

Chapter V: Show Cause Notices (SCNs) & Adjudication Process in CBIC

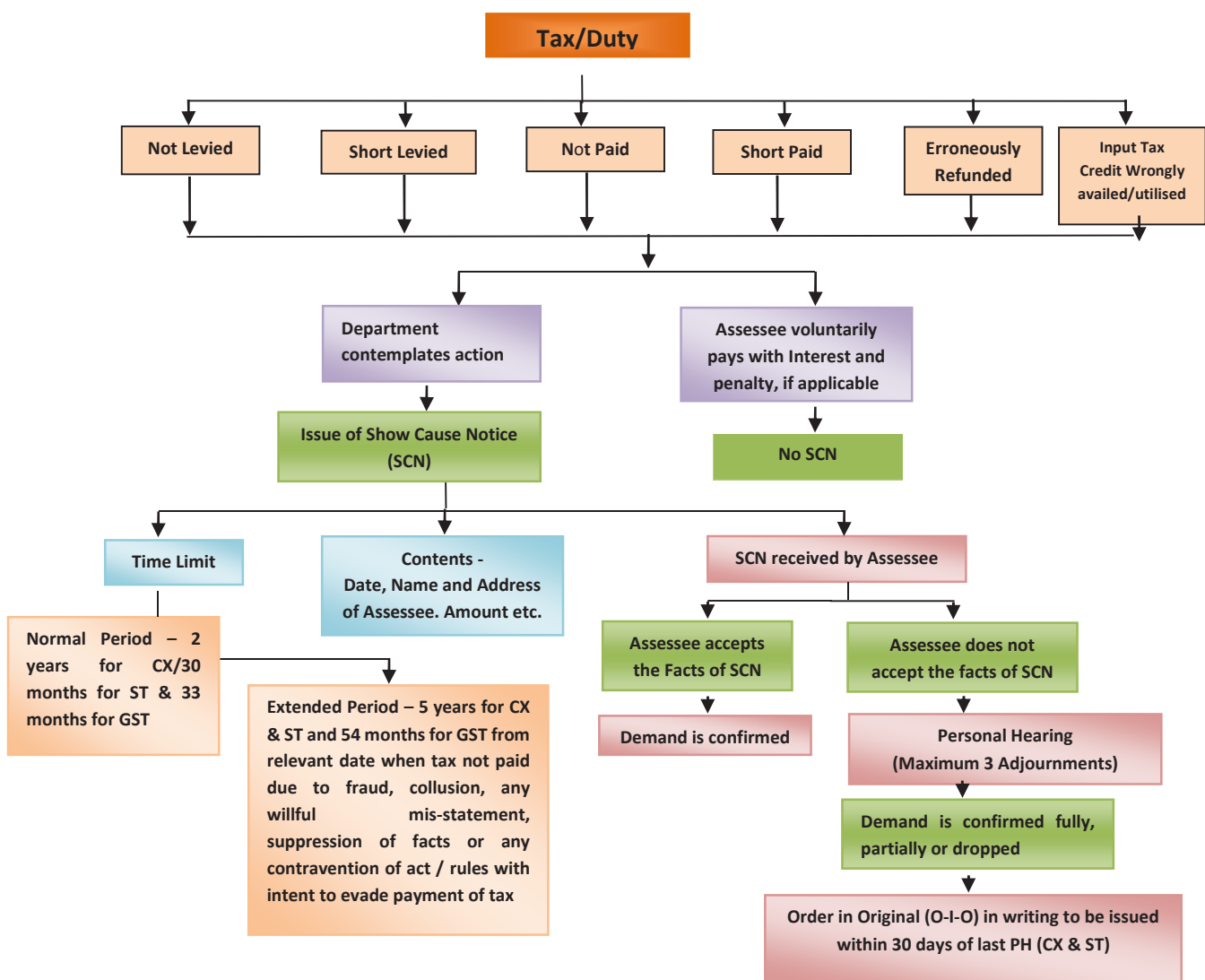
5.1 Introduction

Adjudication is a quasi-judicial function of the departmental officers of the Central Board of Indirect Taxes and Customs (CBIC). Through imposition of an appropriate penalty after adjudication, the department seeks to ensure that no revenue loss is caused by the contravention of applicable laws and rules, which may result in non/short payment of tax, erroneous refunds, irregular availing of CENVAT credit etc. It is mandatory that a Show Cause Notice (SCN) is issued if the department contemplates any action prejudicial to the assessee. The SCN would detail the provisions of law allegedly violated and ask the noticee to show cause why action should not be initiated against him under the relevant provisions of the Act/Rules. Thus, an SCN gives the noticee an opportunity to present his case.

5.2 SCN and adjudication process

Process for issue of SCNs and their adjudication under the three Acts viz. Central Excise Act, 1944, Finance Act, 1994 and CGST Act, 2017 are described in the relation chart below;

Chart 5.1
SCN and Adjudication Process



5.3 Administrative set up for Issue of SCNs and adjudication process

The organizational chart of Central Board of Indirect Taxes and Customs (CBIC) is depicted in Chart-5.2. As on 31 March 2019, CBIC was supported by 21 Zones, 107 Executive Commissionerates, 725 Divisions and 3,785 Ranges. In addition, there were 48 Audit Commissionerates alongwith 71 other units. The monetary limits in relation to adjudication⁶⁸ are depicted in Chart-5.3

⁶⁸ As per the Master Circular No.1053/02/2017-CX dated 10 March 2017

Chart 5.2
Organizational Structure for SCN & Adjudication Process

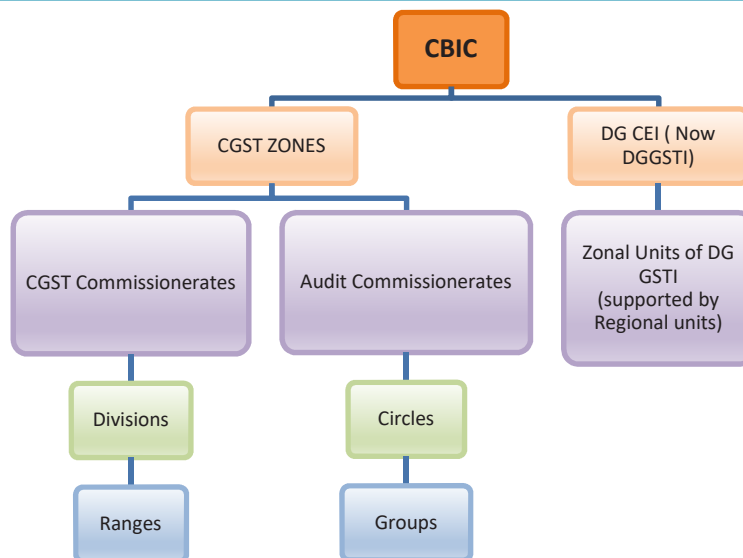


Chart 5.3
Monetary limit for Adjudication of SCNs

Commissioner	•Cases exceeding rupees two crore
Additional/ Joint Commissioner	•Above fifty lakh but not exceeding rupees two crore
Deputy/ Assistant Commissioner	•Above ten lakh but not exceeding rupees fifty lakh
Superintendent	•Not exceeding rupees ten lakh

5.4 Results of previous Audits

We had examined the SCN and adjudication process of the department in FY15 covering the period FY12 to FY14. This was included in Chapter-II of Report No. 1 of 2016 (Service Tax) and Chapter-V of Report No. 2 of 2016 (Central Excise). The major findings of that exercise, inter-alia, were incorrect invocation of extended period of time while issuing SCN resulting in demands getting timed barred, delay in adjudication of SCNs, non-issuance of adjudication orders within stipulated period and non-periodic review of Call Book cases resulting in irregular retention of cases in Call Book.

The Ministry in its Action Taken Note (ATN) (June 2016) stated that all the field formations had been instructed for timely issuance of SCN and strict monitoring to reduce delays in various stages and processing of SCN so that the interest of both the Government revenue and the assessee are protected. The Ministry further stated (March 2017) that a master circular dated 10 March 2017 had been issued for SCN & Adjudication process, which provided for strict adherence to time limit for issuance of SCN and rightful invocation of extended period of limitation, as prescribed in para 3.1 to 3.7 of the said circular. Para 14.10 of the circular further states that in all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible but not later than one month in any case, barring in exceptional circumstances to be recorded in the file.

We followed up on the Ministry's reply, and during the course of current audit, noticed persistent compliance deviations with respect to issue of SCN and Adjudication process despite Ministry's assurance in the action taken note (March 2017). The audit findings are reported in the subsequent paras.

5.5 Audit Objectives

In the present audit, we examined:

- a) the adequacy of rules, regulations, notifications, circulars/instructions etc. issued from time to time in relation to adjudication process;
- b) whether the extant provisions of law and rules relating to issue of SCNs and adjudication process were being complied with adequately;
- c) whether there was an effective monitoring and internal control mechanism to ensure timely corrective action by the department.

5.6 Scope of Audit, Audit Criteria and Audit Sample

5.6.1 Scope of Audit

During the audit, we had examined the SCN files, registers and monthly returns prepared by the departmental offices related to SCN and adjudication process for the period FY17 to FY19.

5.6.1.1 Audit Sample

We followed a risk based sampling method to identify departmental units for audit. We selected one to three executive Commissionerates from each CGST Zone depending on the number of Commissionerates in a Zone, based on stratified random sampling. In the zones where the number of executive Commissionerates is 1 to 5, one Commissionerate has been selected. In the zones where the number of executive Commissionerates is 5 to 10, two Commissionerates have been selected. In the zones where the number of

executive Commissionerates is more than ten, three Commissionerates have been selected. In addition to executive Commissionerates, one Audit Commissionerate from each Zone and one Zonal Unit of Directorate General of Goods and Services Tax Intelligence (DGGSTI) (earlier DG CEI) was selected in addition to the DGGSTI Headquarter for audit. The details of departmental units selected for audit are given in table 5.1 below-

Table No. 5.1: Universe and sample of departmental units

Type of units	Total number of units	Units selected as sample
Executive Commissionerate (CGST)	107	28 Commissionerates (including 28 division and 26 Ranges there under)
Audit Commissionerate	48	20
Zonal units of DGGSTI	25	14 (including DGGSTI Hqrs)

We have selected 116 units under Executive Commissionerates, Audit Commissionerates and Zonal units of GSTI including DGGSTI, New Delhi⁶⁹.

Further, sample of SCN related files, available in the selected units, was derived for detailed examination based on random sampling. The audit universe and sample for focus audit areas are detailed in table 5.2 below:

⁶⁹ Ghaziabad, Allahabad, Jamshedpur, Ahmedabad North, Rajkot, Vadodara II, Jaipur, Mumbai South, Mumbai West, Raigad, Pune II, Nashik, Hyderabad, Visakhapatnam, Bhubaneswar, Trichy, Chennai North, Thiruvananthapuram, Jalandhar, Gurugram, Bhopal, Bengaluru East, Mangalore, Kolkata North, Howrah, Guwahati, Agartala, Delhi South, Kanpur Audit, Meerut II Audit, Ahmedabad Audit, Vadodara Audit, Jaipur Audit, Raigad Audit, Pune II Audit, Nashik Audit, Hyderabad I Audit, Visakhapatnam Audit, Bhubaneswar Audit, Chennai I Audit, Kochi Audit, Ludhiana Audit, Gurugram Audit, Delhi II Audit, Bhopal Audit, Bengaluru I Audit, Kolkata I Audit, Guwahati Audit, DGGI Hqrs. Delhi, Lucknow DGGI, Ahmedabad DGGI, Jaipur DGGI, Pune DGGI, Hyderabad DGGI, Visakhapatnam DGGI, Bhubaneswar DGGI, Chennai DGGI, Ludhiana DGGI, Bhopal DGGI, Bengaluru DGGI, Kolkata DGGI and Guwahati DGGI.

Table No. 5.2: Universe and Sample of files selected for detailed examination

Sl. No.	Focus Area	Period	Audit Universe	Audit Sample		Sample as % of population
				No.	Amount	
1.	SCN pending for adjudication ⁷⁰	As on 31 March 2019	11,723	4,457	29,672.96	38
2.	SCNs adjudicated	FY17 to FY19	8,766	3,335	17,208.40	38
3.	SCNs pending in Call Books	As on 31 March 2019	5,491	2,191	13,308.02	40
4.	Remand back cases	FY17 to FY19	748	622	3,358.21	83
5.	Waiver of SCNs	FY17 to FY19	17,095	1,020	1,155.69	6
6.	Draft SCNs(DSCNs) pending for issuance	As on 31 March 2019	203	203	1,282.80	100
7.	CERA audit objections	FY17 to FY19	1,079	373	912.15	35
8.	SCNs & DSCNs transferred due to GST restructuring	July 2017 to March 2019	551	500	523.26	91

5.6.2 Audit Criteria

The audit criteria included the provisions related to adjudication in the Central Excise Act, 1944, the Finance Act, 1994, rules and circulars issued by the Board to its field formations viz. the master Circular No. 1053/02/2017-CX dated 10 March 2017 vide which all other circulars on this subject were rescinded except the three circulars i.e. 984/08/2014-CX dated 16 September 2014, 137/46/2015-S.T. dated 18 August 2015 and 1023/11/2016-CX dated 8 April 2016. As for GST, audit criteria included provisions relating to demand and recovery as contained in Section 73 to 84 of Chapter XV of IGST Act, 2017 and rule 142 to 161 under chapter XVIII of the CGST Rules, 2017.

5.7 Performance of the department in adjudication of SCNs

5.7.1 Receipts, Disposal and Closing Balance of SCNs pending for adjudication

As per Sub-Section 11(b) of Section 11A of Central Excise Act, 1944 read with Sub-section 4B of Section 73 of the Finance Act, 1994 as amended with effect

⁷⁰ This also includes:

- 1,922 SCNs issued and transferred to other formations by the Audit Commissionerates
- 2,208 SCNs issued and transferred to other formations by DGGSTI Units.

from 06 August 2014, SCNs issued in normal cases were to be adjudicated within six months in respect of Central Excise (CE) & Service Tax (ST), and SCNs issued for fraud and collusion cases should be adjudicated within two years relating to CE and in one year relating to ST.

Details of receipt, disposal and closing balance of the SCNs during the last three years are given in table 5.3 below:

Table No. 5.3: Receipt, Disposal and closing Balance of SCNs

Table No. 5.3(A) - Central Excise

Year	Opening balance(SCN)		SCNs issued during the year		SCNs disposed during the year		Closing Balance (SCN)		Percentage of disposal
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	
	FY17	23,104	29,354.68	55,520	50,218.92	68,166	59,097.92	10,347	
FY18	10,347	20,474.20	28,876	50,513.21	30,321	53,776.60	8,534	17,401.47	77.30
FY19	8,534	17,401.47	17,174	28,219.49	18,719	28,210.50	6,989	17,410.46	72.81

Table No.5.3 (B) - Service Tax

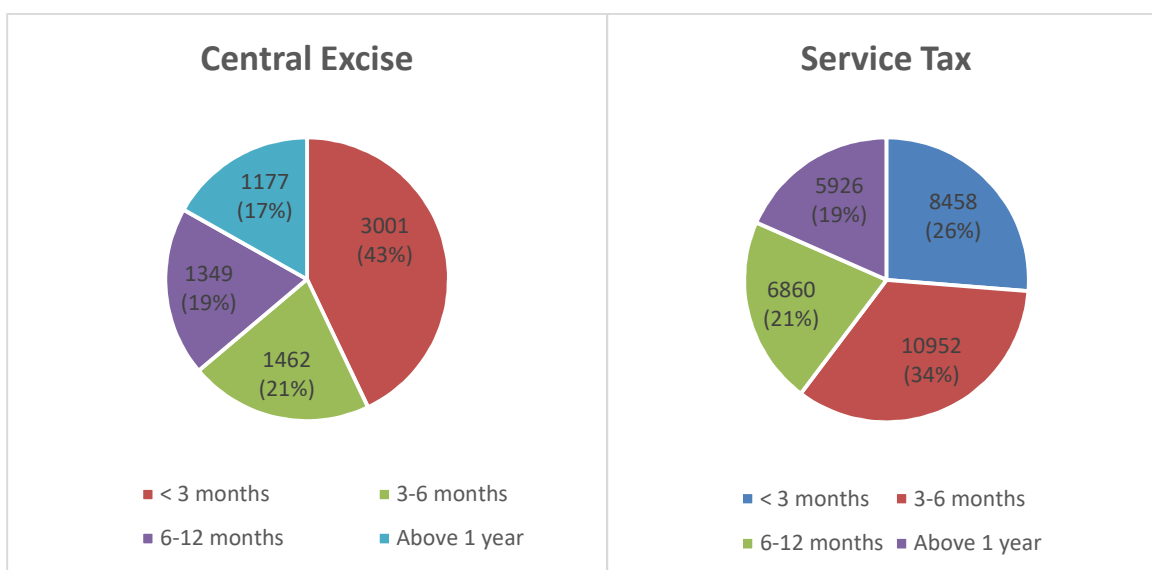
Year	Opening balance(SCN)		SCNs issued during the year		SCNs disposed during the year		Closing Balance (SCN)		Percentage of disposal
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	
	FY17	30,453	76,123.74	54,310	67,413.25	65,702	74,594.52	19,053	
FY18	19,053	68,940.78	35,173	70,918.42	32,349	55,931.20	22,208	81,280.44	59.65
FY19	22,208	81,280.44	44,776	1,25,740.29	34,788	92,256.81	32,196	1,14,764.40	51.93

As evident from the table above, as on 31 March 2019, 6,989 SCNs with Central Excise duty of ₹ 17,410.46 crore and 32,196 SCNs with Service Tax of ₹ 1, 14,764.40 crore were pending for adjudication. The disposal of SCNs was showing a declining trend as is evident from the tables above. Disposal of SCNs declined from 86.69 per cent in FY17 to 72.81 per cent in FY19 in respect of Central Excise. Similarly, disposal of SCNs in Service Tax declined from 77.51 per cent in FY17 to 51.93 per cent in FY19.

5.7.2 Age-wise analysis of pending SCNs

Age wise pendency of SCNs pertaining to Central Excise and Service Tax is shown in the Chart-5.4 below:

Chart 5.4 – Age-wise pendency of SCNs



From the chart, it is evident that 1,177 SCNs (17 per cent) pertaining to Central excise and 5,926 SCNs (19 per cent) pertaining to Service Tax were pending for adjudication for more than one year as against the prescribed time limit of six months in normal cases and one year in extended period of time. The department did not maintain further age-wise details of cases pending for more than one year.

5.8 Audit Findings

The following table 5.4 brings out the extent of deficiencies noticed in the sample of SCN/adjudication related records, selected for detailed audit. The extent of deviation from the law and rules ranges from 0.80 per cent to 45.92 per cent for various areas of focus selected for detailed audit.

Table No.5.4: Sample of files selected for detailed audit and deviations noticed

(₹ In crore)

Sl. No.	Area	Period	Audit Sample		No. of deficiencies noticed	Deficiencies as % of sample
			No.	Amount		
1.	SCN pending for adjudication	As on 31 March 2019	4,457	29,672.96	1,407	31.57
2.	SCNs adjudicated	FY17 to FY19	3,335	17,208.40	968	29.03
3.	SCNs pending in Call Books	As on 31 March 2019	2,191	13,308.02	1,006	45.92
4.	Remand back cases	FY17 to FY19	622	3,358.21	65	10.45
5.	Waiver of SCNs	FY17 to FY19	1,020	1,155.69	32	3.14
6.	Draft SCNs (DSCNs) pending for issuance	As on 31 March 2019	203	1,282.80	2	0.99
7.	CERA audit objections	FY17 to FY19	373	912.15	3	0.80
8.	SCNs & DSCNs transferred due to GST restructuring	July 2017 to March 2019	500	523.26	5	1.00

As evident from the table 5.4, we noticed high rate of deviation from the law/rules during detailed audit of SCNs pending in Call Books, SCNs pending

for adjudication and SCNs that had been adjudicated during FY17 to FY19. We noticed significant delays in adjudication of SCNs; delay in issuance of Orders-In-Original (OIOs) within stipulated period after completion of last Personal Hearing (PH); non-review of Call Book cases, periodically, non/delayed retrieval of SCNs from Call Book, incorrect transfer of SCNs to Call Book etc. The focus area wise audit findings are detailed in the following paragraphs.

5.9 Deficiencies noticed in SCNs pending for Adjudication

In the selected 116 offices, 11,723 SCNs were pending for adjudication as on 31 March, 2019. We examined 4,457 SCNs involving money value of ₹ 29,672.96 crore and noticed irregularities in 1,407 SCNs (31.57 per cent) involving money value of ₹ 12, 162.53 crore. Deficiencies noticed pertain to incorrect computation of demand in SCN, delay in adjudication and not taking steps to reduce litigation etc. as detailed in the table 5.5 below:

Table No. 5.5: Deficiencies noticed in SCNs pending for adjudication

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in % of sample (No.)
1.	Incorrect computation of demand in SCN resulting in Short demand raised	161	36.63	3.61
2.	Late issuance of SCNs which may result in demand getting time-barred in adjudication	71	30.17	1.59
3.	Delay in Adjudication	373	4,310.17	8.37
4.	Non-intimation regarding settlement commission	768	7,658.32	17.23
5.	Incorrect invocation of extended period	2	3.19	0.04
6.	Abnormal delay in Preparation of SCNs	23	94	0.52
7.	Short raising of demand due to delay in finalization of investigation	6	30.05	0.13
8.	Incorrect issue of SCN	3		0.07
	Total Deficiencies noticed	1,407	12,162.53	31.57
	Total Cases examined by Audit	4,457	29,672.96	
	Total Cases pending for adjudication in selected units	11,723		

5.9.1 Incorrect computation of demand in SCN resulting in short raising of demand

In seven Commissionerates⁷¹, four audit Commissionerates⁷² and one DGGSTI Zonal Unit⁷³, we noticed short raising of demand of ₹ 36.63 crore in 161 SCNs (3.61 per cent), out of 4,457 cases examined in 116 selected offices, due to

⁷¹ Bhopal, Chennai North, Howrah, Mumbai South, Mumbai West, Pune-II and Raigad.

⁷² Pune, Bhopal, Nashik and Raigad.

⁷³ Bhopal.

non-verification of the relevant records, adoption of incorrect rate of tax and non-verification of Income Tax Returns/Tax deducted at Source data etc.

When we pointed this out (November 2019 to December 2019), the Ministry admitted the facts in 141 cases. The Ministry did not accept the audit objection in 17 cases. Reply with respect to remaining three cases is awaited (December 2020).

One illustrative case is given below:

5.9.1.1 Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of the Act. The Board, in Master circular (March 2017) had, inter-alia, reiterated that SCN being starting point of any legal proceedings against the party, it should be drafted with utmost care. It is clarified in the circular that principles and manner of computing the amounts due from the noticee are clearly laid down in the SCN.

In Pune II Commissionerate, an SCN was issued to an assessee in October 2018 for irregular availing of exemption and abatement in respect of works contract service provided. Audit examination revealed that the department incorrectly adopted gross value of service provided at ₹ 46.68 crore instead of ₹ 52.55 crore as indicated in ST-3 return. The error resulted in short assessment of taxable service by ₹ 4.21 crore, after allowing admissible abatement, with consequent short levy of Service Tax of ₹ 0.79 crore.

When we pointed this out (November 2019), the Ministry did not admit the audit observation (December 2020) and stated that the SCN was issued based on invoices issued to the government department only and not on all invoices issued by the assessee. The reply of the Ministry is not acceptable as invoices issued to customers other than Government departments had also been included in the annexure attached to the SCN.

5.9.2 Late issuance of SCNs that may result in demand getting time-barred in adjudication or exclusion of part-period demand

In four Executive Commissionerates⁷⁴ and one Audit Commissionerate⁷⁵, we noticed late issuance of SCNs in 70 cases (1.57 per cent), out of 4,457 cases examined in 116 selected offices, which may result in demand being declared time-barred in adjudication. Further, we also observed exclusion of part-period demand in SCN in one case. Thus, the overall demand of ₹ 30.17 crore in 71 SCNs may get time-barred due to late issuance of SCNs.

⁷⁴ Allahabad, Kolkata North, Guwahati and Pune-II.

⁷⁵ Bengaluru Audit

When we pointed this out (November 2019 to December 2019), the Ministry accepted the facts in one case and did not accept the facts in remaining cases (December 2020).

One illustrative case is given below:

5.9.2.1 The Internal Audit Party (IAP) of Bengaluru Audit-I Commissionerate, in January 2017, had taken an observation on an assessee relating to non-payment of Service Tax on services provided during January 2015 to March 2016 as intermediary to a foreign company, its Principal company, wrongly treating the same as export, amounting to ₹ 675.46 lakh. The Para was initially presented in Monitoring Committee Meeting (MCM) held in January 2017 and ratified in MCM held in May 2017. However, at the time of preparation of SCN, the IAP realised that the assessee had been rendering marketing services even before the marketing services and post-sales support services agreements were entered into with the their Principal Company (1 April 2015). To examine this aspect the issue was transferred to Executive Commissionerate after discussions in MCM held in September 2017 for further investigation.

It was noticed that no SCN had been issued till date in spite of lapse of 35 months from the date of internal audit. The date of issue of SCN within normal period had expired on 29 October, 2018, hence there was a risk of whole demand becoming time barred.

The delay was, therefore, due to ineffective audit by the IAP, and the absence of an effective system of monitoring by the Audit Commissionerate on the fate of cases/SCNs transferred to Executive Commissionerates.

When we pointed this out (October 2019), the Ministry stated (December 2020) that an SCN had been issued for the period November 2014 to April 2017 in May 2020 invoking extended period of time. As the last date for submission of ST-3 return for half year ending March 2015 was in April 2015, late issuance of SCN in May 2020, may result in time barring of transactions up to March 2015.

5.9.3 Non-adjudication of SCN within prescribed time limit

In 22 offices⁷⁶, we noticed that 373 SCNs (8.37 per cent), out of 4,457 cases examined, involving revenue of ₹ 4,310.17 crore, were not adjudicated in the

⁷⁶ Allahabad, Ahmedabad North, Bhopal, Chennai North, Delhi South, Bhubaneswar, Bengaluru East, Ghaziabad, Gurugram, Howrah, Hyderabad, Jalandhar, Jamshedpur, Kolkata North, Mangalore, Mumbai South, Mumbai West, Pune-II, Raigad, Thiruvananthapuram, Vadodara-II and DGGSTI Headquarters Delhi.

prescribed time limit of six months in normal cases and within the prescribed time limit of one year (ST)/two years (CX) in extended period cases.

When we pointed this out (September 2019 to December 2019), the Ministry admitted the facts in respect of all the cases except seven cases of Gurugram Commissionerate and stated that the delays were due to shortage of staff and heavy work load owing to introduction of GST (December 2020).

One illustrative case is given below:

5.9.3.1 In case of an assessee, an SCN was issued vide No. 574/CE/12/2016/INV dated 04 October, 2016 involving duty of ₹ 18.08 crore. The assessee filed writ petition in Delhi High Court against the SCN, which ordered (January 2017) to set aside the said SCN and directed to issue fresh SCN after clearly setting out what the proposed demands are. The department filed appeal in the Supreme Court (May 2017) against the Delhi High Court's order. Supreme Court (December 2017) had restored the SCN and ordered to conduct adjudication proceeding as per procedure. During audit we noticed that no action has been taken by the department or personal hearing fixed to adjudicate the case as of September 2019 i.e. even after more than 22 months from the date of issue of orders of Apex Court.

When we pointed this out (September 2019), the Ministry admitted (December 2020) the audit objection and stated that delays were due to shortage of staff, heavy work load and introduction of GST. However, efforts are being made to reduce the pendency.

5.9.4 Non-intimation regarding settlement of cases through Settlement Commission

Para 14.1 of Master Circular dated 10 March, 2017, issued by CBIC, provides that every show cause notice should be forwarded, along with a letter stating that assessee can approach settlement of case through Settlement Commission. Where the noticee approaches the Settlement Commission, the matter needs to be transferred to Call Book till the matter is decided by Settlement Commission.

In 27 offices⁷⁷, we noticed that in 768 cases (17.23 per cent), out of 4,457 cases examined in 116 selected offices, involving money value of ₹ 7,658.32 crore,

⁷⁷ Agartala, Ahmedabad North, Chennai North, Delhi South, Ghaziabad, Gurugram, Guwahati, Howrah, Hyderabad, Jalandhar, Kolkata North, Thiruvananthapuram, Visakhapatnam Commissionerates, Bhopal Audit, Chennai Audit-I, Guwahati Audit-I, Hyderabad Audit-I, Visakhapatnam Audit, DGGSTI Bhopal, DGGSTI Chennai, DGGSTI Guwahati, DGGSTI Hyderabad, DGGSTI Kolkata, DGGSTI Lucknow, DGGSTI Pune, DGGSTI Visakhapatnam and DGGSTI Headquarters Delhi.

no intimation regarding settlement of cases through Settlement Commission was forwarded to the noticees along with the SCNs.

When we pointed this out (October to December 2019), the Ministry (December 2020) accepted the audit observation in 694 cases and assured for compliance of the departmental instructions in future. Reply with respect to remaining 74 cases is awaited (December 2020).

5.9.5 Incorrect invocation of extended period for issuance of SCN

In NOIDA Audit and Bengaluru Audit-I Commissionerates, we noticed that two SCNs, with monetary value of ₹ 3.19 crore were issued for extended period. However, the ingredients for invoking extended period were not clearly detailed in the SCNs, and hence invocation of extended period may be held invalid at the time of adjudication resulting in demand being declared time-barred in adjudication.

The Ministry did not accept the audit objection (December 2020) and stated that invocation of extended period was correct in both the cases. Reply of the Ministry is not acceptable as the errors were already reflected in the ST-3 returns of the assesses, hence invocation of extended period was not correct.

5.9.6 Abnormal Delay in preparation and finalisation of SCN

In Nashik Audit Commissionerate, it was observed from Draft SCN register that there was abnormal delay in finalisation of 23 draft SCNs ranging from 119 to 1,435 days. This had ultimately led to delay in adjudication and consequential blockage of Government revenue to the tune of ₹ 94 crore. The reason for delay in preparation and finalisation of draft SCN was apparently due to absence of regular follow up by Audit Commissionerate.

When we pointed this out (December 2019), the Ministry stated (December 2020) that the draft SCNs are received from audit groups, and as they are continuously on field duty, clarifications, if any, are received from them after their return to Headquarters. Further, for complying with the queries, audit groups have to seek information from the assesseees. The Ministry further stated that from December, 2016 onwards, where the demand is more than ₹ 50 lakh, pre SCN consultation was to be done. Due to these factors it took some time to issue SCN, however the same were issued to the party in time.

The Ministry's reply is not acceptable as there were long delays in finalisation of SCNs ranging from 119 to 1435 days leading to subsequent delay in adjudication and blockage of Government revenue.

5.9.7 Short raising of demand due to delay in finalization of investigation

In DGGSTI Zonal Unit Pune, we noticed short raising of demand of ₹ 30.05 crore in six SCNs (0.13 per cent), out of 4,457 cases examined in the selected 116 offices, due to late finalization of investigation. An example is given below:

5.9.7.1 Abnormal delay in issuance of SCN leading to loss of revenue

DGGSTI, Pune Zonal Unit (earlier Regional Unit) had initiated investigation in 13 cases, in FY13, for taxation of service on deployment of Transit Mixtures for transportation of Ready Mix Concrete from various plants of an assessee. In all 13 cases, the department had initiated proceedings to tax the said service by classifying it under the 'Cargo Handling Service' (CHS) and the proposal was accordingly sent to Mumbai Zonal Unit for approval (vide common incident report). In October 2013, the Mumbai Zonal Unit opined that the service was appropriately classifiable under the head 'Supply of tangible Service (STG).' After re-examination, Pune Zonal Unit in December 2013, intimated that it would be appropriate if the service was taxed under 'CHS' instead of 'STG'. It was observed from the Pune Zonal Unit, that no action was taken in the matter during 2014 to 2016. After the receipt of clarification from Mumbai Zonal unit in April 2017, proceedings were initiated and five SCNs, demanding ₹ 17.99 crore, were issued between October, 2018 and April 2019 to eight assessees covering the period FY14 onwards. Audit examination revealed that in 2013, ₹ 30 crore Service Tax evasion was estimated by the department in 11 cases but since the investigation proceedings were abnormally delayed, the department could not cover the period prior to March 2013 as the same was time barred. Time barred demand in respect of all 13 cases could not be determined by Audit as relevant records for earlier period were not available in the respective files.

When we pointed this out (December 2019), the department replied (December 2019) that owing to contradicting views on the classification of service, the issue was kept in abeyance for want of suitable clarification regarding classification of the said service.

The reply is not acceptable as the amount involved in the issue was very high and therefore, prompt and appropriate action, within time, should have been taken to determine the classification of service and to protect the revenue. Reply of the Ministry is awaited (December 2020).

5.10 Deficiencies noticed in Adjudicated SCNs

In the selected 116 offices, 8,766 SCNs were adjudicated during FY17 to FY19. We examined 3,335 cases involving money value of ₹ 17,208.40 crore and noticed irregularities in 968 cases (29.03 per cent) involving money value of

₹ 9,006.86 crore. Deficiencies noticed pertained to incorrect computation of demand in SCN, incorrect invocation of extended period of time for issuing SCN, delay in adjudication, not taking steps to reduce litigation etc. as per the table 5.6 below:

Table No.5.6: Deficiencies noticed in adjudicated SCNs during FY17 to FY19

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in per cent of sample (No.)
1.	Invocation of extended period of time held irregular in adjudication	10	17.32	0.3
2.	Invocation of extended period of time for issuing periodical SCN which may be held irregular in further appeal	9	4.94	0.27
3.	Non-inclusion of demand for part period due to late issuance of SCN	4	8.26	0.12
4.	Incorrect computation of demand resulting in short confirmation of demand in adjudication	15	147.81	0.45
5.	Delay in adjudication	340	4,716.09	10.19
6.	Delay in issuance of OIO within stipulation period after completion of last PH	581	4,063.89	17.42
7.	Dropping of demand due to non-availability of Relied upon documents	9	48.55	0.27
	Total Deficiencies noticed	968	9006.86	29.03
	Total Cases examined by Audit	3,335	17,208.40	
	Total Cases adjudicated in selected units	8,766		---

5.10.1 Invocation of extended period of time held irregular in adjudication

In four Commissionerates⁷⁸, we noticed that invocation of extended period of time for issuance of SCN was held irregular in 10 cases (0.30 per cent), out of 3,335 cases examined in 116 selected offices, involving revenue impact of ₹ 17.32 crore.

When we pointed this out (November 2019 to December 2019), the department accepted the facts in two cases. Reply in remaining eight cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.10.1.1 An SCN was issued to an assessee in Kolkata North Commissionerate in December, 2015, based on internal audit observations and covered the demand period from December 2010 to October 2015. However, the noticee contested the demand on merit as well as on point of limitation of extended period. The adjudicating authority while passing the order mentioned that there were no allegations of non-submission of monthly ER-1 Returns in the SCN; and that the Tariff Classification of the goods, and the availing of benefit of the Notification were in the knowledge of the department. The adjudicating authority further noted that as no allegation of

⁷⁸ Kolkata North, Ghaziabad, Guwahati and Vadodara.

fraud, collusion, wilful mis-statement or suppression of facts against the noticee was brought out in the SCN, the invocation of extended period was not justified. As such, the noticee was liable for payment of Central Excise duty not paid/short paid for the period of one year from the date of issue of SCN (dated 22 December 2015) i.e. from December 2014 to October 2015. Demand for the rest of the period as mentioned in the SCN amounting to ₹ 3.83 crore was dropped due to limitation of extended period.

We pointed this out in October 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.2 Invocation of extended period of time for issuing periodical SCN which may be held irregular in further Appeal

In four Commissionerates⁷⁹, we noticed that in nine cases (0.27 per cent), out of 3,335 cases examined in selected 116 offices, involving revenue impact of ₹ 4.94 crore, periodical SCNs for subsequent period were issued by invoking the extended period of time which were confirmed in the adjudication but the same may be held time barred in appeal as the issue was already in the knowledge of the department.

When we pointed this out (November 2019 to December 2019), the department accepted the facts in one case. The reply in remaining eight cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.10.2.1 Para 3.7 of the master circular of March, 2017 stipulates that after the issue of first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation.

An SCN was issued to an assessee for non-payment of Service Tax of ₹ 1.86 crore for the period FY14 to FY16 by invoking the extended period of time (October 2018) by the Additional Commissioner, CGST Commissionerate, Ghaziabad. Further examination of records revealed that another SCN was issued to the same assessee on the same grounds in January, 2015. Thus, issuance of second SCN by invoking the extended period of time in October, 2018 was contrary to the provisions cited above. The Demand was confirmed with equal amount of penalty under section 78 of the Finance Act, 1994 but the assessee filed an appeal against the O-I-O.

When we pointed this out (August 2019), the department stated (September 2019) that the CESTAT (December 2018) remanded the case for

⁷⁹ Ghaziabad, Howrah, Mumbai South and Trichy.

fresh adjudication and proceedings, in this regard, were being initiated. Reply of the Ministry is awaited (December 2020).

5.10.3 Non-inclusion of demand for part period due to late issuance of SCN

In four Commissionerates⁸⁰, we noticed late issuance of SCNs in four cases (0.12 per cent), out of 3,335 cases examined in selected 116 offices, which had resulted in exclusion of part-period demand of ₹ 8.26 crore.

When we pointed this out (November 2019 to December 2019), the department accepted the fact in one case. The reply in remaining three cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One example is given below:

5.10.3.1 In Nashik Commissionerate, it was observed that DGCEI Mumbai Zonal Unit had initiated investigation in the case of an assessee in connection with non-payment of excise duty on industrial promotion subsidy received. In response to Mumbai Zonal unit's enquiry, the assessee had furnished entire details of subsidy received amounting to ₹ 202.54 crore in November, 2015. Audit scrutiny revealed that DGCEI had concluded investigation and issued SCN in June, 2017 to tax industrial promotion subsidy of ₹ 146.52 crore to tax. The subsidy to the tune of ₹ 61.24 crore received by the assessee in March, 2012 was not considered due to time barring of demand of FY12 by the time of issuing of SCN. As the relevant information was furnished by the assessee in November 2015, the delay of 19 months by the department for issuing the SCN had resulted in exclusion of revenue of ₹ 6.12 crore in the SCN and consequent loss of revenue.

We pointed this out in December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.4 Incorrect computation of demand leading to short demand being raised in SCN

In six Commissionerates⁸¹, we noticed short raising of demand of ₹ 147.81 crore in 15 cases (0.42 per cent), out of 3,335 cases examined in selected 116 offices, mainly due to incorrect adoption of taxable value by the department while computing the demand in the SCN.

We pointed this out from November 2019 to December 2019. The department did not accept the audit observation in one case. The reply of the department in remaining 14 cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

⁸⁰ Ghaziabad, Guwahati, Mumbai South and Nashik.

⁸¹ Agartala, Bhopal, Chennai North, Ghaziabad, Mumbai South and Mumbai West

One illustrative case is given below:

5.10.4.1 In Mumbai South Commissionerate, while examining adjudication order passed in the case of an assessee, it was observed, that, at the time of framing SCN, the department held construction activity carried out by the assessee as falling under works contract service, which was chargeable to tax after allowance of abatement at the rate of 60 per cent. Audit scrutiny revealed that the department had first allowed abatement at the rate of 75 per cent of the value of flats towards cost of land and, thereafter, further abatement at the rate of 60 per cent was allowed considering the service as 'Works Contract Service', which was not in conformity with the Rule 2A(ii) of Valuation Rules, 2006. Since, the service was proposed to be taxed as works contract service, the assessee was liable to pay Service Tax on 40 per cent of gross value without allowance of additional abatement at the rate of 75 per cent. Though the error was noticed by Adjudication Authority, as per the settled law, he was not able to travel beyond the SCN and had to adjudicate the case as per the charges framed in the SCN. Thus, the mistake in framing of SCN had led to loss of revenue to the tune of ₹ 22.26 crore including mandatory penalty under section 78 of the Finance Act, 1994.

We pointed this out in October 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.5 Inordinate delay in adjudication

In 14 offices⁸², we noticed that 340 SCNs (10.19 per cent), out of 3,335 cases examined in selected 116 offices, involving revenue of ₹ 4,716.09 crore, were not adjudicated in prescribed time limit of six months in normal cases and within the prescribed time limit of one year (ST)/two years (CX) in extended period cases.

When we pointed this out (September 2019 to December 2019), the department in respect of Hyderabad, Visakhapatnam, Jaipur, Delhi South, Ghaziabad, Pune-II, Raigad, Mumbai South Commissionerates and DGGSTI, New Delhi accepted the delay in adjudication and stated that the delays were due to heavy pendency of cases and frequent change in adjudicating authorities.

Replies in respect of rest of the Commissionerates are awaited (June 2020). Reply of the Ministry is awaited (December 2020).

⁸² Agartala, Allahabad, Bengaluru East, Delhi South, Ghaziabad, Hyderabad, Jaipur, Mumbai South, Mumbai West, Pune-II, Raigad, Thiruvananthapuram, Visakhapatnam Commissionerates and DGGSTI Headquarters Delhi.

One illustrative case is given below:

5.10.5.1 A demand of ₹ 0.47 crore along with the penalty of same amount under section 11 AC Central Excise Act, 1944 against an assessee was confirmed⁸³ (February 2001) by Commissioner Central Excise, Meerut. Aggrieved by the order, the assessee filed an appeal in CEGAT New Delhi and the tribunal vide its final order 292-94/2001-A dated 03 January 2001 upheld the demand for the period from March 1994 to 14 January 1997. Regarding penalty under section 11AC and interest under section 11 AB of the Central Excise Act, 1944, the Tribunal held that the penalty and interest cannot be imposed prior to the dates when the provisions of Section 11 AC and section 11 AB came into force, and accordingly directed adjudicating authority to re-quantify the amount of duty, penalty and interest.

The party as well as the department filed appeal before Hon'ble Supreme Court vide Civil Appeal Number 8529-8531/2001 and Civil Appeal Number 2008-2010 of 2002, respectively. Hon'ble Supreme Court, vide its final Decision dated 27 October 2007, directed to implement the order passed by CEGAT by re-adjudicating the case. However, it was noticed during audit that the case was re-adjudicated⁸⁴ by the Commissioner CGST Ghaziabad in 2018, i.e. after 11 years of the decision passed by Hon'ble Supreme Court by fixing the personal hearing (PH) on 30 November 2017.

When we pointed this out (August 2019), the department replied (September 2019) that when the appeal was filed in Supreme Court, the case was under the jurisdiction of Meerut Commissionerate. Due to re-structuring of the department, the case was transferred to Ghaziabad Commissionerate in 2002, which was again transferred back to the jurisdiction of Meerut Commissionerate in the subsequent re-structuring of the department, held in October 2014. However, the case was finally re-adjudicated by CGST Commissionerate, Ghaziabad as the case was transferred back again to Ghaziabad Commissionerate due to restructuring of the department in 2017, owing to implementation of GST.

Reply of the Commissionerate is not acceptable as the case was decided by the Hon'ble Supreme Court in 2007 and the case file was with the Ghaziabad Commissionerate from 2007 to 2014. Hence, Ghaziabad Commissionerate could have re-adjudicated the case and re-quantified the amount during the seven years, when the case file was with them. Reply of the Ministry is awaited (December 2020).

⁸³ vide O-I-O Number 01/Commr/M-01/2001 dated 02 February 2001 for the period March 1994 to March 1997 demanded by SCN Dated 19 March 1999.

⁸⁴ Vide O-I-O Number V(15)/ADJ-01/51/99 334- 340 dated 31 January 2018

5.10.6 Non-issuance of adjudication orders within stipulated period after completion of personal hearings

As per master circular dated 10 March 2017, personal hearing should be given at least three times and where personal hearings are concluded, it is necessary to communicate the decision as expeditiously as possible but not later than one month from the date of last personal hearing, barring in exceptional circumstances to be recorded in file. Further, the order is required to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944 which is applicable to Service Tax also as per Section 83 of Finance Act, 1994.

In 25 offices⁸⁵, we noticed that O-I-Os in 581 cases (17.42 *per cent*) with monetary value of ₹ 4,063.89 crore, were issued with delay beyond the prescribed period of one month without any reasons being recorded in case files. This has resulted in delayed initiation of recovery proceedings of ₹ 4,063.89 crore.

When we pointed this out (September to November, 2019), the Ahmedabad North, Vadodara-II, Rajkot, Jaipur, Hyderabad, Visakhapatnam, Bangalore East, Jalandhar, Gurugram, Delhi South, Kolkata North, Howrah, Bhubaneswar, Guwahati, Agartala, Pune-II, Mumbai South, Mumbai West, Nashik, Bhopal Commissionerates and DGGSTI Headquarters, Delhi had replied that the delay in issue of O-I-Os beyond one month was due to verification of facts before issuing orders, shortage of staff and heavy workload due to introduction of the GST.

Replies of the Commissionerates are not acceptable as the circular clearly specified that in exceptional cases where O-I-Os might not be issued within one month, reasons had to be recorded in files. No justification was found recorded in the adjudication files. Replies from the rest of the Commissionerates are awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.7 Dropping of demand due to non-availability of Relied upon documents in SCN files

In the Kolkata-North, Howrah Commissionerate and DGGSTI headquarters, it was noted that in nine cases (0.27 *per cent*), out of 3,335 cases examined, demands amounting to ₹ 48.55 crore were dropped, as these demands raised

⁸⁵ Allahabad, Agartala, Ahmedabad North, Bengaluru East, Bhopal, Bhubaneswar, Chennai North, Delhi South, Ghaziabad, Gurugram, Guwahati, Howrah, Hyderabad, Jaipur, Jalandhar, Kolkata North, Mumbai South, Mumbai West, Nashik, Pune-II, Rajkot, Thiruvananthapuram, Vadodara-II, Visakhapatnam Commissionerates and DGGSTI Headquarters Delhi.

under the SCNs were not supported by documentary evidence. The case noticed in DGGSTI Headquarters is given below:

5.10.7.1 Master Circular No. 1053/02/2017-CX dated 10 March 2017, provides that a Show Cause Notice and the documents relied upon in the Show Cause Notice need to be served on the assessee for initiation of the adjudication proceedings.

During scrutiny of files relating to adjudicated cases, it was noticed that an SCN dated 21 March 1995, was issued by the Commissioner, Central Excise, New Delhi. The case was adjudicated by confirming the demand against an assessee (October 2013). Aggrieved with the said O-I-O, the assessee preferred appeal in CESTAT and CESTAT remanded the cases back in October, 2013 for re-adjudication considering the demand in the light of Relied Upon Documents (RUDs). The case was assigned to Additional Director General (Adjudication), DGCEI, New Delhi. The adjudicating authority vide order No. 60/2018-CE dated 31 March 2018, dropped the demand of ₹ 46.52 crore as 395 RUDs, out of 440 RUDs, were not available with the case files.

When we pointed this out (September 2019), the department replied (December, 2019) that the adjudicating authority had decided the matter on the basis of available documents and that the RUDs were not made available to the noticee by the Commissioner, Central Excise, New Delhi. As a result, no action could be initiated.

The reply is silent on the reasons as to why RUDs were not available with the case files which led to the loss of revenue of ₹ 46.52 crore. Reply of the Ministry is awaited (December 2020).

5.11 Monitoring of Call Book cases

The Board, vide Circular No. 162/73/95- CX.3, dated 14 December 1995 read with Circular Nos. 992/16/2014-CX, dated 26 December 2014 and 1023/11/2016-CX dated 08 April 2016 and Master circular no. 1053/02/2017/CX dated 10 March 2017, has specified the categories of cases, which cannot be adjudicated immediately due to certain specified reasons such as department has filed appeal in similar case, injunction order has been issued by the courts etc. and as a result adjudication of such cases is kept in abeyance, which can be transferred to call book.

Further, CBIC, vide its circular⁸⁶ dated 08 April 2016, intimated its field formations that the procedure of transferring the show cause notices arising out of contested CAG's audit objections to Call Book had been discontinued

⁸⁶ Circular No. 1023/11/2016-CX New Delhi dated 08 April 2016

and in the future no such show cause notice should be transferred to the Call Book. The circular further stated that past SCNs kept in Call Books shall also be reviewed and adjudicated in the manner as prescribed in the circular, *ibid*. The Board vide D.O. letter dated 4 March 1992 had issued instructions to Commissioners to periodically review the cases transferred to Call Books on monthly basis.

Status of pendency of SCNs, of Call Book at the end of 31 March 2019 is given in table 5.7 below:

Table No.5.7: Breakup of SCNs pending in Call Book

Category	(₹ In crore)			
	No. of cases (CX)	Amount	No. of cases (ST)	Amount
Cases in which department has gone in appeal to the appropriate authority	20,687	64,530.92	14,516	54,677.94
Cases where injunction has been issued by SC/HC/Tribunal etc.	1,289	5,492.68	1,555	6,513.14
Cases where CERA Audit objections are contested	704	2,263.04	401	938.59
Cases where Board has specifically ordered the case to be kept in Call Book/Others	288	2,081.04	546	3,348.92
Cases Where parties had filed applications in Settlement Commission, which are pending	43	68.49	84	411.26
TOTAL	23,011	74,436.17	17,102	65,889.84

It is evident from the table 5.7 above that as on 31 March 2019 Central Excise duty of ₹ 74,736.17 crore and Service Tax of ₹ 65,889.84 crore were lying in the form of un-confirmed demand in the Call Books. Further, it is noticed that in spite of clear instructions of the Board, field formations did not retrieve the SCNs based on contested CAG audit objections from the Call Book, indicating lack of effective monitoring mechanism to review Call Book cases.

In the selected 116 offices, 5,491 SCNs were kept in Call Book as on 31 March 2019. We examined 2,191 cases involving money value of ₹ 13,308.02 crore and noticed irregularities in 1,006 cases (45.92 *per cent*) involving money value of ₹ 6,918.57 crore. Deficiencies noticed pertained to incorrect computation of demand in SCN, incorrect invocation of extended period of time for issuing SCN, incorrect transfer of SCNs to Call Book, non/delayed retrieval of SCNs from Call Book, non-intimation of transfer of SCNs to the noticees etc. as per table 5.8 below:

Table No. 5.8: Deficiencies noticed in SCNs pending in Call Book

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in % of sample
1.	Incorrect computation of demand resulting in short raising of demand in SCN	7	25.99	0.32
2.	Incorrect Invocation of extended period of time for issue of periodical SCN	4	307.78	0.18
3.	Non-issuance of periodical SCN	8	0	0.37
4.	Incorrect transfer of SCNs to Call Book	23	120.73	1.05
5.	Non-periodical review of Call Book Cases	370	2,251.92	16.89
6.	Non/delayed retrieval of SCNs from Call Book	137	437.64	6.25
7.	Non-intimation to the noticees regarding transfer of SCNs to Call Book	415	3,225.17	18.94
8.	No prior approval of Commissioner taken to transfer cases to Call Book	10	13.18	0.46
9.	Inordinate delay in issuance of periodical SCNs	32	536.16	1.46
	Total Deficiencies noticed	1,006	6,918.57	45.92
	Total Cases examined by Audit	2,191	13,308.02	
	Total Cases pending in Call Book in selected units	5,491		---

5.11.1 Short computation of demand in SCN kept in Call Book

In Trichy and Pune-II Commissionerates, we noticed short raising of demand of ₹ 25.99 crore in seven SCNs (0.32 per cent), out of 2,191 Call Book cases examined in selected 116 units, due to adoption of incorrect rate of tax and non-consideration of full amount.

When we pointed this out (August 2019 to December 2019), the department accepted the facts in six cases and did not accept the audit observation in one case. Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.1.1 In Pune-II Commissionerate, we observed that an SCN was issued to an assessee in March 2013, for non-payment of Service Tax of ₹ 6.55 crore for the period 2010-11, in respect of services availed from abroad on reverse charge basis. The assessee paid ₹ 1.21 crore under protest before issue of SCN, paid balance amount of ₹ 5.34 crore subsequently, and availed CENVAT credit of the entire amount of ₹ 6.55 crore. Since, the payment was made under protest, the department objected to availing of the CENVAT under Rule 9(bb) of CENVAT Credit Rules, 2004 and the short payment of tax was due to suppression of facts with intention to evade payment of tax. Consequently, the

department issued fresh SCN in June 2016 seeking reversal/payment of aforesaid CENVAT availed. Audit examination revealed that the SCN was issued for ₹ 5.34 crore excluding payment of ₹ 1.21 crore made before issue of first SCN. Since the case involved suppression of facts and the payment was made under protest, the SCN was required to be issued for entire amount of CENVAT availed of ₹ 6.55 crore invoking the extended period. Though the department had further instructed the concerned division to verify availing of CENVAT of ₹ 1.21 crore, there was nothing on record to indicate that any action to rectify the irregularity was initiated by the concerned Division, in order to protect the interest of revenue. The omission had endangered Government revenue to the extent of ₹ 1.21 crore.

When we pointed this out (December 2019), the department stated (January 2020) that the amount of ₹ 1.21 crore was paid as service tax under reverse charge before issuance of SCN dated 31/03/2013. Subsequently availing of CENVAT credit thereof, is informed to the department. Hence, SCN of ₹ 5.34 crore issued for irregular availing of CENVAT credit is legal and correct.

The reply is not acceptable as the assessee had paid service tax under protest after Internal Audit pointed out the non-payment of service tax. Hence, CENVAT credit availed by the assessee should be disallowed as per Rule 9(1) (bb) of the CENVAT Credit Rules, 2004 and the department should have issued SCN of ₹ 6.55 crore instead of ₹ 5.34 crore. Reply of the Ministry is awaited (December 2020).

5.11.2 Incorrect invocation of extended period of time for issue of periodical SCNs/ non-issuance of periodical SCNs

In three Commissionerates⁸⁷, we found incorrect invocation of extended period of time for issue of periodical SCNs of ₹ 307.78 crore in four SCNs (0.18 per cent) and non-issuance of periodical SCNs in eight SCNs (0.37 per cent), out of 2,191 Call Book cases examined in 116 selected office.

We pointed this out from August, 2019 to December, 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.2.1 An SCN was issued (December 2013) to an assessee, under Trichy Commissionerate, engaged in the manufacture of cement falling under Tariff item 2523 2910 and 2523 2930 of the First Schedule to the CE Tariff Act, 1985, for the clearance of cement in 50 kg bags, to industrial customers, during the

⁸⁷ Chennai, Mangalore and Trichy.

period from December 2008 to November 2013, invoking extended period demanding duty of ₹ 89.01 crore. This is despite the fact that an SCN on the same ground had already been issued (December 2008) covering the period from December 2007 to October 2008. Hence, issuance of subsequent SCN by invoking the extended period is incorrect as the matter was already in the notice of the department and the demand may be held time barred at the time of adjudication.

We pointed this out in August, 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.3 Incorrect transfer of SCN in Call Book

In six Commissionerates⁸⁸, we found incorrect transfer of 23 SCNs (1.05 per cent) involving money value of ₹ 120.73 crore, out of 2,191 Call Book cases examined in Audit in the selected 116 units.

When we pointed this out (September 2019 to December 2019), the department, accepted the facts in five cases. The Reply is awaited in remaining 18 cases (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.3.1 In Gurugram Commissionerate, it was noticed that SCN No. 4867 dated 24 October 2008 for recovery of Service Tax for ₹ 2.12 crore along with interest and penalty, was issued to an assessee by Addl. Director General (DGCEI) with the direction to appear before Commissioner Central Excise Delhi-III. The noticee submitted reply to the Commissioner, Service Tax New Delhi on 30 December 2008. Thereafter, the case was assigned to the Commissioner, Central Excise by the Chief Commissioner (Delhi Zone) Central Excise New Delhi. Three PHs were fixed on 20 May 2009, 4 June 2009 and 12 June 2009. The noticee submitted its reply on 04 June 2009. No action was taken by the department after that, and the case was transferred in Call Book on 16 December, 2015 without mentioning any ground.

When we pointed this out (September 2019), the department admitted (January 2020) the audit objection and noted the same for future compliance. Reply of the Ministry is awaited (December 2020).

5.11.4 Periodical review of Call Book cases not done

The Board vide D.O. letter dated 4 March 1992 had issued instructions to Commissioners to periodically review the cases transferred to Call Books on monthly basis.

⁸⁸ Delhi South, Ghaziabad, Gurugram, Jamshedpur, Kolkata North and Pune-II.

In 11 offices⁸⁹, we noticed that 370 SCNs (16.89 per cent) were not reviewed periodically, involving money value of ₹ 2,251.92 crore, out of 2,191 Call Book cases examined in selected 116 units, in contravention of the instructions cited above.

When we pointed this out (August 2019 to December 2019), the department accepted the facts in 121 cases and did not accept the audit observation in 96 cases. Reply in remaining 153 cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.5 Non/delayed retrieval of cases from Call Book

In 13 Commissionerates⁹⁰, we noticed non/delayed retrieval of 137 SCNs (6.25 per cent), involving money value of ₹ 437.64 crore, out of 2,191 Call Book cases examined in selected 116 units.

When we pointed this out (October 2019 to December 2019), the department accepted the facts in 60 cases. The reply in remaining 77 cases is awaited (June, 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.5.1 In Chennai North Commissionerate, 532 Call Book cases, pending as on 31 March 2019, were examined wherein the departmental appeals against the assesseees were pending in various judicial forums on similar issues. The cases were verified by CAG Audit with respect to status of disposal of cases in the official website of Honourable Supreme Court and Madras High Court. It was noticed that 29 SCNs of Central Excise and 29 SCNs of Service Tax were still kept in the Call Book wherein the similar cases were disposed off by the judiciary. Therefore, these cases were fit for retrieval from Call Book for adjudication, but the same were retained in Call Book irregularly.

This indicates that the Commissionerate did not monitor the cases pending in appeal with the aim to retrieve the SCNs from Call Book, transferred on the grounds of such appeal.

When we pointed this out (September 2019), the Commissionerate stated (October 2019) that eight cases had been retrieved from the call book for adjudication in September 2019; 12 cases had been retained in Call Book pending outcome of the appeal before the Honourable Supreme Court; three cases were under examination by legal section; and one case belonged to

⁸⁹ Bhopal, Bhubaneswar, Ghaziabad, Hyderabad, Jalandhar, Kolkata North, Mumbai West, Pune-II, Raigad, Visakhapatnam Commissionerates and DGGSTI headquarter New Delhi.

⁹⁰ Bhubaneswar, Chennai North, Delhi South, Ghaziabad, Gurugram, Guwahati, Jalandhar, Mangalore, Mumbai West, Pune-II, Raigad, Thiruvananthapuram and Visakhapatnam.

Mangalore Commissionerate. Reply in respect of remaining 34 cases is awaited from the department. Reply of the Ministry is awaited (December 2020).

5.11.6 Non-intimation to the noticee regarding transfer of SCN to the Call Book

As per para 9.4 of Master Circular dated 10 March 2017, issued by CBIC, a formal communication should be issued to the noticee, where the case has been transferred to the call book.

In eight offices⁹¹, we noticed that in 415 SCNs (18.94 per cent), involving money value of ₹ 3,225.17 crore, out of 2,191 Call Book cases examined in selected 116 units, the noticees were not informed about transfer of their cases to the Call Books.

When we pointed this out (October 2019 to December 2019), the department accepted the facts in 54 cases. Reply is awaited in remaining 361 cases (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.7 Prior approval from the Commissioner not taken before transfer of SCN to Call Book

The Board vide D.O. letter dated 4 March 1992 had instructed that SCNs should be transferred to Call Books with the prior permission of the Commissioner.

We noticed that in 10 cases (0.46 per cent) involving money value of ₹ 13.18 crore, in Thiruvananthapuram and Delhi South Commissionerate, out of 2,191 Call Book cases in the selected 116 units, prior approval of the Commissioner was not taken before transferring the cases to Call Books.

We pointed this out from August 2019 to December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.8 Abnormal delay in clarification from Board on the issue of levy of Service Tax on brokerage charges, on services provided by Indian Stock Brokers to Foreign Institutional Investors (FII), leading to blockage of revenue

The stock brokers provide stock broking services to several Foreign Institutional Investors (FIIs)/other foreign clients as well as domestic clients. After the negative list regime, came into effect from 01 July, 2012, the stock brokers stopped paying service tax for the services provided to FII & other foreign clients, as the location of the service recipient was outside India. The stock brokers stopped paying service tax on the stock broking services

⁹¹ Bhopal, Delhi South, Gurugram, Jalandhar, Pune-II, Thiruvananthapuram, Trichy Commissionerates and DGGSTI Headquarters Delhi.

provided to their foreign clients from 01 July 2012 to 30 September 2014. They started paying service tax from 01 October 2014 after the definition of the term “intermediary” was amended to include facilitation of supply of goods and consequently they being located in India, and acting as an intermediary, the place of the provision of service was in India, as per clause (c) of Rule 9 of the place of the provision of service Rules.

On the issue of taxability of brokerage charges for services provided to FII during the intervening period from July 2012 to September 2014, Mumbai Zone took stand that securities fall within the ambit of goods that are made available in electronic form and hence taxable. Accordingly, in several stock brokers’ cases, the department issued SCNs for levy of ST during the intervening period. However, in the meantime Stock Brokers Association, Asia Securities Industry & Financial Market Association (ASIFMA) made representation to the Board in August, 2014, to avoid retrospective levy of service tax on Stock Broking Services provided to Foreign Institutional Investors.

From the records made available to Audit in Mumbai South Commissionerate, it was observed that the Board in August 2016 called for certain details regarding SCNs pending on this issue from all the zones. In response, the then Pr. Commissioner ST-III, Mumbai, in October, 2016, intimated that, in Mumbai Zone, 32 SCNs on this issue, involving revenue of ₹ 536.16 crore, had been kept in Call Book for want of clarification from Board. It was observed that, in July, 2018, Chief Commissioner, Mumbai Zone had intimated its Commissionerates that request of ASIFMA was rejected by the Board and instructed to take up adjudication of these cases kept in call book.

In view of above, it is evident that the Board took around four year to provide clarification to the Mumbai zone. This abnormal delay in issue of clarification by the Board led to undue retention of cases in Call Book, to the tune of ₹ 536.16 crore in 32 SCNs, for four years in Mumbai Zone alone.

We pointed this out in December, 2019. Reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.12 Deficiencies noticed in Remand Cases

In case of *de novo* adjudication in pursuance of order of appellate authority, such cases should be decided by adjudicating authority of the same rank who had passed the order, which was in appeal before the appellate authority, notwithstanding the enhancement of power of adjudication of the officers. On receipt of the order for *de novo* adjudication from the appellate authority, such case should be shown as pending, in the list of cases pending adjudication of

such adjudicating authority, till it is decided by him. Remand cases should be adjudicated in the same manner as adjudication of the fresh SCN.

In 13 offices⁹² 748 SCNs were remanded back for adjudication during FY17 to FY19. We examined 622 cases involving money value of ₹ 3,358.21 crore and noticed irregularities in 65 cases (10.45 per cent) involving money value of ₹ 419.52 crore. Deficiency pertains to non/delay in adjudication of remand cases.

When we pointed this out (October 2019 to December 2020), the department accepted the facts in 15 cases. Reply in remaining 50 cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

Two illustrative cases are given below:

5.12.1 Commissioner Service Tax, Bengaluru confirmed (December 2012) ineligible input service credit availed by an assessee of ₹ 5.20 crore. The assessee preferred appeal to CESTAT, and CESTAT remanded⁹³ (September, 2014) back the case to the Original Adjudicating authority to verify the related input service invoices and allow CENVAT credit to the assessee, wherever eligible. It was noticed during audit that Assistant Commissioner, East Division-I, Bengaluru East Commissionerate, submitted his verification report to the Commissioner on 24 June, 2019, i.e. after a delay of almost five years, stating that out of the total input service, CENVAT credit of only ₹ 2.29 crore was irregular. The case is still pending for adjudication. Thus, due to late submission of the verification report by the division, the case was still pending for adjudication resulting in pendency of huge amount under litigation for a long period.

We pointed this out in September, 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.12.2 Non-adjudication of remanded case due to non-appointment of Common adjudication authority

During scrutiny of records/SCN pending for adjudication at Delhi South Commissionerate, it was noticed that in five cases, involving money value of ₹ 9.27 crore, the Hon'ble Supreme Court had dismissed the Departmental appeal against the CESTAT order vide its judgement No. Civil Appeal Nos. 4964-4976 of 2004 dated 29 April 2015, and remanded back the cases for re-adjudication.

⁹² Agartala, Ahmedabad North, Bengaluru East, Bhopal, Chennai North, Delhi South, Jaipur, Jamshedpur, Mangalore, Pune-II, Raigad, Thiruvananthapuram Commissionerates and DGGSTI Headquarters Delhi

⁹³ vide their final order No.21693/2014 dated 08 September, 2014

We observed that the Commissioner, Central Excise Delhi II fixed PH on 17 January 2017, wherein Counsel on behalf of above noticees requested that common adjudicating authority may be appointed in eight similar cases, (three of which are located in Greater Noida and five in Delhi) as the issue involved was common, in order to maintain uniformity in the decision. The Commissioner, Central Excise Delhi II on 23 January 2017 requested Chief Commissioner, Central Excise Delhi Zone to take up the matter with the Board for appointment of common adjudication authority. Similar requests were made on 28 February 2017, 09 March 2017, 19 May 2017, 22 November 2017, 12 October 2018 and 20 March 2019. Despite several requests, the Board did not appoint a common adjudication authority and the cases are still pending for adjudication. As a result, Government Revenue to the tune of ₹ 9.27 crore is yet to be adjudicated since 2015.

When we pointed this out (October 2019), the department stated (December, 2019) that the competent authority had been requesting the Board for necessary approval and there was no lapse on its part as action could be taken only after the Board appointed common adjudicating authority.

It can be seen from above, and from the department's reply, that even after a lapse of three years, the common adjudicating authority had not been appointed for cases involving revenue of ₹ 9.27 crore. Reply of the Ministry is awaited (December 2020).

5.13 Closure of cases on payment of duty/Tax demand before issuance or within one month of issuance of SCN (Waiver of SCN)

Government vide Finance Act 2015 liberalized the penal provisions under the Service Tax and Central Excise Act with effect from 14 May 2015, which provides that, if an assessee is willing to pay duty/tax along with interest either before issue of SCN or within 30 days of issue of SCN, there shall be:

- (a) No penalty in case of non-fraud cases.
- (b) Reduced penalty of 15 percent in fraud cases.

5.13.1 In the selected 116 offices, 17,095 SCNs were closed without issuance, on payment of due amount during FY17 to FY19. We examined 1,020 cases involving money value of ₹ 1,155.69 crore and noticed irregularities in 30 cases (2.94 per cent) involving money value of ₹ 6.50 crore in Thiruvananthapuram Commissionerate. The irregularities pertained to non-intimation to the assesseees regarding closure of the proceedings in their cases. We further noticed in Noida Audit Commissionerate that in two cases, (DARs), proceedings were closed before ensuring the payment of objected amount of ₹ 0.66 crore.

When we pointed this out (November 2019), the Noida Audit Commissionerate (November 2019), recovered the objected amount in one case and details are awaited in the second case. Reply of the Thiruvananthapuram Commissionerate is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.14 Draft SCNs pending for issuance

In the selected 116 offices, 203 draft SCNs were pending for issuance as on 31 March 2019. We examined all 203 draft SCNs involving money value of ₹ 1,282.80 crore. We noticed irregularities in two cases (0.99 per cent) involving money value of ₹ 35.06 crore in Pune II Commissionerate. One illustrative case is given below:

5.14.1 Improper drafting of Draft SCN (DSCN)

As per the Board's master Circular dated 10 March 2017, Show Cause Notice (SCN) is the starting point of any legal proceedings against the defaulter. It lays down the entire framework for the proceedings that are intended to be undertaken and, therefore, it should be drafted with utmost care. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of the Act and the rules made there under.

In Pune II Commissionerate, a draft SCN was prepared in the case of an assessee demanding erroneous refund of ₹ 197.77 crore pertaining to the period, October 2016 to March 2017. Audit examination revealed that while granting the original refund, the department had held CENVAT credit to the tune of ₹ 17.39 crore inadmissible. However, in the draft SCN, the department omitted to demand reversal/payment of this ineligible CENVAT credit. This omission was fraught with the risk of loss of revenue to the extent of ₹ 17.39 crore. It was further noticed that the department had issued an SCN, in the month of May 2017, covering earlier period from April, 2016 to September, 2016 demanding erroneous refund of ₹ 90.91 crore. In the said SCN also, the department did not demand reversal/payment of inadmissible CENVAT credit to the extent of ₹ 15.24 crore, which was held inadmissible while granting original refund. This resulted in loss of revenue of ₹ 15.24 crore to the exchequer.

We pointed this out in December, 2019. Reply from the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.15 Evaluation of internal controls

The Board vide letter dated 23 May 2003 had instructed the Commissioners and Chief Commissioners to analyze the reasons for pendency of adjudication

cases and strengthen the monitoring system. MPR DPM-ST-1A and DPM-CE-1A of the Monthly Progress Reports (MPR) incorporate information relating to adjudication of pending cases and their disposal.

5.15.1 Non/improper Maintenance of Registers

The Board, in its Circular dated 24 December, 2008, envisaged the functions, responsibilities and duties to be performed by Range Officers and Sector officers under the Central Excise Act, 1944 and the rules made there under for maintenance of proper records/registers and timely review and preparation of monthly abstract.

During examination of records in 116 offices, we noticed non/irregular maintenance of records, registers in Ghaziabad, Guwahati, Agartala, Mumbai South, Pune-II, Nasik, Trichy, Chennai North, Bhopal, Delhi South, Thiruvananthapuram, Ahmedabad North, Rajkot, Bhubaneswar Audit, Nashik Audit Commissionerates and Lucknow DGGSTI zonal unit. An example is given below:

5.15.1.1 In CGST Range 28 under Ghaziabad Commissionerate, confirmed/un-confirmed registers, needed to watch status of SCNs were not maintained. In Mumbai South Commissionerate, Range IV under Division–VII, and Division-VII under Pune–II Commissionerate, DSCN registers were not maintained. CERA audit objection register to watch progress of action taken on audit objections, was not found maintained in Pune-II Commissionerate.

In the selected 28 Commissionerates audited by us, we observed that monthly abstracts of receipt and disposal of SCNs were not found maintained with the signature of the competent authority. Due to non-maintaining of proper registers, mismatch in the figures shown in the register and the MPRs were noticed in Pune-II and Ghaziabad Commissionerates.

We pointed this out from August 2019 to December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.16 Non-production of records to Audit

Despite Board's instructions⁹⁴ regarding cooperation with the C&AG during audit, by procuring and providing complete and comprehensive information, the department did not produce the complete records. The details of the records not produced by the department for detailed examination during audit are given below in table 5.9.

⁹⁴ Board's DO letter F.No.232/Misc DAPs/2018-CX-7, dated 26 April, 2018.

Table No. 5.9: Records not produced

Sl. No.	Auditee Unit	Nature of Records Sought	Number of records not produced	
1.	Jamshedpur Commissionerate	DSCN Files	13	
2.	Pune-II Commissionerate	Waiver of SCN Case files	33	
3.	Jamshedpur Commissionerate	SCNs pending for Adjudication	24	
4.	Pune-II Commissionerate	SCNs pending for Adjudication	6	
5.	Raigad Commissionerate	SCNs pending for Adjudication	24	
6.	Jamshedpur Commissionerate	Adjudicated Cases	16	
7.	Agartala Commissionerate	Adjudicated Cases	4	
8.	Jamshedpur Commissionerate	Call Book	1	
9.	Delhi Commissionerate	South	Transfer of records due to GST	List of records not provided
10.	Gurugram Commissionerate	Audit	List of total records	List of records not provided
11.	Bengaluru Commissionerate	Audit-I	Transfer of records due to GST	559 case files received from other field formations not provided. 115 case files transferred to other field formations also not provided.
12.	DGGSTI Headquarters		Transfer of records due to GST	List of records not provided
13.	DGGSTI Zonal Units (Hyderabad and Kolkata)		Waiver of SCN Case files	45
Total			843	

Non production of the records by the department not only prohibits Audit from seeking assurance whether the codal provisions and due procedures were followed in these cases, but it is also not in compliance with the Board's instructions regarding production of records to Audit.

We pointed this out from August 2019 to December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.17 Conclusion

We noticed persistent compliance deviations with respect to issue of SCNs and adjudication process. We noticed significant deviations from law/rules such as incorrect computation of demand in SCNs, late issuance of SCNs, delay in adjudications etc. during audit of SCNs that were pending for adjudication as on 31 March 2019. As for SCNs adjudicated between FY17 to FY19, the

irregularities pertained to incorrect invocation of extended period, non-inclusion of demand for part period due to late issuance of SCN, incorrect computation of demand, delay in adjudication, delay in issuance of adjudication order, non-availability of documents in the case file resulting in the dropping of demand etc. As for SCNs kept in Call Book as on 31 March, 2019, the irregularities observed pertained to non-issuance of periodical SCNs, short computation of demand in SCNs kept in Call Book, incorrect transfer of SCNs in Call Book, non/delayed retrieval of cases from Call Book, non-conducting the periodical review of Call Book, non-approval of competent authority before transfer of SCNs to Call Book etc. Apart from this, we also observed irregularities in remand cases, waiver of SCNs and draft SCNs pending for issuance. We also reviewed transfer of adjudication records during GST transition and did not notice any significant observation.

We identified lack of effective monitoring mechanism, inadequate coordination among CBIC field formations, delay in issuing clarifications by the Board, delay in investigation/ verification by CBIC field formations, delay in appointment of common adjudicating authority, non-availability of records in the case files etc. as the reasons for many irregularities noticed by Audit. Further, the department cited transition to GST, shortage of staff, heavy pendency of cases, frequent changes in adjudicating authority, delay in transfer of records etc. as the reasons for delays in adjudication and other irregularities observed in Audit.

5.18 Recommendations

In order to address persistent delays in adjudication process, manual mistakes, and other irregularities noticed in Audit, and to strengthen monitoring of SCNs, the department may consider end-to-end computerization/ automation of the SCN and adjudication process, with following components:

- (i)** The process of issuance of SCN may be computerized with inbuilt controls to ensure correct computation of demand, timely issuance of SCN, valid invocation of extended period of time and correctness of the SCN issued.
- (ii)** Computerization of adjudication process with inbuilt controls to ensure effective monitoring, conducting of personal hearings and timely issuance of OIOs
- (iii)** Maintenance of Call Book may be computerized with inbuilt mechanism to ensure issuance of periodical SCNs, timely retrieval of SCNs from Call Book, intimation to the assessee regarding transfer of cases to Call Book, prior approval of competent authority before transfer of SCNs to Call Book and controls regarding transfer of valid cases to Call Book.