free imports for setting up unit.	No duty free benefits for setting up EOU.
2.	CST exemption	CST refund.
3.	IT Exemption on the export profits as per section 10AA of Income Tax Act, as given in the 2 nd schedule of SEZ Act, 2005.	No Income Tax exemption on export profits since April' 2011
4.	DTA sale on payment of full duty	DTA sale on payment of concessional duty.
5.	Supply of goods from DTA to SEZ stated as physical exports	Supply of goods from DTA to SEZ stated as deemed exports

Chapter - II - Performance of EOUs and system issues
Declining trend of EOUs

26. EOU Scheme was primarily designed for the promotion and growth of manufacture and export of value added products. The EOU scheme allows the establishment of manufacturing units anywhere in the country with the obligation to achieve Net Profit Exchange (NFE). For this purpose, units are allowed duty free procurement through import or from indigenous sources. Details of total, functional, non functional and de-bonded EOUs in last five years are shown below:

Year	Total no of registered units	Functional Units		Nonfunctional units	Debonded units	Percentage of nonfunctional and debonded units to total units
		Number	Percentage to total units			
2009-10	3109	2279	73.30	687	143	26.70
2010-11	2802	2337	83.04	305	160	16.96
2011-12	2747	2206	80.30	336	205	19.70
2012-13	2626	2131	81.15	365	130	18.85
2013-14	2608	2095	80.33	385	128	19.67

27. As seen from the table, the total number of EOUs has gone down from 3109 in 2009-10 to 2608 in 2013-14. While the number of functional units has come down from 2279 to 2095 during the same period, the percentage of functional units to total units has declined from 83 per cent in 2010-11 to 80 per cent in 2013-14 with corresponding increase in percentage of nonfunctional and debonded units. There has been a gradual reduction in EOUs after the SEZ Act came into force in 2006-07. The FTP did not have any special provision to utilise the unique advantages of the 100 per cent EOU Scheme.

28. Further, details regarding present position (upto 15-12-2015) of total number of registered units, functional units, non-functional units and de-bonded units as provided by the Ministry of Commerce & Industry are as follows:

Zones	Total No. of Registered Units	No. of Functional Units	No. of non-functional units	No. of debonded units
VSEZ	1248	254	738	256
SEEPZ	1632	281	949	402

FSEZ	85	52	26	7
KASEZ	1499	197	1034	268
NSEZ	339	218	107	14
MEPZ	479	426	45	8
CSEZ	1302	527	418	357
ISEZ	49	10	-	39
Total	6633	1965	3317	1351

29. Explaining the reasons for declining trend of functional units and increase in number of non-functional units from 2010-2011 to 2013-14, the Ministry of Commerce and Industry stated as follows:

"The primary reasons for declining trend regarding functional units is discontinuation of Income tax benefits on the export profits to EOU from April 2011. It is a fact that EOU are subjected to regular Export Obligation by way of requirement of positive NFE and have to operate in the bonded area. Hence, those units which require continuous inflow of duty free raw material are continuing under the scheme but those units which can procure their raw materials from market are not very favourably disposed towards the scheme in absence of Income Tax exemption."

30. Export by EOUs as reported by Export Promotion Council (₹ 83,700 crore, ₹ 59,824 crore, ₹ 79,343 crore and ₹ 65,927 crore) during 2009-10 to 2012-13 differ significantly from the figures furnished by DOC. Further, Audit observed that the share of EOUs in overall exports has been declining during last five years barring a marginal improvement in 2010-11. In addition, the growth rate of EOU exports is not commensurate with the growth rate of overall exports of the country except in 2013-14. In fact, it turned negative during 2011-12. DC, SEEPZ Mumbai stated that the major factors responsible for poor growth of exports from EOUs were withdrawal of income tax benefit under section 10 B of Income Tax Act 1961 (with effect from 1 April 2011), decreasing profit margins on export products, more attractive schemes like SEZ where similar export benefits are available to the domestic unit without any domestic sales limitation. Similar sentiments have also been echoed by stake holders (small, medium and large EOUs). Audit observed that while exports by EOUs have been declining, during 2008-09 to 2013-14, the export of SEZs has risen. Important reasons for opting out by the EOUs from the scheme are unavailability of benefits of DEPB, Drawback, DFRC and Target Plus Scheme, etc., are not available, discontinuation of income-tax benefits under Section 10B of IT Act effective from assessment year April 1, 2011, (Previous year 2010-11) etc. The prominent EOUs which exited from the scheme

include Reliance Jamnagar, Orient Crafts Ltd, Oswal Cotton and Spinning Ltd, Vardhman Group, Ludhiana and Nahar Spinning Mills, Rajasthan.

31. Explaining the reasons as to why the EOUs are de-bonding from EOU Scheme, the Ministry of Commerce & Industry stated as follows:

"It is an admitted fact that EOUs are de-bonding from EOU Scheme. This is mainly because of discontinuation of Income Tax benefit w.e.f. 1.4.2011. An exporter would operate in the bonded area only if he gets some extra benefits. Since duty free import of raw material, duty free import of capital goods and chapter 3 benefits are available in DTA, exporters find EOU Scheme less attractive. Fall in growth rate of EOU exports was due to international recession and external competition."

32. As far as steps taken by the Ministry of Commerce & Industry to arrest the declining trend of registered units as well as functional units, the Ministry apprised the Committee as follows:

"Department of Commerce had constituted Panda Committee in the year 2011. Certain recommendations of the Panda Committee have already been incorporated in 5 year FTP announced on 01.04.2015. These recommendations have been incorporated in consultation with Department of Revenue."

33. However, Audit scrutiny revealed that a Committee was formed under the Chairmanship of Sh. S.C. Panda, DC, NSEZ (December 2010), to review/revamp the EOU scheme. It was a study based on interviewing selected stake holders. In its report, the Committee made 41 recommendations to be implemented by various agencies of the Government. DOC accepted only seven of the recommendations. The Committee had not done any impact study of its recommendations whether it be of fiscal, procedural nature or pertaining to the FTP. The revenue implication for Government or cost implication for the EOUs, was neither computed nor estimated. Neither any time line was set by the Committee for implementation of its recommendations nor was any outcome measurement suggested.

34. Apprising the Committee of the 41 recommendations as made by the S.C. Panda Committee, the Ministry of Commerce & Industry submitted as under:

S.No.	Recommendation of Revamp Committee
1.	To extend Investment linked Income Tax benefit
2.	To allow exemption from Customs & Central Excise duty to all goods & services
3.	To exempt Service Tax on services consumed wholly within EOUs
4.	To exempt CST on goods supplied to EOUs

5.	To exempt State levies on the goods supplied to EOUs
6.	To rationalize administrative mechanism for setting up EOU and for efficient coordination.
7.	To rationalize power for approval of the proposals for setting up EOUs
8.	To dispense with the minimum investment criteria for setting up EOU
9.	To align validity of the period of the LOP issued to EOU
10.	To align duration of goods and services in EOU with the term of LOP
11.	To allow broad banding of operations and activities in the EOU
12.	To expand scope of reconditioning / repair under para 6.16 of FTP
13.	Allowing warehousing facilities outside EOU premises and jurisdiction of DC
14 I	To define "similar goods" for DTA sale by EOUs
14 II.	To allow DTA sale by EOU on payment on full duty without any rider of NFE
14 III	To allow DTA sale of by products / waste & scrap within DTA entitlement
14 IV	To exclude wholly exempted goods from computation in DTA entitlement
15	To align deemed exports supplies for EOUs at par with SEZ unit & DTA supplier
16.	To rationalize fixation/amendment of SION for EOU
17.	To allow sharing of facilities among EOUs
18. I	To simplify job work procedure
18. II	To allow EOU to undertake job work for DTA purpose
18. III	To allow direct delivery of raw material to sub-contractor
19. I	To allow transfer of services from one to another EOU without payment of service tax
19. II	To allow inter unit transfer (IUT) of inputs among the group companies
19. III	To allow return of goods/services to unit, in case of rejection, without payment of duty
19 IV	To lay down uniform procedures for Inter-Unit Transfer (IUT) of finished goods
20.	To allow procurement of spares & components for after sales-service in DTA
21.	To dispense with the Procurement Certificate and CT-3 prior to procurement of goods
22	To reduce ceiling for self warehousing and self certification of goods by EOUs
23.	To dispense with Cost Recovery charge for services of Customs & C.Ex. officers
24.	To rationalize criteria for unblemished trade record
25.	To allow transfer of goods for repair / replacement, testing or calibration
26.	To rationalize report/return to be filed by EOUs
27.	To extend time for submitting shipping bill for export under self sealing/certification
28.	To allow credit facility against EEFC balances
29.	To allow retention of 100% export earning in EEFC account
30.	Power & functions of BOA and UAC under the IDR Act and FTDR Act
31.	To empower BOA as policy relaxation and Grievance redressal body for EOUs

32. I	Increase duty free procurement of spares to 15% from 5% for EOUs in granite sector
32. II	To allow removal of duty free spares to granite quarry site

35. Further, the details of eight recommendations of S. C. Panda Committee that have been accepted by the Ministry of Commerce & Industry are as follows:

Validity of the period of Letter of Permission (LOP) issued to EOU: LOP issued to an EOU will have an initial validity for a period of 2 years to enable the Unit to construct the plant and install the machinery. The next extension of one year may be given by the DC for valid reasons to be recorded in writing. Subsequent extension of one year may be given by the UAC subject to condition that two-thirds of activities including construction, relating to the setting up of the Unit are complete and a Chartered Engineer's certificate to this effect is submitted by the Unit. Subsequent extension, if necessary, will be granted by the Board of Approval.

Aligning duration of goods and services in EOU with the term of LOP: At present, capital goods are required to be installed or otherwise used by the EOU, within a fixed period from the date of import or procurement thereof and other goods are to be used in connection with the production or packaging of goods within a period of three years. In case of failure to use within above stated period, extension is required. It has now been decided that the period of usage of goods should be co-terminus with the period of LOP. This would do away with the current practice of obtaining multiple extensions for goods and LOP separately.

Setting up warehousing facilities outside EOU premises and outside the jurisdiction of DC: EOUs which intend to have their warehouses near to the port of export to reduce lead time for delivery of goods overseas and to address unpredictability of supply orders will now be permitted to set up such warehouses subject to the provisions related to export warehousing as given in notification No. 46/2001-Central Excise(N.T.) dated 26.6.2001 and the CBEC Circular No. 581/18/2001-CX dated 29.6.2001 as amended.

Sharing of facilities among EOU/STP/EHTP/SEZ Unit: In order to allow optimal utilization of infrastructure facilities it has been decided that sharing of facilities among EOUs may be considered by the UAC on case-to-case basis and the recommendations be sent to the BoA for final approval. While accepting such proposals, the NFE obligations of the Units shall not be altered. However, sharing of facilities between EOUs and SEZs Units should not be permitted.

Inter-Unit transfer (IUT) of goods & services : In order to facilitate a group of EOUs which sources inputs centrally to obtain bulk discount, reduce cost of transportation and other logistics cost and to maintain effective supply chain, IUT of goods and services will be permitted on a case to case basis by the UAC. Further, the procedure for Inter-Unit Transfer (IUT) of finished goods will be clarified by CBEC in order to bring uniformity in the practices and procedure adopted by various field offices.

Self-warehousing and self-certification of goods imported/procured by EOUs: The scheme of self-warehousing and self-certification was introduced vide Circular No. 19/2007- Cus. dated 3.5.2007 dispensing with the requirement for physical verification of imported/indigenously procured duty-free goods before issuing re-warehousing certificate by the proper officer in respect of Units set up under EOU/EHTP/STP/BTP scheme having physical export turnover of ₹15 Crore and above in the preceding financial year and having a clean track record. In order to extend self-warehousing and self-certification facility to more Units, it has been decided to reduce the limit of physical turnover from Rs 15 Crore to Rs 10 Crore.

Rationalization of reports/ returns to be filed by EOUs: EOUs submit Quarterly Performance Report (QPR) and Annual Performance Report (APR) to the Development Commissioners and monthly return ER-2 to Central Excise. In order to reduce multiplicity of these reports, a common return to DoC and DoR would reduce paperwork for the EOUs. It has, therefore, been decided that a single common report/return may be devised which may serve the purpose for DoC as well as DoR. A joint group of DoC and DoR including Director General of Systems, CBEC will be formed to devise a proforma exhaustively capturing all the data and figures relating to export, import, DTA sale, deemed export sale, IUT, sale of goods as such, destruction, payment of duty etc. and devise simplified records to be maintained by EOUs.

Extension of time for submitting shipping bill for export made under self-sealing / self-certification: It has been decided to increase the mandatory requirement to submit Shipping Bill within 24 hrs to 48 hrs as it is sometimes difficult to reach jurisdictional Central Excise office within 24 hrs from the port of export."

36. As regards the status of implementation of the aforesaid recommendations, the Ministry stated that these have been implemented in FTP 2015-20.

37. Owing to their flexibility and unique position, EOU scheme flourished in 1980's, 1990's and upto mid 2000 decade had contributed to the process of structural change in the domestic industry via technological and skill spillover, economic linkages and disaggregation of the units for a positive development. However over the period, the exports from SEZs increased as against the exports from EOUs. It is substantiated by the observation in the Performance Audit (Audit Report of C&AG No. 21 of 2014 on Performance of SEZs) of the SEZs where it was observed that several EOUs and STPIs had closed and shifted base to SEZs after partial fulfillment of their growth obligations.

38. While furnishing their comments on the aforesaid Audit observation, the Ministry of Commerce & Industry in their written submission stated that necessary actions have

also been initiated by various Development Commissioners and the field formation of Central Excise Authorities for taking remedial measures.

39. On being asked as to whether any measures have been contemplated by the Department of Commerce to make the EOU scheme more attractive than the SEZ scheme, the Ministry replied as follows:

"EOU Scheme and SEZ Scheme are complimentary to each other with both having distinct features of its own and having some common features as well. In respect of EOU scheme DOC has constituted Panda Committee in the year 2011 to make the scheme vibrant and attractive. Certain recommendations of the Panda Committee had already been incorporated in 5 year FTP announced on 01.04.2015."

Revenue Foregone

40. Audit scrutiny revealed that Government of India had forgone significant custom and central excise revenue amounting to ₹ 32,932 crore during 2009-10 to 2013-14 on EOU/EHTP/STP scheme as detailed below.

Duty foregone	
Year	Amount of duty foregone (₹ in crore)
2009-10	8076
2010-11	8580
2011-12	4555
2012-13	5881
2013-14	5840

41. Though the duty foregone on the scheme remained static in FY13 and FY14 (₹ 5800 crore), the export by EOU dipped by 11 per cent in FY14 over the exports of FY13.

42. However, the figures of revenue foregone during the years 2009-10 to 2015-16 on EOU Scheme as provided by Ministry of Commerce & Industry are as follows:

(₹ in Crore)

S.No.	Performance of 100% Export Oriented Units (EOUs) Schemes	
1	2009-10	2845.78
2	2010-11	4200.74
3	2011-12	4442.16
4	2012-13	5647.38

5	2013-14	6994.07
6	2014-15	7065.07
7.	2015-16 (Upto Nov,2015)	5396.04

43. When asked about the specific consideration on which revenue foregone is allowed and steps contemplated to restrict the revenue foregone to the minimum extent, the Ministry of Commerce & Industry replied as under:

"The revenue foregone is allowed to EOU units for promotion of export. EOU enjoy duty free import of raw material and capital goods. The amount of duty concessions availed on raw material and capital goods used in manufacture of exported goods are calculated as duty foregone in case of EOU. Generally, taxes are not exported alongwith exported goods. Therefore, more revenue foregone may also be an indicator of more export. However, Department officials are always on guard to stop misuse of scheme".

Analysis of the Scheme

44. Audit observed that the overall functioning of the EOU's getting permission from the Customs authorities for procuring/exporting materials/services and getting sanction of claims viz. rebate, CST etc. are considered to be the major difficulties. This was on account of enhancing several export incentives for the exporters operating within DTA which finally acted as a disincentive for the exporters operating within EOU scheme. Further, it was observed that:

- The present scheme is a profit-linked incentive. No incentive was allowed on capital and revenue expenditure incurred by the unit during setting up of the unit (unlike SEZs) and further running of the unit. The unit is liable to pay Income Tax on the business profits.
- EOU has to pay duty, taxes etc on import/procurement from DTA resulting in blockage of capital money of the entrepreneur. Similarly, EOUs are allowed credit of Service Tax and refund CST paid on inputs which is a tedious process for the unit as well as Department.
- Multiple bodies (UAC, BoA and PRC) are approving proposals for setting up of EOU. The mechanism need to be simplified to expedite approval process.
- Usage of goods and services in EOU has not been aligned to the validity period of the LoP.
- DTA sale by EOU has not been rationalised, there are ambiguity in definition of similar goods.
- EOU have comparative disadvantage vis-a-vis SEZ/DTA in respect of deemed export supplies as in the case of SEZ/DTA.

- EOUs have to obtain permission for job work which is time taking and adds to the cost of the EOU.

45. Government has fallen short by almost 33 per cent (US \$ 150 billion) of its export target in 2013-14 vis-a-vis Strategic Plan (DOC). FTP (2009-14) is being operated beyond its tenure and EOU scheme is neither able to attract Entrepreneurs nor contribute to the growth as envisaged while forgoing substantial duty.

46. The Committee desired to know about the measures initiated to obviate the aforesaid shortcomings. In response the Ministry of Commerce & Industry in their written replies submitted as follows:

"FTP 2015-20 is effective from 01.04.2015 and several amendments has been done in it to make the EOU Scheme more vibrant and attractive to exporters. As mentioned above, amendment has been done to make the period of utilisation of goods, including capital goods, co-terminus with the validity of LoP in FTP 2015-20. Other amendments that have carried out in the new FTP(2015-2020) are as under:

- EOUs, EHTPs, STPs have been allowed to share infrastructural facilities among themselves. This will enable units to utilize their infrastructural facilities in an optimum way and avoid duplication of efforts and cost to create separate infrastructural facilities in different units.
- Inter unit transfer of goods and services have been allowed among EOUs, EHTPs, STPs, and BTPs. This will facilitate group of those units which source inputs centrally in order to obtain bulk discount. This will reduce cost of transportation, other logistic costs and result in maintaining effective supply chain.
- EOUs have been allowed facility to set up Warehouses near the port of export. This will help in reducing lead time for delivery of goods and will also address the issue of un-predictability of supply orders.
- STP units, EHTP units, software EOUs have been allowed the facility to use all duty free equipments/goods for training purposes. This will help these units in developing skills of their employees.
- 100% EOU units have been allowed facility of supply of spares/ components upto 2% of the value of the manufactured articles to a buyer in domestic market for the purpose of after sale services.
- At present, in a period of 5 years EOU units have to achieve Positive Net Foreign Exchange Earning (NEE) cumulatively. Because of adverse market condition or any ground of genuine hardship, then such period of 5 years for NFE completion can be extended by one year.

- (g) Time period for validity of Letter of Permission (LoP) for EOUs/EHTP/STPI/BTP Units has been revised for faster implementation and monitoring of projects. Now, LOP will have an initial validity of 2 years to enable the unit to construct the plant and install the machinery. Further extension can be granted by the Development Commissioner up to one year. Extension beyond 3 years of the validity of LoP, can be granted, in case unit has completed 2/3rd of activities, including the construction activities.
- (h) At present, EOUs/EHTP/STPI units are permitted to transfer capital goods to other EOUs, EHTPs, STPs, SEZ units. Now a facility has been provided that if such transferred capital goods are rejected by the recipient, then the same can be returned to the supplying unit, without payment of duty.
- (i) A simplified procedure will be provided to fast track the de-bonding / exit of the STP/ EHTP units. This will save time for these units and help in reduction of transaction cost.
- (j) EOUs having physical export turnover of ₹ 10 crore and above, have been allowed the facility of fast track clearances of import and domestic procurement. They will be allowed fast track clearances of goods, for export production, on the basis of pre-authenticated procurement certificate, issued by customs / central excise authorities. They will not have to seek procurement permission for every import consignment"

47. The Committee sought to know that keeping in view that the EOU Scheme is neither able to attract Entrepreneurs nor contribute to the growth as envisaged, whether the Department of Commerce have ever considered for abolishing the same or making it more profitable. In this regard, the reply as furnished by the Ministry is given as under:

"There is no proposal to abolish the EOU scheme. EOU scheme has its own distinct advantages for those who require continuous procurement of raw material. EOUs can import raw material duty free without repeating licensing like advance authorization, DFRC etc. In addition entrepreneur has an option for setting up of manufacturing units, at various places at a geographical location suitable to the exporter."

Chapter III - Internal Control, Audit and Monitoring
Internal Audit Arrangement

48. No impact assessment was done before implementing EOU scheme by DoC. Neither was any midterm evaluation done while implementing the SEZ Act in direction competition to the EOU scheme. Though the EOU Scheme was introduced several years ago and considerable concessions are extended to the EOUs, there is no structured internal audit mechanism in the MOC&I to assist in oversight of the functioning of EOUs. Absence of structured internal audit arrangement is fraught with the risk of undetected misrepresentation of facts by EOUs and there is a need to strengthen the jurisdictional Commissionerates dealing with Direct and Indirect Taxes administration.

49. Annual monitoring of functioning and performance of units are carried out by DCs through Quarterly/Half yearly/Annual returns furnished by units. Based on such review, DC's inform/suggest to DoC corrective measures to enable defaulting units to fulfill their obligation.

50. Information on EOU's are not captured and displayed in the dedicated website of DoC/EPC/EOO, therefore, it was not made available to audit.

51. Neither the Controller of Aid, Accounts and Audit (DEA) nor Chief Controller of Accounts (DoC) has audited the EOU scheme.

52. DoC in February 2015 admitted that neither internal audit of EOUs at field level have been conducted so far nor any audit has been conducted by the Controller of Aid, Accounts and Audit of the scheme during 2009-10 to 2013-14.

53. In this regard the Audit recommended that Department of Commerce may institutionalize a system of regular internal audit of the EOU Scheme and may take steps to collect, clean, collate and communicate updated data on the dedicated website.

54. Apprising the Committee about the measures initiated by Department of Commerce to institutionalize a system of regular internal audit of the EOU Scheme, the Ministry of Commerce and Industry in their written replies stated as follows:

"The system of internal control and Joint Monitoring have already been developed. Joint Monitoring is prescribed. Detailed guidelines have been provided for monitoring of EOUs in Appx. 14-I-G of the HBP (Vol.I) 2009-14. In the new FTP these guidelines have been provided in Appendix 6 F of HBP 2015-20. For internal control also, the instructions have been issued to DCs and many DCs have engaged Chartered Accountants for carrying out the system effectively."

Non-filing/delay in filing APR

55. Audit scrutiny of records in the offices of the DC SEEPZ Mumbai, DC NSEZ Noida and DC VSEZ, Visakhapatnam revealed delay ranging from 1 month to 20 months in filing of 948 APRs. In SEEPZ, Mumbai, there was delay in filing of APRs in 57 per cent cases (925 cases out of 1615 APRs filed during 2009-13).

56. Further, audit also observed that 419 EOUs (128 units in SEEPZ Mumbai, 286 units in NSEZ Noida and five units in FALTA Kolkata respectively) were neither formally de-bonded nor filed APRs during the period 2009-14.

57. One such case of non-filing of APR is discussed below:

M/s Parmeshwar Creations Pvt. Ltd under the jurisdiction of NSEZ, NOIDA, applied (October 2005) for conversion from DTA into EOU, DC, NOIDA, SEZ issued LoP) in March 2006. As per the terms and conditions of LoP, the unit was required to submit APR to the DC, NOIDA SEZ and to obtain registration from Central Excise department for EOU. The unit neither submitted any APRs upto 2011-12 nor got registered with Central Excise Department as EOU. Legal Undertaking (LUT) was also not signed. The unit was allowed exemption of ₹ 1.40 crore under section 10 B of Income Tax Act. Development Commissioner, NSEZ, NOIDA cancelled the LoP while imposing penalty of ₹ 75 lakh (October 2013). However no action has been initiated to recover the IT benefit availed under section 10 B of IT Act (November 2014).

DoC in their reply (January and February 2015) stated that the unit has deposited penalty of ₹ 15 lakh out of ₹ 75 lakh (20 per cent) and filed appeal in DoC against the DC's order in original (O-I-O).

58. DoC in their reply (January and February 2015) stated that instructions are being issued to all the DCs to ensure timely filing of APRs.

59. Now, the Ministry of Commerce & Industry in their replies (January 2016) have informed that instructions have been issued to all the zones for timely filing of APRs.

Mismatch of figures as per APRs and Excise data

60. A comparative study of data of import and export for the period 2009-10 to 2013-14 furnished by the Central Excise Department and the corresponding data in APR furnished by the units has revealed that there was a mismatch in the figures of Central Excise Department in case of seven units as detailed in the table given below.

Mismatch of Import data

(₹ in crore)

Name of the unit (M/s)	Development Commissioner	Period	Import data as furnished by DC	Import data as per Excise Department
ASB international	SEEPZ, Mumbai	2009-10 to 2012-13	354	428.37
A R Sulphonates	SEEPZ, Mumbai	2009-10 to 2012-13	372.04	385.18
Sandvik Asia Unit II	SEEPZ, Mumbai	2009-10 to 2012-13	247.08	856.62
BEL Optronics	SEEPZ, Mumbai	2009-10 to 2012-13	300.63	328.14
Santo Exim Pvt. Ltd	NSEZ Noida	2009-10 to 2012-13	0.36	0
P.P. Jewellers (Export)	NSEZ Noida	2009-10 to 2012-13	566.81	386.15
P.C. Jewellers	NSEZ Noida	2009-10 to 2011-12	159.91	7.08
Albion Consulting Pvt. Ltd	NSEZ Noida	2009-10 to 2011-12	1.16	1.05
Wipro Ltd. Jasola	NSEZ Noida	2010-11 to 2012-13	38.75	8.05

61. The possibility of incorrect decision on fulfillment of NFE in the above cases cannot be ruled out. Similar observation was also made in earlier PA Report (No. 7 of 2007), however, the department did not furnish any reply to that. DoC in their reply (January and February 2015) stated that there is no provision or method in the present policy to cross verify APR data & Central Excise data. However, for reconciliation of the figures, factual status report has been called from the jurisdictional Central Excise Authorities.

62. On being asked as to how the Ministry cross verify the APR data & Central Excise data in the absence of any method to cross verify the same, the Ministry stated as follows:

"Efforts are made to reconcile the data between DCs and Central Excise through Joint Monitoring mechanism, as prescribed in Appx. 14-L-G of HBP 2009-14 and Appx. 6 F of HBP 2015-20"

63. In their Audit Report, the Audit had recommended that Department of Commerce may consider devising mechanism to cross verify APR data and Central Excise data. However, the Ministry repeated the same reply as stated above.

Domestic purchases (deemed export by DTA units) by EOUs not reflected in the Annual Progress Report (APR)

64. During the scrutiny of Annual Progress Reports (APRs), audit observed that imports involving foreign exchange alone are reported and considered for calculating NFE. Apart from importing goods, EOUs also procure raw materials from domestic suppliers. However, the domestic procurement made by EOU units has not been reported in the APRs as imports as these are qualified as imports under notification cited above. Further the duty foregone in import and domestic procurements made by the unit were also not captured in the QPR/APRs.

65. In 13 cases, procurement of indigenous inputs from DTA amounting to ₹ 549.50 crore where suppliers claimed deemed export benefit for the supplies made to EOUs has not been reported by EOUs in APRs.

66. In this regard, the Audit recommended that DoC may take steps to ensure that APRs are submitted in time and these reports which are meant for monitoring the performance of EOUs may contain all relevant data not only of exports but also about duty foregone, DTA sale by the government for facilitating the exports.

67. DoC in their reply (January 2015) stated that instructions are being issued to all the DCs to ensure timely filing of APRs by the EoUs. The issue of revising APR format to include a column on duty forgone data will be examined in consultation with the concerned Ministries/Departments.

68. On being asked about the number of APRs not received so far alongwith the reasons for delayed/non-submission of the same, the Ministry of Commerce & Industry stated that 360 units have not submitted their APRs and SCNs have been issued to them for the reasons for delayed/non-submission of the same.

Chapter IV - Cases of non-compliance and Policy mis-representation

69. In 48 cases irregular/incorrect DTA sales were noticed by EOUs under DCs Mumbai, Cochin, Noida, Kandla and Falta involving short/non levy of duty of ₹ 62.52 crore which included clearance of products into DTA in excess of permitted limits, irregular availing of concessions on clearance of finished goods into DTA, clearance/sale of marble in DTA in violation of provisions of FTP, short payment of duty on sale of scrap in DTA, non-payment of SAD on clearance made to DTA, non-payment of proportionate Anti-Dumping Duty (ADD) on DTA clearance, irregular DTA sale by 100 per cent EOU despite negative NFE, and non reversal of Cenvat credit on clearance of goods without payment of duty.

70. While expressing their views on the aforesaid Audit observations, the Ministry of Finance (Department of Revenue) submitted as follows:

"The Audit observations/objections have been noted. However, some of the audit observations/objections have not been accepted by CBEC, DoR. There are also instances where non-compliance was first detected by internal Audit department of CBEC e.g. the issue of M/s Sigma Aldrich Chemicals Private Ltd, Bangalore (Para 4.2 of CAG's Report 9 of 2015) was already noticed by the Department during post audit of 2 Ex-bond Bill of Entries filed for De-bonding of goods. Upon noticing by the Post Audit, the differential duty payable was quantified at ₹ 1,16,809/- which was paid by the assessee vide challan No.22/2011-12 dated 07.09.2011. Hence, the quantification was done taking into consideration the date of commercial production, and applicable duties have already been recovered by the Department. Similarly, in case of M/s GEA Pharma Ltd.- Ahmedabad (Para 4.4 of CAG's Report 9 of 2015), Show Cause Notice dated 09.10.2014 for ₹ 31,73,099/- for the period from March 2010 to March 2014 has been issued for non payment of Service Tax on 'Commission Income received' for acting as sales commission agent (procuring sales orders in India) for the person residing abroad. It covers demand for ₹ 18,18,794/- for the period from July 2012 to March 2014, which was proposed initially on the basis of an Internal Audit Report. Further, the period has been extended for the past period i.e. March 2010 to March 2014.

Show Cause Notices have been issued in most of the admitted audit observations/objections and in some of the cases, duty/penalty has already been recovered. Departmental Officers have been directed to strictly follow the CBEC's Circulars, Notifications, Acts and Rules."

71. On being asked as to whether all the above said lapses have been enquired into and action taken against the erring officials, the Ministry of Finance (Department of Revenue) stated as follows:

"Yes. Most of the Audit observations can be checked only when units are audited thoroughly. Currently EOUs file monthly ER-2 returns without accompanying relevant documents like purchase invoice, sale invoice etc. The current system of assessment puts lot of trust in the assessee (EOU) and non-compliance/delinquent assesseees are dealt with regularly in our own internal audit reports or through enforcement machinery (Anti-evasion formations). Besides, if delinquency/connivance of excise officials are noticed, appropriate disciplinary action is taken against them. In the current audit, till now no instance has come to the notice of the department where excise officials need to be proceeded against."

72. When asked as to whether the verification of aforesaid cases with Central Excise authorities was completed and recovery effected in all the cases, the Ministry of Finance (Department of Revenue) sated as under:

"Yes. Show Cause Notices have been issued in most of the admitted audit observations/objections and in some of the cases, duty/penalty has already been recovered. The disposal of Show Cause Notice is through a standard operating procedure which takes time to conclude. As a number of audit objections are contested either by the assessee or by the department or both, many a time the process initiated with the issuance of a show cause notice gets concluded at the level of the Hon'ble Supreme Court. As a result recovery in such cases gets linked to litigation and has to wait till the matter attains finality."

73. In their Audit Report, the Audit had recommended that the Department may strengthen the internal control in case of DTA clearances by EOUs, by way of improving the prescribed mechanism of joint monitoring by Development Commissioners and Central Excise Authorities as well as by fixing accountability for any serious non compliance as per the FTDR/Customs/Central Excise/Service Tax Act. In response thereto, the Ministry of Finance (Department of Revenue) in their written replies stated as under:

"CBEC has already issued guidelines vide Circular No. 35/2001-Cus dated 15.06.2001 and Circular No. 41/2001-Cus dated 23.07.2001 regarding joint monitoring of EOUs. By Joint Monitoring, the department gets access to statements/returns/reports filed by EOUs to Department of Commerce and these are utilized for tallying with information/records filed before Central Excise authorities, thereby enabling to cross check export obligation/achievement of NFE of such units as prescribed in EXIM policy and initiating timely action against the defaulting units for safeguarding the interest of revenue.

However, it has again been reiterated to all jurisdictional Chief Commissioners to ensure such joint monitoring meetings are held regularly through UAC. As stated above, any misdemeanor on the part of the excise officials are dealt with by the disciplinary authority."

74. Other shortcomings as observed by audit in operation of EOU Scheme are as follows:

- (i) Scrutiny of records of DC, SEEPZ, NSEZ, Falta and CSEZ revealed that ten EOU units were allowed to exit from the scheme by allowing incorrect rate of duty on finished goods, stock of finished goods, unfinished goods and incorrect depreciation allowed on capital goods etc. This resulted in short levy of duty amounting to ₹ 1.93 crore.
- (ii) Scrutiny of records of DC, KSEZ revealed that six EOUs availed Cenvat credit amounting to ₹ 1.88 crore on payments towards sales commissions.
- (iii) Scrutiny of records of M/s. Mylan Laboratories Limited, (Unit-III) (100 per cent EOU), under DC VSEZ revealed that the unit received convertible foreign exchange equivalent to ₹ 737.14 crore during the period from July 2012 to March 2014 towards Dossier Sales. Service Tax on sale of Dossier for the period July 2012 to March 2014 worked out to ₹ 91.11 crore, which is recoverable from the unit.
- (iv) Similarly, another EOU, M/s Aurobindo Pharma Limited, Hyderabad, under DC VSEZ rendered similar services valued ₹ 36.66 crore with service tax liability of ₹ 4.53 crore to foreign buyers during July 2012 to March 2014.
- (v) Audit scrutiny of records of DC, Kandla revealed that one EOU received income on account of service provided by way of finding prospective customers in India for overseas client and in CSEZ, Cochin two units paid commission to foreign agents under Section 66A and in another unit received rent and processing charges, however, no service tax was levied in these cases.
- (vi) Audit observed from the records at the office of DC, FSEZ, that M/s-Mittal Technopack Pvt. Ltd, an EOU was reimbursed CST claim on goods which included PP Granules/Homopolymer procured from M/s Reliance Industries Ltd., an SEZ unit and not from DTA unit. This was in contravention to the provisions resulting in excess reimbursement of CST amounting to ₹ 12.11 lakh.
- (vii) Delay in submission of 3177 re-warehousing certificates ranging from 1 month to 73 months. The value of imports involved was ₹ 762.34 crore with duty forgone of ₹ 204.16 crore.
- (viii) Bond files and records of DC, NSEZ, VSEZ, SEEPZ and CSEZ revealed that five EOU units executed bonds in the form of B-17 bond far below the required amount in five EOUs ranging from 30 per cent to 193 per cent. In another two units bond register was not maintained. Execution of insufficient bond and non maintenance of bond register carries a risk of safeguarding of government revenue to the extent of ₹ 62.27 crore.

- (ix) In case of four units it was found that permission for job work from jurisdictional Asst/Deputy Commissioner of Customs and Central Excise were not obtained.

75. Audit also observed the cases of non availability of data of cases received for fixation of ad hoc norms and finalization thereof, non-levy of duty on consumption of imported inputs/raw materials/consumables etc. other than those allowed under SION, non-recovery of duty forgone on excess consumed imported inputs/raw materials, Violation of conditions in LoP, non-realisation of Foreign exchange, applicability of central excise exemption notifications issued under section 5A of the Central Excise Act, 1944 to EOU, ambiguity in the FTP and CE notification etc.

76. Detailed scrutiny of aforesaid audit observations and reply of the Ministry of Finance (Department of Revenue) thereon are given as under:

Short levy of duty at the time of exit from EOU Scheme

77. Paragraph 6.18 of FTP laid down the procedure and condition for EOU to exit from the EOU scheme. The procedure *inter alia* lay down that with the approval of DC, an EOU may opt out of scheme subject to payment of Excise and Customs duty. FTP further allows an EOU to exit from the scheme at any time on payment of duty on capital goods under the prevailing EPCG scheme for DTA units subject to fulfilling of positive NFE under EOU scheme.

78. Scrutiny of records of DC, SEEPZ, NSEZ, Falta and CSEZ revealed that ten EOUs were allowed to exit from the scheme by allowing incorrect rate of duty on finished goods, stock of finished goods, unfinished goods and incorrect depreciation allowed on capital goods etc. This resulted in short levy of duty amounting to ₹ 1.93 crore.

79. DoC in their reply (January and February 2015) stated that the cases have been forwarded to jurisdictional Central Excise Authorities to examine and submit the factual report.

80. Present status of aforesaid cases as furnished by the Ministry of Finance (Department of Revenue) is given as under:

Development Commissioner	Name of the unit	Short levy of Duty (₹ In lakh)	Nature of irregularity	Comments:
SEEPZ SEZ	M/s Smruthi Organics, Solapur	19.11	Finished goods cleared at concessional rate	Not admitted. There is no short payment of duty. The unit has not opted out of the scheme as per para No. 6.18 of FTP. They have only debonded and deleted some parts of the premises with permission from Dev. Commr., Mumbai. Also, Solapur Division has given 'No dues certificate' regarding deletion of existing blocks B,C,E & G from EOU to Smruti Organics after payment of Customs Duty and Central Excise Duty. The finished goods manufactured in erstwhile debonded blocks out of raw material accounted for and lying in the finished goods area of the EOU premises.
SEEPZ SEZ	M/s Virgo Valves & Controls Ltd., Pune	4.75	Duty paid at concessional rate on stock of finished goods	Not admitted. <u>Para 6.18 (a) of Foreign Policy, 2009-2014</u> prescribed that, such exit shall be subject to payment of Excise and Customs duties and industrial policy in force. Further <u>Appendix 14-I-L (NOTE -ii)</u> , guidelines for exit of EOU/EHTP/STP Units prescribed that the unit would continue to be treated as EOU/EHTP/STP unit till the date of final exit order or issue of fresh LOP under the new scheme in case of conversion from one scheme to the other and subject to monitoring of the stipulated obligations under the relevant scheme.
SEEPZ SEZ	M/s Virgo Valves & Controls Ltd., Pune	63.15	Duty paid at concessional rate on unfinished goods	The last step in the debonding process will be to obtain final de-bonding letter from Development Commissioner's office. During the process of obtaining de-bonding till the final certification the unit continues to operate as an EOU. Accordingly assessee has paid the applicable duties before exiting from EOU scheme.
NSEZ	M/s KEI Industries	6.01	Depreciation was not computed proportionately.	<u>NOT ADMITTED</u> The unit had rightly computed depreciation for discharging duty on old and used capital goods value while de-bonding at the time of Exit from EOU considering even part of a quarter as a full quarter. For claiming depreciation in their 100% EOU bonded warehouse, they were supposed to comply with provisions of Notification No.22/2003-CE dated 31.03.2003 as amended.

				<p>According to Para 8(i) of Notification No. 22/2003-C.E. Dated 31.03.2003, such clearance or de-bonding of capital goods may be allowed on payment of an amount equal to the excise duty on the depreciated value thereof and at the rate in force on the date of de-bonding or clearance, as the case may be, if the unit has fulfilled the positive NFE Criteria taking into consideration the depreciation allowable on the capital goods at the time of clearance or de-bonding. In case of failure to achieve the said positive NFE, the depreciation shall be allowed on the value of capital goods in the same proportion as the achieved portion of NFE. The depreciation shall be allowed in straight line method as specified below, namely:-</p> <p>(a) for computer and computer peripherals: for every quarter in the first year @10% for every quarter in the second year @8% for every quarter in the third year @5% for every qtr. in the fourth and fifth year @1%</p> <p>(b) for capital goods other than computer and computer peripherals: for every quarter in the first year @4% for every quarter in the second year @3% for every quarter in the third year @3% for every qtr. in the fourth and fifth year @2.5% and thereafter for every quarter @2%</p> <p>Explanation – (1) For the purpose of computing rate of depreciation for any part of a quarter, a full such quarter shall be taken in to account; (2) there shall be no upper limit for such depreciation and depreciation upto 100% could be allowed; (3) the depreciation shall be allowed for the period from the date of commencement of commercial production of the user industry or where such goods have been received after such commencement, from the date on which such goods have come into use for commercial production to the date of clearance or de-bonding, as the case may be.</p> <p>Therefore, while converting capital from 100% EOU to EPCG scheme, the unit was not to pay duty even on the depreciated value of those capital goods. Moreover, if they were to pay more duty taking the depreciated value, then said amount would have been available to them as Cenvat credit resulting into Revenue neutrality.</p>
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	M/s Skipper Electricals (India) Ltd Unit-II, Bhiwadi			As above.
FALTA SEZ	M/s Naffar Chandra Jute Mills Limited, Nadia	13.06	Depreciation was not computed proportionately	SCN has been issued vide C.No. V(15)20/CE/Kol-III/ADC/Adjn/2015/9567 dated 08.10.2015 for demand of duty of ₹ 13,06,252/- alongwith interest and penalty.
CSEZ	M/s. Sigma Aldrich Chemicals Private Ltd, Bangalore	2.2	Depreciation was not computed proportionately	<p>At present M/s. Sigma Aldrich Chemicals Private Limited, Bommasandra-Jigani Link Road, Bangalore is registered as a DTA Unit. The licensee has started commercial production on 01.09.2006 and de-bonded capital goods on 01.08.2011. Hence, they are eligible for depreciation of 60% for 20 quarters in terms of Customs Notification No.52/2003 Cus dated 31.03.2003. However, the depreciation is allowed at 62% resulting in short levy of ₹2.2 Lakhs as observed by the audit.</p> <p>The said issue was already noticed by the Department during post audit of 2 Ex-bond Bill of Entries filed for De-bonding of goods. Upon noticing by the Post Audit the differential duty payable was quantified at ₹1,16,809/- which was paid by the assessee vide challan No.22/2011-12 dated 07.09.2011. Hence, the quantification is done taking into consideration of date of commercial production, and applicable duties are already recovered by the Department.</p>
SEEPZ SEZ	M/s Galaxy Surfactant, Navi Mumbai	76.3	Credit on duty paid on capital goods 100% instead of 50%.	SCN is being issued.
FALTA SEZ	M/s Chaitanya Minerals, Jajpur	4.23	Under Rule 2(a) of the CENVAT Credit Rules, 2004 Capital Goods do	A Demand-Cum-Show Cause Notice bearing C.No. V-87(15)11/CCR/CM/JPR/2015/1140-1141 dated 24.06.2015 amounting to ₹ 4.23 lakhs has been issued.

			not include Motor Vehicles	
NSEZ	M/s Skipper Electricals (India) Ltd Unit-II, Bhiwadi,	4.59	Indigenous capital goods were taken under EPCG licence.	<p><u>NOT ADMITTED</u></p> <p>The unit had got converted from 100%EOU to DTA unit and for capital goods existed in EOU were converted under EPCG Scheme after getting necessary approval from Development Commissioner as also from this department and subsequent to which they had calculated the duties using their EPCG License while converting the whole process in line with law and procedure as given in Notification No.22/2003-CE dated 31.03.2003 as amended which is applicable in the instant case and in view of compliance of said provisions they had not contravened any provisions because indigenously procured capital goods are included in the word capital goods and no rider had been provided specifically for indigenously procured capital goods. Hence they were not supposed to pay any duty while clearing said capital goods under EPCG scheme. Even if they were liable to pay duty on their clearances they were entitled to avail Cenvat credit and, as such, it would have all been revenue neutral. Also, Notification No.22/2003-CE dated 31.03.2003 was fully complied with by them for claiming benefits in respect of goods which were domestically procured and they had already fulfilled the conditions of NFE and there was no such state of affairs with them as they had fulfilled the positive NFE criteria at the time of clearance or de-bonding in terms of Para 6.18 (d) of Foreign Trade Policy in terms of requirements.</p>

Incorrect availing of Cenvat credit

81. Central Excise circular dated 29 April 2011 stipulates that Cenvat credit is admissible on the services of sale of dutiable goods on commission basis. Hon'ble High Court of Gujarat, however, disallowed the credit considering the said service was not an input service and this judgement was further upheld in the High Court of Gujarat wherein it was also stated that order of jurisdictional High Court is binding on the department. Audit observed that the circular dated 29 April 2011 was still in force, the Central Excise Authorities have not amended the circular in lines of High Court judgement. Scrutiny of

records of DC, KSEZ revealed that six EOU's availed Cenvat credit amounting to ₹ 1.88 crore on payments towards sales commissions as detailed below:

Incorrect availing of Cenvat credit (sales commission)

Name of the unit	Jurisdictional authorities	Cenvat credit availed (₹ in lakh)
M/s Cadila Health Care Ltd.	Range I Padra Division II Vadodara I.	15.97
M/s Kemrock Industries and Exports Ltd.	Range II Division Wagodia Vadodara II	68.83
M/s Sun Pharmaceutical Industries Ltd.	Range II Division Ankleshwar III Surat II	33.62
M/s GEA Pharma Ltd.	AR-I, Div-City Division Vadodara-II	3.89
M/s KLJ Organic Ltd.	Range IV, Division II, Surat II	2.09
M/s Sun Pharmaceutical Industries Ltd.	Range III Division Wagodia Vadodara II	63.45

82. DoC in their reply (January and February 2015) stated that the Central Excise authority informed that SCN has been issued to M/s. Cadila Healthcare on 17 September 2014.

83. Remedial action by the Ministry of Finance (Department of Revenue) in the aforesaid cases is as under:

Name of the unit	Jurisdictional authorities	Cenvat credit availed (₹ In lakh)	CBEC Comments
M/s Cadila Health Care Ltd.	Range I Padra Division II Vadodara I	15.97	A Show Cause Notice bearing no. V.ch.28/15-10/OA/Cadila/ADC/ Div.II/2014 dt. 17.09.2014 for ₹ 15,96,969/- has been issued. The same has been confirmed vide Adjudication order No.VAD-CXCUS-JC-038- 15-16 dt.15.10.2015.
M/s Kemrock Industries and	Range II Division	68.83	A Show Cause Notice bearing No. V.Ch.39(04)/Kemrock/H-II/Adj/Commr /13/2015-16

Export Ltd.	Wagodia Vadodara II			dated 13.05.2015 amounting to ₹ 68,83,808/- has been issued. Under process, PH fixed for 08.12.2015, but party had not attended the hearing.
M/s Sun Pharmaceutical Industries Ltd.	Range II Division Ankleshwar III Surat II	33.62		A show cause notice of ₹33.61 lakhs has been issued on 21.10.2015. Under process of Adjudication, PH fixed for 22.01.2016.
M/s GEA Pharma Ltd.	AR-I, Div-City Division Comm. Vadodara-II	3.89		The unit has paid an amount of ₹ 3,88,909/- vide Debit Entry No. RG 23S 409 dated 25.08.2014 for incorrect availment of Cenvat Credit on Sales Commission.
M/s KLJ Organic Ltd.	Range IV, Division II, Surat II	2.09		A show cause notice bearing F.No.V(CH.38)3-15/DIV.II/ADC/2014-15 dt.28.11.2014 of ₹14,24,169/- for the period December 2009 to Oct., 2014 has been issued.
M/s Sun Pharmaceutical Industries Ltd.	Range III Division Wagodia Vadodara II	63.45		A SCN No. V.Ch.30(04)Sun Pharma/D-Wag/Commr/Adj/90/2014-15 dated 25.03.2015 has issued for disallowing cenvat credit of ₹ 63,45,010/- on sales commission and recovery thereof along with interest.

Non-levy of Service Tax

84. Online information and database access or retrieval services are brought under the service tax net vide notification No. 4/2001-ST dated 9 July 2001. Further, Rule 9 of Place of Provision of Service Rules, 2012 envisages that the place of provision of service or the services provided through online information and database access or retrieval will be the place of service provider. Scrutiny of records of M/s. Mylan Laboratories Limited, (Unit-II) (100 per cent EOU), under DC VSEZ revealed that the unit received convertible foreign exchange equivalent to ₹ 737.14 crore during the period from July 2012 to March 2014 towards Dossier Sales. As "Dossier" is being supplied by the unit to the overseas customers (recipient) in electronic form through a computer network and delivered over the internet or an electronic network accordingly, the activity falls under "Online information and database access or retrieval service". The services are provided from the taxable territory (Hyderabad, India) and the receiver is located

overseas and the charges are received by the unit in foreign currency hence do not fall under the category of exports of services. The service tax thus will be payable by the unit being the service provider as per Rule 9 ibid. Service Tax on sale of Dossier for the period July 2012 to March 2014 worked out to ₹ 91.11 crore, which is recoverable from the unit.

85. The action taken by the Ministry in regard to above said cases is given as under:

"The objections raised are accepted by the department. SCNs NO.116/2015-ADJN(ST) (Commnr) dt.20.10.2015 has been issued to the Assessee for the period 2012-13 to 2014-15 for an amount of ₹ 138.14 crore. The case is pending for adjudication."

86. Similarly, another EOU, M/s Aurobindo Pharma Limited, Hyderabad, under DC VSEZ rendered similar services valued ₹ 36.66 crore with service tax liability of ₹ 4.53 crore to foreign buyers during July 2012 to March 2014.

87. As regards the Action taken in respect of above case the Ministry of Finance informed that:

"SCN No.117/2015-ADJN(ST)(Commnr) dt.20.10.2015 has been issued to the Assessee for the period July, 2012 to March 2014 for an amount of ₹ 6.94 crore, in which an amount of ₹ 4.53 crore is towards dossier sales i.e. for the subject audit. The case is pending for adjudication."

88. Audit Scrutiny of records of DC, Kandla revealed that one EOU received income on account of service provided by way of finding prospective customers in India for overseas client and in CSEZ, Cochin two units paid commission to foreign agents under Section 66A and in another unit received rent and processing charges, however, no service tax was levied in these cases as detailed below:

Non levy of Service tax

DC	Unit	Amount of Service tax not levied (₹ in crore)	
KASEZ, Gandhidham	M/s GEA Pharma Ltd.- Ahemdabad	0.18	Income received on account of service provided by way of finding prospective customer in India for overseas client.
CSEZ, Kochi	M/s AVT McCormick Ingredients Pvt Ltd, Vazhakulam	1.31	Commission paid to foreign agents under Sec 66A of Finance Act 1994.

CSEZ, Kochi	M/s Synthite Industries Ltd	0.07	Commission paid to foreign agents under Sec 66A of Finance Act 1994.
CSEZ, Kochi	M/s Alleppey Company Ltd, Puthenangadi	0.16	Processing charges and rent received
Total		1.72	

89. The reply as received from the Ministry of Finance (Department of Revenue) on the above said cases is as follows:

"M/s AVT McCormick Ingredients Pvt Ltd, Vazhikulam

Not admitted. The Unit claimed exemption as per Notification Nos. 18/2009 ST dated 07-07-2009. The exemption is limited to 1% of the FOB value of export goods for which the said service has been used. The conditions for availing the exemption under the above said notification (upto 30.06.2012) is that the unit is to submit the EXP1 and EXP2 every six months to the concerned Assistant Commissioner of the division. Subsequently, w.e.f. 01.07.2012 vide notification No. 42/2012 ST the basic condition for availing the exemption has remained same but "the exemption is enhanced to 10% of the FOB value". Therefore, under notification no. 42/2012-ST dated 29.06.2012, they have paid commission in foreign currency in permissible limit set by the relevant notification.

The unit have submitted EXP 1 and EXP2 every six months to the Assistant Commissioner division on time with all relevant documents. Since the unit is eligible to avail the exemption under the above said notifications, they have not paid commissions in foreign currency in excess of the amount.

M/s Synthite Industries Ltd

Objection is admitted. SCN no. 103/2015-ST dt. 17.06.2015 has been issued for an amount of ₹ 7.51 lakhs covering the period from 2010-11 to 2013-14.

M/s Alleppey Company Ltd, Puthenangadi

Not admitted. M/s. Alleppey Co. Ltd, are doing processing work like weaving, dyeing, bleaching, drying action floor covering items falling under chapter 57 of Central Excise tariff for their sister concerns at their factory TACFLOORCO situated at Ammandivilai P.O, Nagercoil, K.K. District, Tamilnadu for which they are receiving processing charges and the figures are reflected in the consolidated Balance Sheet. No unit belonging to the Alleppey Company under this Commissionerate is doing job work as confirmed by the assessee. The processing unit is having separate Service Tax Registration No.AABCT2048MSD005.

Further, Notification No. 19/2005 ST dated 7.06.2005 exempts taxable services provided to a client by Commercial concern or any person in relation to Business Auxiliary, in so far it relates to Production or processing of goods on behalf of the client and provided in relation to Agriculture printing, textile processing or education from the whole of the service tax leviable thereon under Section 66 of the Finance Act. Job work in relation to Textile processing in respect of coir and other matings falling under Chapter 57 of the Central Excise

Tariff is exempt from Service tax by virtue of the aforesaid Notification. This exemption was also extended for further period vide notification No. 25/2012 dated 20.06.2012 Item No. 30 with effect from 1.07.2012.

Regarding Rent receipts, they have taken on lease building belonging to Cochin Port Trust which was rented out and the rent receipts were shown as rental income in the Consolidated Profit and loss A/C. The Rent received shown in the Profit & Loss Account for the year 2011-12 was ₹ 7.53 lakhs and the payment of Service Tax on ₹ 5.51 lakhs was already been reported and Service Tax of ₹ 18,834/- on the remaining amount of ₹ 2.02 lakhs have been paid vide challan dated 23.10.14 and 30.03.15. The rent received during 2012-13 is 3.44 lakhs and the tax payable is ₹ 42,518/-. The party has paid ₹ 31,238/- in PLA and the balance of ₹ 11280/- through Cenvat credit. They have taken Service tax Registration under Service Tax Division, Ernakulam (Service Tax C Range) bearing Registration No. AABCT2048MST 001 and they have paid service tax under the category of Customs House Agent and filed ST3 Returns with Service Tax C Range."

Non-receipt of re-warehousing certificates

90. As per the provisions of Section 67 of the Customs Act, 1962, read with Warehoused Goods (Removal) Regulations, 1963, goods can be removed from one warehouse to another warehouse by executing a bond for an amount equivalent to duty leviable on such goods. Paragraph 12.1 under Chapter 25 of Customs Manual and Regulation 4 of Warehoused Goods (Removal) Regulations, 1963, provides that the warehouse owner shall produce re-warehousing certificate within a period of ninety days from the date of issue of procurement certificate failing which he shall be liable to pay import duty leviable on such goods.

91. Audit observed that delay in submission of 3177 re-warehousing certificates ranged from 1 month to 73 months. The value of imports involved was ₹ 762.34 crore with duty forgone of ₹ 204.16 crore.

92. In this regard the Ministry of Finance (Department of Revenue) stated that instructions have been issued to field formations that re-warehousing certificates should be sent within stipulated period by all concerned Jurisdictional Central Excise Superintendents/ Range Officers vide their letter dated 21.10.2015.

Removal of goods for job work without obtaining permission from jurisdictional authorities

93. As per para 6.14(a)(i) of Customs Act 1962, (1) the importer of any goods specified in sub-section (1) of section 61, which have been entered for warehousing and assessed to duty under section 17 or section 18 shall execute a single all-purpose bond

before jurisdictional DC/AC of Customs and Central Excise binding himself in a sum equal to twice the amount of the duty assessed on such goods covering liability of duty in the event of failure to achieve positive NFE.

94. Audit scrutiny of Bond files and records of DC, NSEZ, VSEZ, SEEPZ and CSEZ revealed that five EOUs executed bonds in the form of B-17 bond far below the required amount in five EOUs ranging from 30 per cent to 193 per cent. In another two units, bond register was not maintained. Execution of insufficient bond and non maintenance of bond register carries a risk of safeguarding of government revenue to the extent of ₹ 62.27 crore.

95. Reply of the Ministry of Finance (Department of Revenue) in respect of aforesaid cases is as under:

1. **M/s Keerti Industries Ltd:** This para has already been covered in SOF vide No. PDA/Central/RAINDT/P-X/2014-15/69, dt. 24-9-2014. SCN was issued vide C.No. V/15/20/CE/2014-Adjn(AC), dt. 28-11-2014 which has been adjudicated vide OIO No. 001/2014-15, dt. 23-1-2015 by imposing a penalty of ₹ 2,000/- under Rule 25(1)(a) of Central Excise Rules,2002.

2. **M/s DVB Design and Engineering:** The unit has accounted for the job worked goods with all documents and records. No revenue loss has been noticed except for the technical/ procedural lapse of non-intimation of the goods sent for job work to the Department. For this, a Show Cause Notice vide C.No. V/82/15/05/2015-Adj, dated 26.03.2015 was issued to the unit proposing penalty for their failure to obtain prior permission for sending the goods outside the bonded premises for job work purpose. The same has been adjudicated and a penalty of ₹ 3,000/- has been imposed vide OIO No. 01/2015 dated 14.05.2015 and assessee paid penalty of ₹ 3,000/- on 05.06.2015.

3. **M/s Santec Exim Pvt Ltd:** The unit has not obtained permission for job work from jurisdictional Division office. SCN dated 23.03.2015 has been issued vide C.No. GL-6/IAR/Santec Exim/R-21/07/2013-14 alongwith penalty by Central Excise Delhi-I Commissionerate.

4. **M/s Welspring Universal:** The unit had got permission to get job work done from outside upto 31.03.2010 and thereafter, they applied for permission for the year 2010-11, 2011-12, 2012-13 but the same was not processed at divisional level. However, the goods sent for the job work during these years were brought back by the unit within the stipulated time and there was no diversion and there is no duty involvement in the case."

Non-levy of duty on consumption of Imported inputs/raw materials/consumables etc, other than those allowed under SION

96. As per Sl. No.- A 1049 of Standard Input Output Norms (SION), FTP (2009-14)(Vol.2), for manufacture and export of 'Ophthalmic lenses', input allowed is 'Rough

blanks'. Audit scrutiny of records relating to M/s GKB Rx LENS PVT. Ltd., (100 per cent EOU) located in Kolkata & Gurgaon (additional unit) under jurisdiction of DC, FSEZ & Kolkata-V/Delhi-III Central Excise Commissionerate revealed that LoP was issued in February, 1995 and June, 2009 respectively for manufacture of 'Ophthalmic lenses'. However, the units imported and consumed 'Spectacle Lens' and 'consumables' during 2009-14, which were not eligible items of import for manufacture of 'Ophthalmic lenses'. As per the raw material procurement data furnished by the EOU the unit imported 'Spectacle Lens' and 'consumables' worth ₹ 363.13 crore involving duty of ₹ 77.83 crore during the period of 2009-14 which was inadmissible. On this being pointed out (September 2014), DC, Falta stated (November 2014) that during 2009-10 to 2013-14 the EOU unit at Gurgaon did not use 'Rough blanks made up of glass'-CTH-70151010 (which was permissible item of import for export of Ophthalmic lenses as per SION entry No. A-1049 for manufacture of Ophthalmic lenses') and used only 'Spectacle lenses made up of plastic'- CTH-90015000 and as per importer's claim, in view of paragraph 6.6(e) of HBP (v-1) and notification no. 52/2003-Cus, there was no need of fixing the SION from DGFT or any other authority because their waste/scrap/remnants are less than 2 per cent of input quantity.

97. In this regard, the Ministry of Finance in their reply submitted as follows:

"The unit has been importing semi-finished/uncut finished spectacle lenses as permitted by the Asstt Development Commissioner (ADC), FALTA, Special Economic Zone, Kolkata. The unit has not imported Rough Ophthalmic Blanks as raw material for making Ophthalmic lenses. Since the party uses uncut finished spectacle Lenses and semi-finished spectacle lenses only, both made up of Plastic and falling under CETH 90015000 and do not use Rough Blanks made of Glass covered under CETH 70151010, the SION entry No. A1049 does not apply in this case. The generation of waste, scrap and remnants is nil during the process of manufacture, hence, in view of para 6.6(e) of FTP Handbook of Procedures, Volume-I and notification No.52/2003-Cus dated 31.03.2003, there is no need of fixing the separate SION from DGFT because the waste/scrap/remnants are less than 2% of input quantity. Hence, in view of the above facts, condition 3(d)(i) of the Notification No 52/2003-Cus dated 31.03.2003 does not appear to be attracted. Although the Audit objection has been contested by this office, however a protective Show Cause Notice no. 670/2014-15 dated 06.02.2014 for the period 2009-2014 has been issued to the party."

98. The comments of Audit on the aforesaid reply of the Ministry are as follows:

"The reply is not tenable because the exported item of the objected EOU, as mentioned in their LoP, was 'Ophthalmic lenses' for which the appropriate SION is (A - 1049) according to which permissible imported input was 110 Nos 'Rough

Blanks'. The said LOP, was not amended till date of audit to include the exported item of 'Plastic Ophthalmic Lenses of different specification' which has a separate SION No. (H540) allowing import of relevant plastic ophthalmic lenses with 5% permissible wastage norm. Moreover, as per provisions of Para 6.6 (e) of HBP (2009 14) v - 1 and Condition (3)(d)(i)(ii) of Customs Notification No. 52/2003-Cus. dt. 31.03.2003, consumption of inputs by the EOU unit shall be based on the Standard Input Output Norms (SION) only. Therefore, consumption of any inputs other than those provided in the SION related to export items approved in LOP was irregular."

Applicability of central excise exemption notifications issued under section 5A of the Central Excise Act, 1944 to EOU

99. Audit observed that in eight EOUs, seven under jurisdiction of DC, Falta and one under DC, SEEPZ, Mumbai availed duty exemption benefit of ₹ 17.67 crore under central excise notification issued under section 5 of the Central Excise Act in contravention to the proviso there under as detailed below:

Applicability of Central Excise notification

(₹ in crore)

S.No	Development Commissioner	Name of the unit (M/s)	Period/date of de bonding	Value of clearance into DTA	Duty short paid/not paid
1	Falta SEZ	Sova Power Ltd.	2009-14	62.63	8.19
2	Falta SEZ	Manaksia Ltd., Hooghly	2009-14	4.45	0.60
3	Falta SEZ	Synergy Electric Pvt. Ltd.	2007-13	16.06	2.35
4	Falta SEZ	Gradient Wire Product Pvt. Ltd.	2012-14 (upto 20.3.14)	4.52	0.27
5	Falta SEZ	Goodricke Group Ltd.	2009-13 (up to 28.5.12)	9.20	1.42
6	Falta SEZ	Al Champdany Industries Ltd	25.5.2012	NA	3.81
7	Falta SEZ	Naffar Chandra Jute Mills Ltd.	6.5.2013	NA	0.27
8	SEEPZ SEZ	Shreya Life Science Pvt, Ltd	2008-09 to 2010-11	8.58	0.76

100. Central Excise Department in respect of one unit under SEEPZ SEZ issued SCN for ₹ 0.76 lakh.

101. The response of the Ministry of Finance (Department of Revenue) in this regard is given as under:

"Proviso to Section 3 of the Central Excise Act 1944 stipulates that duty on EOUs for DTA clearances would be an amount equal to duties of customs leviable under Customs Act or any other law for the time being in force. Therefore, there is no contradiction between provisions of Section 5A and Section 3 of the Central Excise Act in as much as:-

- a) The duties of DTA clearances from EOU are an amount equal to the duties of customs leviable under Customs Act or any other law for the time being in force which in this case is Section 3 of the Customs Tariff Act and this section provides only effective rate of excise duty as CVD.
- b) Even section 5A's exclusion of applicability on EOU is conditional meaning that its (Section 5A) benefit can apply to EOU, it is expressly provided in the notification. Thus notification 23/2003 - CE dt. 01.04.2003 which is the master notification for exemptions provided to EOUs has specific provision at S.No. 2 of the notification which provides as under:

"In excess of the amount equal to the aggregate of duties of Customs leviable on like goods, as it,-

- (i) Duty of customs specified in the First Schedule to the Customs Tariff Act, 1975, read with any other notification in force was reduced by 50%, and
- (ii) No additional duty of customs was leviable under sub-section 5 of section 3 of customs Tariff Act."

Thus, it is seen that there is no contradiction in Section 3 & Section 5A of Central Excise Act for charging duty on DTA clearances."

102. The Comments of Audit on the aforesaid reply are given below:

"The ambiguity created due to contradiction between Sec 3 and Sec 5A of the Central Excise Act 1944 becomes more apparent from the Ministry's stand in their reply that Section 3 of the Customs Tariff Act provides only effective rate of excise duty as CVD. Because, if Section 3 of the Central Excise Act 1944, as per Ministry stand, provides for collection of effective rate of excise duty as CVD on DTA sale, collected under Sec 3 of Customs Tariff Act, then it contradicts the proviso to Sec 5A of Central Excise Act which disallow the benefit of Central Excise duty exemption on such DTA sale. (ii) Sl No. 2 of the Notification 23/2003-CE dt. 01.04.2003, which is applicable on DTA sale by EOUs, also grants exemption of excise duty in excess of the amount equal to the aggregate of duties of Customs leviable on like goods and does not speak anything on how to calculate CVD under Section 3 of the Customs Tariff Act which forms a part of aggregate of duties of Customs leviable under Section 3 of Central Excise Act 1944."

PART - II
OBSERVATIONS AND RECOMMENDATIONS

1. The Committee note that the Government of India introduced 100 percent Export Oriented Scheme *vide* Ministry of Commerce Resolution dated 31.12.1980. The purpose and thrust of the scheme was to boost exports by generating additional production capacity. The activities of EOUs include manufacture, services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, pisciculture, viticulture, poultry and sericulture. In order to make these units cost efficient, facilitate their free access to foreign technology and encourage them to venture into foreign markets on a large scale, wide range of incentives have been introduced for the units operating under the scheme. The key objective of the Government was to arrest the declining exports and reverse the trend and achieve export target of US \$ 450 billion in 2013-14 and then to \$750 billion in 2016-17.

2. The functioning of EOUs is governed by three tier administrative set up. The Board of Approval (BoA) is the apex body and is headed by the Secretary, Department of Commerce. The Unit Approval Committee (UAC) at the Zonal level deals with the approval of the units within the jurisdiction of Development Commissioner (DC), who is *ex officio* chairperson of the UAC. The provisions of the Customs and Central Excise law in respect of the EOUs are administered by the Commissioner of Customs and Central Excise under the control of Central Board of Excise and Custom (CBEC), Ministry of Finance (MoF).

3. Chapter 6 of FTP 2009-14 and HBP I 2009-14 govern the scheme. In addition, relevant provisions of Central Excise Act 1944, the Customs Act, 1961 and rules made thereunder and the notifications issued under provisions of Finance Act 1994 relating to the applicability of Service Tax and provisions of Foreign Exchange Management Act, 1999 etc. are also applicable. Monitoring achievement of Net Foreign Exchange (NFE) and in cases of default, levy of penalty under section 11(2) of Foreign Trade (Development and Regulation) Act, 1992 (FTD&R Act) are within the jurisdiction of the DC functioning under the Department of Commerce (DoC). With the approval of DC/BoA, EOUs can be de-

bonded on their inability to achieve NFE or other exigencies, subject to payment of duty applicable at the time of de-bonding.

4. In depth examination of the subject by the Committee has revealed following irregularities and deficiencies in the implementation of the Scheme:

- (i) The total number of EOUs had gone down from 3109 in 2009-10 to 2608 in 2013-14. While the number of functional units had come down from 2279 to 2095 during the same period, the percentage of functional units to total units had declined from 83 per cent in 2010-11 to 80 per cent in 2013-14 with corresponding increase in percentage of non-functional and deboned units. There had been a gradual reduction in EOUs after the SEZ Act came into force in 2006-07. The Foreign Trade Policy (FTP) did not have any special provision to utilise the unique advantages of the 100 per cent EOU Scheme.
- (ii) The share of EOUs in overall exports had been declining during last five years barring a marginal improvement in 2010-11. In addition the growth rate of EOU exports was not commensurate with growth rate of overall exports of the country except in 2013-14. In fact, it turned negative during 2011-12.
- (iii) Though, the duty forgone on the scheme remained static in FY13 and FY14 (₹ 5800 crore), the export by EOU dipped by 11 per cent in FY14 over the exports of FY13.
- (iv) No incentive was allowed on capital and revenue expenditure incurred by the unit during setting up of the unit (unlike SEZs) and further running of the unit.
- (v) EOU has to pay duty, taxes etc on import/procurement from DTA resulting in blockage of capital money of the entrepreneur. Similarly, EOUs are allowed credit of Service tax and refund CST paid on inputs which is a tedious process for the unit as well as Department.
- (vi) Multiple bodies [Unit Approval Committee (UAC), Board of Approval (BoA) and Policy relaxation Committee (PRC)] are approving proposals for setting up of EOUs.
- (vii) EOUs have comparative disadvantage vis-a-vis SEZ/DTA in respect of deemed export supplies.
- (viii) No impact assessment was done before implementing EOU scheme by the Department of Commerce (DoC). Neither was any midterm evaluation done while implementing the SEZ Act in direct competition to the EOU scheme.
- (ix) Information on EOUs are not captured and displayed in the dedicated website of DoC/Export Promotion Council (EPC)/Evidence of Origin (EOO).
- (x) Neither the Controller of Aid, Accounts and Audit of Department of Economic Affairs nor Chief Controller of Accounts of Department of Commerce has audited the EOU scheme.

- (xi) In 48 cases irregular/incorrect DTA sales were noticed by EOUs under DCs Mumbai, Cochin, Noida, Kandla and Falta involving short/non levy of duty of ₹ 62.52 crore which included clearance of products into DTA in excess of permitted limits, irregular availing of concessions on clearance of finished goods into DTA, clearance/sale of marble into DTA in violation of provisions of FTP, short payment of duty on sale of scrap in DTA, non-payment of SAD on clearance made to DTA, non-payment of proportionate Anti-Dumping Duty (ADD) on DTA clearance, irregular DTA sale by 100 per cent EOU despite negative NFE and non reversal of Cenvat credit on clearance of goods without payment of duty.

The aforesaid irregularities have been discussed in the succeeding paragraphs.

5. The Committee observe with serious concern about the non-availability of updated data in EOU's dedicated website. Neither the DGFT nor DCs have put up the year-wise details in the website, especially about the number of EOUs functioning, number of new entrants, number of units which have opted out of the scheme, their exports/imports etc. As a result, this data is not available in the website of the Ministry of Commerce/DGFT. Further, in the dedicated website of EOU (i.e. eouindia.gov.in) only certain data upto the financial year 2007-08 is available. DCs also do not have a database relating to EOUs similar to that of SEZ's units, falling under their jurisdiction. In this regard, the Ministry of Commerce & Industry apprised the Committee that they are in the process of setting up separate website for EOUs with a link from SEZ website. Besides, instructions have been issued to the Zones to ensure regular updation of data relating to EOUs in their respective zones. The Committee are of the view that mere issuing of routine type of instructions will have a little impact until these are regularly monitored. The Committee are further constrained to observe that in the dedicated website of EOU only data like that of export performance of EOUs since 2011-12, State-wise distribution of EOUs, export performance of SEZs, combined export performance of EOUs and SEZs and export share of EOUs and SEZ in India's export and progress of SEZs in India are available. Concerned over such casual approach of the Ministry in maintaining upto date data on their website, the Committee recommend that monitoring of updating such data must be strengthened and the concerned officers responsible in the defaulting zones inflicted with deterrent punishment. The Committee further recommend that both the DGFT and Department of Revenue should strive for an efficient coordination

and integration in maintaining periodically reconciled data with a view to ensuring proper monitoring and evaluation of the 100% EOU Scheme.

6. The Committee are pained to note that the Audit had also conducted a review of the 100% Export Oriented Unit Scheme in 2007 and the findings included in their Report No. 7 of 2007 are disturbing. Out of the nine recommendations made in their Report, only two recommendations on (i) Verification of Macro-data of functional/closed and debonded units in coordination with Department of Revenue; and (ii) Strengthening of internal control mechanism to ensure that the Domestic Tariff Area (DTA) sales effected are after achieving of export obligation by the units were accepted. In respect of other seven recommendations, the Department of Commerce had not sent any specific reply to the Audit. These seven relegated recommendations include, the review and strengthening of existing provisions of Foreign Trade (Development and Regulations) Act, 1992, to protect the revenue of the Government; Investigations into the reasons for short accountal/suppression of production; proper scrutiny and reconciliation of export performance data furnished by Development Commissioners and amendment of provisions of CST drawback correctly to the duties relating to export goods only and not for the goods sold in DTA. Unfortunately, the Department of Commerce has not initiated any action to implement these valuable recommendations. The worst part is that even in respect of two accepted recommendations, no tangible action has so far been taken by the Department. The Committee view this lackadaisical attitude of the Ministry seriously and desire that responsibility of the officers should be fixed for this serious lapse. The Committee would also like to be apprised of the reasons for not accepting the aforesaid seven recommendations of Audit.

7. The Committee are constrained to observe that the total number of EOUs has gone down from 3109 in 2009-10 to 2608 in 2013-14. While the number of functional units has come down from 2279 to 2095 during the same period, the percentage of functional units to total units has declined from 83 percent in 2010-11 to 80 percent in 2013-14 with corresponding increase in percentage of non-functional and debonded units. Further, there has been a gradual reduction in EOUs after the SEZ Act came into force in 2006-07. The primary reason as attributed by the Ministry of Commerce for declining trend regarding functional

units is discontinuation of Income Tax benefits on the export profits to EOU from April, 2011. The Committee are also constrained to observe that the share of EOUs in overall exports has been declining during last five years barring a marginal improvement in 2010-11. In addition the growth rate of EOU exports is not commensurate with growth rate of overall exports of the country except in 2013-14 and it turned negative during 2011-12. As regards the steps taken to arrest this declining trend the Committee have been informed that the Ministry of Commerce had constituted Panda Committee in the year 2011. Certain recommendations of the Panda Committee have been incorporated in 5 year FTP announced on 01.04.2015. However, the Committee are surprised to note that out of 41 recommendations given in Panda Committee report, Department of Commerce accepted only seven recommendations. The Committee are again perturbed to find that the Panda Committee had not done any impact study of its recommendations whether it be of fiscal, procedural nature or pertaining to the FTP. The revenue implication for Government and cost implication for the EOUs, was neither computed nor estimated. Neither any time line was set by the Panda Committee for implementation of its recommendations nor was any outcome measures suggested. The Ministry of Commerce have now informed that these seven recommendations accepted by them have been incorporated in FTP 2015-20. The Committee regret to note that the Panda Committee was constituted in 2011, however, reply of the Ministry is silent as to when this Committee had submitted its Report and why its recommendations had been incorporated in 5 year FTP announced on 01.04.2015 i.e. after laying of Audit Report on the subject in Parliament and selecting the subject for detailed examination by the Public Accounts Committee. The Committee are anguished to note that even though widespread abuse of the scheme had come to the notice of the Ministry at least since 2007 via C&AG Report No. 7 of 2007, no timely action was taken by them for constituting the Committee and instead it took five long years for the same. The Ministry, on the other hand remained contented with incorporating eight out of 41 recommendations of the Panda Committee in FTP 2015-20. The Committee view with disapproval the failure on the part of the Ministry in dealing with the matter with firmness and promptitude it deserved. The Committee would, now therefore, desire that in addition to inclusion of Panda Committee recommendations in FTP on 01.04.2015, necessary corrective measures be

initiated to arrest the declining number of EOUs while prescribing specific timelines and measurable outcomes so that the basic objective of export growth is achieved. The Committee would like to be apprised of the action taken in this regard.

8. The Committee find that owing to their flexibility and unique position, EOU Scheme flourished in 1980s, 1990s and upto mid 2000 but over a period of time the export from SEZs had increased as against the exports from EOUs as several EOUs and STPIs had closed and shifted their base to SEZs after partial fulfillment of their growth obligations. Necessary actions stated to have been initiated by various Development Commissioners and the filed formation of Central Excise Authorities for taking remedial measures. Besides, in order to make the EOU Scheme more vibrant and attractive than the SEZ Scheme, Department of Commerce had constituted Panda Committee in the year 2011, certain recommendations of which had already been incorporated in 5 year FTP announced on 01.04.2015. The Committee are anguished to note that a detailed study of comparison of benefits between SEZ, EOU and DTA units has not been conducted by the Department of Revenue or Department of Commerce so far. However, from the comparison of benefits given to SEZ units and EOUs the Committee notice that while the SEZ units are entitled for duty free imports for setting up unit, no duty free benefits are extended for setting up EOU. Similarly, SEZ units are given IT Exemption on the export profits as per section 10AA of Income Tax Act, no such Income Tax exemptions on export profits since April, 2011 are given to EOU units. Further, in regard to SEZ units DTA Sale is on payment of full duty, while for EOUs it is on payment of concessional duty. In case of SEZ units, supply of goods from DTA to SEZ stated as physical exports, while in case of EOUs it is stated as deemed exports. The Committee also, find that a detailed study about the experience of other countries in the field had also not been made. They, therefore, desire that a specific analysis of the benefits accrue to the SEZ units and EOUs be done so as to avoid shifting of EOUs to SEZs. Thereafter, a suitable strategy be evolved for attracting EOUs into the 100% EOUs Scheme and all necessary steps should be taken to remove the constraints/impediments in their successful operation. The successful

experience of foreign countries can be dovetailed so as to accelerate the pace of development of EOUs.

9. The Committee observe that the Government of India had foregone significant customs and central excise revenue amounting to ₹ 32,932 crore during 2009-10 to 2013-14 on EOU/EHTP/STP Scheme. The scrutiny of figures of revenue foregone during these years revealed that though the duty foregone on the scheme remained static in FY 13 and FY14 (₹ 5800 crore), the exports by EOU dipped by 11 percent in FY14 over the exports of FY13. However, the figures of revenue foregone for the years 2009-10 to 2015-16 as provided by the Department of Commerce revealed that it has been increasing from ₹ 2845.78 crore in 2009-10 to ₹ 5396.04 crore in 2015-16 (upto November, 2015). According to Ministry, the revenue foregone is allowed to EOUs for promotion of export. Therefore, more revenue foregone may also be an indicator of more export. The Committee cannot accept it as a valid explanation in this case as export by EOUs came down by 11 per cent during the Financial year 2014 as compared to Financial Year 2012. The Committee further note that no serious attempt has ever been made by the Ministry concerned to evaluate the impact of concessions incentives etc. extended to EOUs from time to time. The Committee need to emphasise that extension of any incentive or concession should be followed up with a detailed evaluation to enable the Ministry to assess the efficacy of such incentives in terms of growth of the sector. The Committee would also like to stress that export targets must be fixed for each zone and each unit by the Development Commissioners alongwith approval of incentives and facilities to them. In case of non-achievement of export target incentives may be stopped.

10. The Committee note that there is no structured internal audit mechanism in the Ministry of Commerce & Industry to assist in oversight of the functioning of EOUs. Absence of structured internal audit arrangement is fraught with the risk of undetected misrepresentation of facts by EOUs. Neither the Controller of Aid, Accounts and Audit nor Chief Controller of Accounts (DoC) has audited the EOU Scheme. Department of Commerce in February, 2015 admitted that neither internal audit of EOUs at field level have been conducted so far nor any audit has been conducted by the Controller of Aid, Accounts and Audit of the scheme

during 2009-10 to 2013-14. The Committee are aghast to note that no reasons have been explained by the Ministry for such a lapse. The Committee are unable to comprehend as to how in the absence of such an audit the Ministry could monitor the scheme in order to take corrective measures to enable defaulting units to fulfill their obligations. Several steps are stated to be taken by the Department of Commerce to institutionalise a system of regular internal Audit such as developing the system of internal control prescribing Joint Monitoring, providing detailed guidelines for monitoring of EOUs etc. For Internal control also, instructions have been issued to DCs and many DCs have engaged Chartered Accountants for carrying out financial scrutiny of the system effectively. The Committee are of the firm view that urgent and effective implementation of the said measures are essential for maintaining internal Audit mechanism based on sound financial principles thereby promoting the growth of the EOUs.

Non filing/delay in filing APR

11. As per the standing instructions, the EOUs should submit the Annual Progress Report (APR) in the prescribed form wherein the EOUs report procurement of raw material/capital goods, imported as well as indigenous, export and local sales etc. The APR is a tool through which the Unit Approval Committee (UAC) monitors the EOUs. It is mandatory that every EOU to furnish the APR within 90 days of the close of financial year failing which further Imports of DTA sale will not be permitted. The Committee note that there was delay ranging from one month to 20 months in filing of 948 APRs in the offices of the DC, SEEPZ, Mumbai, DC, NSEZ, Noida and DC, VSEZ, Visakhapatnam. In SEEPZ, Mumbai, there was delay in filing of APRs in 57 percent cases (925 cases out of 1615 APRs filed during 2009-13). Further, out of 419 EOUs (128 units in SEEPZ Mumbai, 286 units in NSEZ, Noida and five units in FALTA, Kolkata respectively) were neither formally de-bonded nor filed APRs during the period 2009-14. One such case of non-filing of APRs, which has been discussed by the Audit in their Report, revealed that M/s Parameshwar Creation Private Limited has been extended an undue exemption of income tax amounting to ₹ 1.4 crore and also the Development Commissioner, Noida cancelled the LoP and imposed a penalty of ₹ 75 lakh (October, 2013). However, no action has been initiated to recover the

IT benefit till November, 2014. In January and February, 2015, the unit had deposited only ₹ 15 lakh out of ₹ 75 lakh as penalty and filed appeal in Department of Commerce against the Development Commissioner's order. Now, the Committee have been informed that the instructions have been issued to all the Zones for timely filing of APRs. The Committee fail to understand as to how in the absence of APRs the DCs are able to monitor the performance of EOUs correctly. They are of the considered view that this issue requires urgent attention of the Ministry. They also desire that some foolproof system needs to be evolved to ensure that APRs containing all relevant data are submitted regularly in time and defaulting EOUs are suitably penalised for delayed/non-submission of APRs.

Mismatch of figures as per APRs and Excise data

12. The Committee find that the comparison of the data of import and export for the period 2009-10 to 2013-14 furnished by the Central Excise Department and the corresponding data of APRs furnished by the Export Oriented Units has revealed that there was a glaring mismatch in the figures of import and export return by the units to the Development Commissioners and figures of Excise Department in case of seven units. In the case of Sandvik Asia Unit No. II under SEEPZ, Mumbai, the import data furnished by Development Commissioner for the years 2009-10 to 2012-13 was ₹ 247.08 crore whereas the Excise Department reported ₹ 856.62 crore. Similarly, in respect of PC Jewellers under NSEZ, Noida, the import data furnished by the Development Commissioner was ₹ 159.91 crore as against ₹ 7.08 crore as furnished by the Excise Department. Similar observation was made by the Audit in its earlier report no. 7 of 2007. It is, therefore, necessary that an effective mechanism is devised in order to crosscheck and rectify the disparities in the datas of the APR and Central Excise. Responsibility of the officers should be fixed for the lapses in compilation and incorrect reporting of figures to the C&AG/Committee. The Committee are again shocked to note that till February 2015 there is no provision or method in the present policy to cross verify APR data and Central Excise data. However, the Committee have been informed that efforts have now been made to reconcile the data between DCs and Central Excise through Joint Monitoring mechanism, as prescribed in Appx. 14.1.9 of HBP 2009-14 and Appx. 6F of HBP 2015-20. The

Committee therefore, desire that all efforts should also be made to optimally utilize the joint monitoring mechanism for ensuring correctness in compiling statistics relating to the various components of the scheme.

13. The Committee observe that the domestic procurements made by EOUs have not been reported in the APRs. Further, the duty foregone in import and domestic procurements made by the units were also not captured in the QPRs/APRs. In 13 cases, procurement of indigenous inputs from DTA amounting to ₹ 549.50 crore where suppliers claimed deemed export benefit for the supplies made to EOUs has not been reported by EOUs in APRs. Apprising the Committee about the number of APRs not received till December, 2015, the Ministry of Commerce and Industry submitted that 360 units have not submitted their APRs and SCNs have been issued to them for delayed/non-submission of the same. The Committee would like to be apprised of the final outcome of the SCNs issued. As regards the issue of revising APR format to include a column on duty foregone data, the Ministry stated that it will be examined in consultation with the concerned Ministries/Departments. The Committee desire that the Department may initiate measures urgently to ensure that the proforma APRs are modified to the extent to include domestic purchases and corresponding duty foregone.

14. The Committee observe that in 48 cases irregular/incorrect DTA sales were noticed by EOUs under DCs Mumbai, Cochin, Noida, Kandla and Falta involving short/non levy of duty of ₹ 62.52 crore which included clearance of products into DTA in excess of permitted limits, irregular availing of concessions on clearance of finished goods into DTA, clearance/sale of marble in DTA in violation of provisions of FTP, short payment of duty on sale of scrap in DTA, non-payment of SAD on clearance made to DTA, non-payment of proportionate Anti-Dumping Duty (ADD) on DTA clearance, irregular DTA sale by 100 per cent EOU units despite negative NFE and non reversal of Cenvat credit on clearance of goods without payment of duty. In this regard, the Committee have been informed that Show Cause Notices have been issued in most of the admitted audit observations/objections and in some case, duty/penalty has already been recovered. The disposal of Show Cause Notice is through a standard operating procedure which takes time to conclude. As a number of audit objection are contested either by the assessee or by the department or both, many a time the

process initiated with the issuance of a show cause notice gets concluded at the level of the Hon'ble Supreme Court. As a result recovery in such cases gets linked to litigation and has to wait till the matter attains finality. Further, CBEC has already issued guidelines vide Circular No. 35/2001-Cus dated 15.06.2001 and Circular No. 41/2001-Cus dated 23.07.2001 regarding joint monitoring of EOUs. By Joint Monitoring, the department gets access to statements/returns/reports filed by EOUs to Department of Commerce and these are utilized for tallying with information/records filed before Central Excise authorities, thereby enabling to cross check export obligation/achievement of NFE of such units as prescribed in EXIM policy and initiating timely action against the defaulting units for safeguarding the interest of revenue. However, it has again been reiterated to all jurisdictional Chief Commissioners to ensure such joint monitoring meetings are held regularly through UAC and any misdemeanor on the part of the excise officials are sternly dealt with by the disciplinary authority. The Committee would await the outcome of these steps.

15. The Committee also find the following shortcomings in operation of EOU Scheme:

- (i) Scrutiny of records of DC, SEEPZ, NSEZ, Falta and CSEZ revealed that ten EOUs were allowed to exit from the scheme by allowing incorrect rate of duty on finished goods, stock of finished goods, unfinished goods and incorrect depreciation allowed on capital goods etc. This resulted in short levy of duty amounting to ₹ 1.93 crore.
- (ii) Scrutiny of records of DC, KSEZ revealed that six EOUs availed Cenvat credit amounting to ₹ 1.88 crore on payments towards sales commissions.
- (iii) Scrutiny of records of M/s. Mylan Laboratories Limited, (Unit-III) (100 per cent EOU), under DC VSEZ revealed that the unit received convertible foreign exchange equivalent to ₹ 737.14 crore during the period from July 2012 to March 2014 towards Dossier Sales. Service Tax on sale of Dossier of the unit for the period July 2012 to March 2014 worked out to ₹ 91.11 crore, which is recoverable from the unit.
- (iv) Similarly, another EOU, M/s Aurobindo Pharma Limited, Hyderabad, under DC VSEZ rendered similar services valued ₹ 36.66 crore with service tax liability of ₹ 4.53 crore to foreign buyers during July 2012 to March 2014.

- (v) Audit scrutiny of records of DC, Kandla revealed that one EOU received income on account of service provided by way of finding prospective customers in India for overseas client and in CSEZ, Cochin two units paid commission to foreign agents under Section 66A and in another unit received rent and processing charges, however, no service tax was levied in these cases.
- (vi) Audit observed from the records at the office of DC, FSEZ, that M/s Mittal Technopack Pvt. Ltd, an EOU was reimbursed CST claim on goods which included PP Granules/Homopolymer procured from M/s Reliance Industries Ltd., an SEZ unit and not from DTA unit. This was in contravention to the provisions resulting in excess reimbursement of CST amounting to ₹ 12.11 lakh.
- (vii) Delay in submission of 3177 re-warehousing certificates ranging from 1 month to 73 months. The value of imports involved was ₹ 762.34 crore with duty forgone of ₹ 204.16 crore.
- (viii) Bond files and records of DC, NSEZ, VSEZ, SEEPZ and CSEZ revealed that five EOUs executed bonds in the form of B-17 bond far below the required amount ranging from 30 per cent to 193 per cent. In another two units bond register was not maintained. Execution of insufficient bond and non maintenance of bond register carries a risk of safeguarding of government revenue to the extent of ₹ 62.27 crore.
- (ix) In case of four units it was found that permission for job work from Jurisdictional Asstt/Deputy Commissioner of Customs and Central Excise were not obtained.

The Committee also observe the cases of non availability of data of cases received for fixation of ad hoc norms and finalization thereof, Non-levy of duty on consumption of imported inputs/raw materials/consumables etc. other than those allowed under SION, Non-recovery of duty forgone on excess consumed imported inputs/raw materials, Violation of conditions in LoP, Non-realisation of Foreign exchange, Applicability of central excise exemption notifications issued under section 5A of the Central Excise Act, 1944 to EOU, Ambiguity in the FTP and CE notification etc.

In this regard the Committee have been informed that in case of admitted Audit observations, Show Cause Notices have been issued, some cases are under process of adjudication, In some other cases penalty alongwith interest has been recovered and instructions have also been issued to field formations for taking remedial action as per specified procedure in several other cases. The Committee

may be apprised of the number of cases that are under process of adjudication. The Committee strongly urge that the matter should be earnestly pursued with the judicial authorities with a view to securing early finalization of these cases and the final outcome in each case be reported to them. The Committee also desire that details of the cases where SCNs have been issued be provided to them alongwith recovery of dues.

16. The Committee observe that in eight EOUs seven under the jurisdiction of DC, Falta and one under DC, SEEPZ, Mumbai availed duty exemption benefit of ₹ 17.67 crore under Central excise notification issued under section 5 of the Central Excise Act in contravention to the proviso thereunder. However, according to Department of Revenue proviso to section 3 of the Central Excise Act, 1944 stipulates that duty on EOUs for DTA clearances would be an amount equal to duties of customs leviable under customs act or any other law for the time being in force. Therefore, there is no contradiction between provisions of section 5A and section 3 of the Central Excise Act for charging duty on DTA clearances. In this regard, the Audit are of the view that the ambiguity created due to contradiction between section 3 and Section 5A of the Central Excise Act, 1944 becomes more apparent from the Ministry's stand that Section 3 of the Customs Tariff Act provides only effective rate of excise duty as CVD. Because, if section 3 of the Central Excise Act 1944, provides for collection of effective rate of excise duty as CVD on DTA sale, collected under Section 3 of Customs Tariff Act, then it contradicts the proviso to section 5A of Central Excise Act which disallow the benefit of Central Excise duty exemption on such DTA sale. The Committee, therefore, desire that the Department of Revenue may consider suitable amendment to remove the ambiguity created due to contradictory provisions of Section 5A and section 3 of the Central Excise Act, 1944.

17. The foregoing paragraphs reveal that there are several shortcomings in the implementation of 100 per cent EOU Scheme resulting in drastic decline in the number of units as well as revenue under the scheme. The Committee note that though few corrective measures have been taken to make the Scheme attractive and profitable, they are not satisfied with this and expect more supportive measures to boost the growth of EOUs and encourage for setting up of more

EOUs. Keeping in view the grave nature of the irregularities, the large scale misuses and also taking into account the enormous amount of revenue foregone, the Committee are convinced that there is a need for undertaking a detailed inquiry into the manner of operation of this Scheme. They accordingly recommend that a high powered independent inquiry should be ordered in the light of the facts contained in this Report with a view to finding out the unscrupulous elements responsible for the rampant abuse of the Scheme and also to fix responsibility of the officers for their various acts of omissions and commissions. The Committee further desire that the Department of Commerce and Department of Revenue should conduct a comparative study of the benefits accrued to SEZ units and EOUs so as to find out the reasons for shifting of EOUs to SEZ sector. The Committee would like to be informed of the action taken in the matter.

NEW DELHI;
25 April, 2016
5 Vaisakha 1938 (Saka)

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

**MINUTES OF THE EIGHTEENTH SITTING OF THE PUBLIC
ACCOUNTS COMMITTEE (2015-16) HELD ON 31ST DECEMBER, 2015.**

The Committee sat from 1130 hrs. to 1330 hrs. on 31st December, 2015 in Committee Room No. "C", Parliament House Annexe, New Delhi.

PRESENT

Prof. K. V. Thomas - Chairperson

MEMBERS

LOK SABHA

2. Shri Bhartruhari Mahtab
3. Shri Janardan Singh Sigriwal
4. Dr. Kirit Somaiya

RAJYA SABHA

5. Shri Satyavrat Chaturvedi
6. Shri Shantaram Naik
7. Shri Sukhendu Sekhar Roy

LOK SABHA SECRETARIAT

1. Shri A. K. Singh - Additional Secretary
2. Shri T. Jayakumar - Director
3. Shri A.K. Yadav - Deputy Secretary
4. Smt. Anju Kukreja - Under Secretary

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

1. Shri Balvinder Singh - Deputy C&AG (CRA)
2. Shri Nilotpall Goswami - Principal Director of Audit (Customs)
3. Shri Manish Kumar - Principal Director of Audit (PAC)

2. At the outset, the Chairperson, PAC welcomed the Members and Officers of the C&AG of India to the sitting of the Committee. The Chairperson, then apprised the Members that first the Committee would have an oral evidence of the representatives of the Ministry of Finance (Department of Revenue) and Ministry of Commerce and

Industry (Department of Commerce) on the subject "Performance of 100 Percent Export Oriented Unit (EOU) Scheme" based on C&AG's Report No. 9 of 2015 and then the Committee take up selection of additional subjects for detailed examination during the term 2015-16.

3. Thereafter, the Audit officers briefed the Committee on the above mentioned subject. Then the representatives of the Ministry of Finance (Department of Revenue) and Ministry of Commerce and Industry (Department of Commerce) were called in.

4. The Chairperson in his introductory remarks highlighted that the Audit report of 2015 reflects the sorry state of this scheme, which itself is more than 35 years old. The Export Oriented Unit Scheme was launched in December 1980. It took twenty years to launch Special Economic Zones. The SEZ Act came into force in 2006-07. While boosting exports was the primary purpose, the scheme has been subjected to a lot of changes over the years. The scheme is probably the most significant scheme for the Department of Commerce to realize its aspiration detailed in the Foreign Trade policy of 2014, of "achieving an average annual growth of exports of 25% over the next six years" and to take the level of "merchandise exports to US\$750 billion by 2020."

5. He observed that the Result Framework Document of the Department of Commerce does not mention EOU. No outcome study has been conducted since 2009. DOC has also indicated to the Audit that issues related to EOUs have not been included in the pre-budget proposal of DOC for the year 2015-16. He also pointed out that the number of EOUs had declined to 2608 from 3109 between April, 2009 and March, 2014. The number of functional units had also come down from 2,279 in 2009-10 to 2,095 in 2013-14. The percentage of functional units to total units fell marginally from 83% in 2010-11 to 8% in 2013-14.

6. The Chairperson observed that there had been reduction in benefits for EOUs over these years. The main reasons for opting out by the EOUs from the scheme were unavailability of benefits of DEPB (duty entitlement pass book), drawback, DFRC (Duty Free Replenishment Certificate) and target plus scheme; discontinuation of income tax benefits under section 10B of IT Act.

7. He further pointed out that the export by EOUs was about ₹ 1,76,923 crore in 2009, and had come down to ₹ 82,072 crores in the year 2014. Its share in the total

export has come down from 21.04% in 2009 to just 4.3 % in 2014. During the same period, the exports by SEZ had increased from 99,689 crores to ₹ 4,64,077 crores.

8. The Chairperson observed that the audit had conducted a review of the 100% Export Oriented Unit Scheme in 2007 and the findings were included in their report No.7 of 2007 (Indirect Taxes). Out of the nine recommendations made in their report, it was seen that only two recommendations on (i) verification of macro-data of functional/closed and de-bonded units in coordination with Department of Revenue; and (ii) strengthening of internal control mechanism to ensure that the Domestic Tariff Area (DTA) sales effected are after achieving of export obligation by the units were accepted. In respect of the remaining seven recommendations, the Department of Commerce had not sent any specific reply to the audit. Even in respect of two accepted recommendations, no tangible action has so far been taken.

9. He further observed that as many as 128 units were existing without valid approval and that the units were not monitored by the Department to ensure that these function within the existing norms. It was also pointed out by the Audit that the number of units in operation was more than the number of valid approvals, in six Commissionerates and that a sum of ₹ 1,624.50 crore was due for recovery towards penalty, interest, etc., from 451 closed/de-bonded units. Besides, the Audit has identified a payment of ₹ 440.85 crores which was outstanding for the past 12 years in respect of 194 EOUs in seven SEZs and advised recovery of Government dues.

10. Another glaring irregularity is the non-availability of the data in EOUs dedicated website. Neither the DGFT nor DCs have put up the year-wise details in the website, namely the number of EOU functioning, number of individual entrants, number of units which has opted out of the scheme, their exports/imports, etc. The Audit had also observed that in the website of EOUs, only certain data relating to 2007-08 were available. DCs do not have a data-base relating to EOU similar to that of SEZ units.

11. The Chairperson then observed that it is seen from the records of the Offices of DC, SEEPZ, Mumbai; DC, NSEZ, Noida, etc., that there is a delay ranging from one month to 20 months in filing of 948 APRs. In SEEPZ, Mumbai, there was a delay in filing of APRs in 57% cases, i.e. 925 out of 1615 APRs filed during 2009-2013. He

also drew the attention of the representatives to Direction 55(1) relating to confidentiality of the matter till the report was presented to the House.

12. As the Chairperson had to attend some other important meeting, he authorized Shri Bhartruhari Mahtab, Member of PAC to preside over the meeting in his absence. Thereafter, representatives of the Ministry of Finance (Department of Revenue) & Ministry of Commerce and Industry (Department of Commerce) gave clarifications on the issues raised by the Chairperson, PAC. Then, Members sought clarifications on various issues which *inter-alia* included objectives behind initiation of the Export Oriented Unit (EOU) Scheme, steps taken by the Department of Commerce to make the EOUs cost efficient, facilitate their free access to foreign technology and encourage them to venture into foreign markets on a large scale. Members also asked about the revenue foregone during the last five years on EOU scheme, study of comparison between SEZ, EOU and DTA units, conducted by the Department of Revenue or Department of Commerce, reasons for not updating the website of EOU. They then sought reasons for the declining trend of registered units and functional units, non-implementation of recommendations of S.C. Panda Committee, steps contemplated by both the Ministries to make the EOU Scheme more attractive than the SEZ Scheme, measures initiated to prevent the EOUs from shifting their base to SEZs, delay in filing of APRs etc. Members also drew the attention of the representatives towards 48 cases where cases of irregular/incorrect DTA sales were noticed by EOUs under DCs Mumbai, Cochin, Nodia, Kandla, Falta and Cochin involving short/non levy of duty of ₹ 62.52 crore. The representatives of the Ministry of Finance (Department Revenue) and the Ministry of Commerce and Industry (Department of Commerce) clarified various issues raised by Members of the Committee and assured that the written replies on all the issues raised by the Committee would be furnished expeditiously. The Chairperson, PAC then took over and presided over the remaining part of the sitting. He thanked the representatives of the Ministry of Finance (Department of Revenue) and Ministry of Commerce & Industry (Department of Commerce) for deposing before the Committee and also asked them to furnish the requisite information sought by the Members.

The witnesses, then withdrew.

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

13. The Chairperson then desired the Members to give their views on the selection of subjects for detailed examination during the term 2015-16. After some discussion, the Members authorized the Chairperson to finalise the subjects in the light of their suggestions and from the list of important subjects as provided by the Office of the C&AG of India. The final list of subjects selected by the Committee is reproduced as Annexure to these Minutes.

14. The Chairperson, then, thanked the Office of the C&AG of India for providing valuable assistance to the Committee in the examination of the subject as well as the selection of additional subjects.

The Committee then adjourned.