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EASE OF DOING BUSINESS & CUSTOM AUDIT

Hon. Prime Minister of India has the reason to take India on the top rank of “Ease of Doing Business”, which will promote “Make in India” moment to ensure achievement of dream of making India USD 5 Trillion economy and India to be super power by 2024. One of the major hurdle of doing the business in India and attracting investment in India for creating the manufacturing base was the substantial delay in custom clearances and transaction cost and time attached thereto.

Following actions have been initiated to ensure hurdle free custom clearances and turn around time of import consignments an export consignment should be reduced substantially at par with advance countries.

1. Introduction of self-assessment in terms of Section 17 of Customs Act 1962 as amended in the year 2011 making corresponding amendment in Section 17, 18, 46 & 50 of the Customs Act, 1962.
2. Introduction of Risk Management System in Customs, thereby conducting scrutiny of bill of entry and such scrutiny is called as **Post Clearance Compliance Verification (PCCV) or Post Clearance Audit (PCA)**. Thereby achieving the target of 80% of Air Cargo complexes 70% of Sea Ports and 60% of ICD post clearance of bill of entry.
3. Introduction of **On-Site Post Clearance Audit at the Premises of Importers and Exporters Regulation 2011** has been notified. In accordance with the said regulation and amendment in Customs Act, 1962, officers of customs / central excise will conduct the audit at the premises of importer / exporter vide Notification No. 72/2011 Custom NT dtd 4th Oct.-2011.
4. Introduction of **Authorised Economic Operator (AEO) Certification** in the category of AEO Tier 1 , Tier 2, Tier 3 & AEO LO for benefiting importer. The details of the scheme was provided vide Circular No. Circular No. 33/2016-Customs dtd 22nd July, 2016 and the prominent features of the same are given below:
 - (a) Inclusion of Direct Port Delivery of imports to ensure just-in-time inventory management by manufacturers – clearance from wharf to warehouse
 - (b) Inclusion of Direct Port Entry for factory stuffed containers meant for export by AEOs
 - (c) Special focus on small and medium scale entities – any entity handling 25 import or export documents annually can become part of this programme

- (d) Provision of Deferred Payment of duties – delinking duty payment and Customs clearance
- (e) Mutual Recognition Agreements with other Customs Administrations
- (f) Faster disbursal of drawback amount
- (g) Fast tracking of refunds and adjudications
- (h) Extension of facilitation to exports in addition to imports
- (i) Self-certified copies of FTA / PTA origin related or any other certificates required for clearance would be accepted
- (j) Request based on-site inspection /examination
- (k) Paperless declarations with no supporting documents
- (l) Recognition by Partner Government Agencies and other Stakeholders as part of this programme

Different benefits were granted to different categories of AEO Certification and AEO Certification is granted after thoroughly scrutinizing systems and control of the importer and exporter.

5. Introduction of **Faceless Assessment of import and export consignment** to avoid interface, which will reduce transactions cost and time.
6. Introduction of **Section 99A in the Customs Act 1962** by way of amending Customs Act 1962 through the Finance Act 2018 inserting the following provision:

SECTION 99A. Audit.- *The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.*

Explanation.— For the purposes of this section, “auditee” means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

7. **Implementation of Customs Audit Regulations, 2018 :**

All above steps have been introduced to ensure speedy clearance of import and export consignments on self-assessment basis and audit will be conducted of such import and export consignment on a periodical basis at the premises of the importer / exporter. As a matter of fact, On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011 was notified vide Notification No.72/2011-Customs (N.T.) dtd 4th October, 2011 but hardly any audit might have been carried out under such rules, since government might have noticed there is no backing of section in the Customs Act 1962 and rules cannot override the provisions of sections.

In view of the above, after insertion of Section 99A in the Customs Act 1962, government notified Customs Audit Regulations, 2018 vide Notification No. 45/2018 Cus (NT) dt. 24.05.2018 superseding “On-Site Post Clearance Audit at the Premises of Importers and Exporters Regulation, 2011” and empowering Chief Commissioner of Customs, Chennai, Delhi & Mumbai -1 to conduct audit for whole of the India as their Jurisdiction vide Notification No. 85/2017 Cus dt 14th November, 2017. Object of the government is definitely applauded but, until it is inculcated down the line, exporters and importers will not be benefited and objective of turnaround time for clearance of imports and exports consignments has not achieved even after decade. But, CBIC has already started taking the agenda forward of carrying out Customs Audit under Customs Audit Regulations 2018.

Number of importers and exporters have received the notices for submission of number of documents w.r.t. imports and exports consignments and thereafter, there will be a visit at the premises of importer and exporter for auditing their records and declarations filed by them at the time of imports and exports clearances under self-assessment scheme.

Types of Post Clearance Audit :

There mainly three types Audits:

- (1) **Transaction based audit (TBA)** : TBA is different from Onsite Post and conducted on the basis of The Risk Management System (RMS)
- (2) **Premises based Audit (PBA)** : The legal compliance and correct assessment of Customs duties will be verified by the Customs at the premises of importers, exporters and other related entities wherever necessary
- (3) **Theme based audit (ThBA)** : Review of data relating to the entire business activity for a particular commodity, industry or issue. It provides a systematic approach to data collection and an analysis of data to determine the likelihood of non-compliance.

Frequency of Post Clearance Audit:

- Onsite PCA will be conducted once in two years / three years / five years for AEOs T-1, T-2 & T-3 respectively.
- 50% of AEO T-1, 33.33% of T-2 and 20% of T-3 assesseees to be audited every year.
- For other than AEO, PCA will be conducted under mainly TBA and ThBA method and onsite audit will be conducted basis observations of TBA & ThBA and as per risk parameters.

Steps of Post Clearance Audit: The following broad steps will be involved in PCA

- Selection of Assessee for audit
- Conduct of Desk Review and preparatory interview to gather information
- Prepare audit plan
- Undertake verification of auditee including tour of premises
- Evaluation of internal controls
- Preparation of Audit Report
- Consultative Letter for demand if any
- Monthly Monitoring of Audit Reports
- Issuance show cause notice if Assessee is not agreed with view of Customs

Following information is called for :

1. Organizational Chart of the Auditee
2. Cost Audit / Tax Audit report past three years
3. Customs Audit Reports for previous three years

4. Copies of Annual reports
5. Copies of Trial Balance
6. Import Export Code (IEC) No. & GSTIN
7. Audit points by Central Revenue Audit
8. Details of cases under investigation including SCN issued
9. Details of pending arrears of Revenue
10. List of notices, Court cases, pending investigations under other law related to taxes or duties (e.g. Income Tax, SEBI, GST, Enforcement Directorate etc.)
11. Any other document considered relevant by the Audit Circle
12. Please indicate your business with details of main goods manufactured, traded and services provided
13. Address of other offices including overseas offices
14. Total Import and export from various customs houses/ports (based on previous financial year)
15. Top 10 Imported Items in last one year and current year
16. Top 10 Exported Items in last one year and current year
17. Imports of Goods at Concessional Rate of Duty
18. Export Promotion Schemes
19. Details of EPCG Licence
20. Duty free import authorisations
21. Details of Advance Licence
22. Major Top 10 Importers and Exporters
23. Are you registered with Special Valuation Branch (SVB)
24. Show Cause Notices received during last five years and current year w.r.t. import and export of Goods
25. Details of litigations (Appeals, Court cases etc.) pending
26. No NOC Required (FSSAI, CPCB, Narcotics etc.)
27. List of Bonds with Customs
28. Total import duty paid in past three years
29. Copies of Balance Sheet
30. Copies of Tax Audit Reports
31. Cost Audit Reports
32. Disclosure of Foreign Currency Transactions in the format as desired under IAS
33. Statements or Returns with FEMA and RBI
34. Names of other Govt Agencies where returns are files (RFCL, Narcotics, Central Insecticide Board Etc.)
35. QPR/APR by EOU

36. C.A. report in form No. 3CEB - Transfer Pricing
37. Auditors Report for Previous year
38. Journal Vouchers for adjustment entries/rectification entries
39. Accounts maintained by the importer in terms of Customs (IGCRD)
40. Details of Bankers
41. Any other relevant documents

It is important to note that Principle Commissioner is authorised to appoint the experts like Chartered Accountant / Cost Accountants and experts in Computer Science or information technology etc. to ensure correct declaration by such importers / exporters in terms of their records, documents, MIS & ERP System maintained by them.

It is always better to do the self-audit in the same line of self-assessment so as to avoid any discrepancy during the departmental audit with the help of experts appointed by the department and thereby imposing the penalties, confiscation and seizure of the goods, heavy duty demands and withdrawal of certification granted to the importers/exporters under various scheme.

1. Salient features of Self-Assessment

- (a) The importer / exporter is responsible for Self-Assessment of duty on imported / export goods and for filing all declarations and related documents and confirming the same true, correct and complete.
- (b) Self-assessed import/export declaration may be verified by the Department. For this purpose the Customs officer may call for documents like contract, basis of transfer pricing of goods, broker note, policy insurance, catalogue, invoice etc. If required the goods may also be examined or tested by the officer.
- (c) Verification may result in re-assessment of duty by the officer for which the officer will give a speaking order within 15 days except when importer / exporter accepts re-assessment in writing.
- (d) In case the Self-Assessment is not possible, the importer/exporter may ask for provisional assessment. The officer may also order provisional assessment under Section 18(1). In case, the proper officer feels that the provisional assessment is to be allowed, the concurrence of jurisdictional Commissioner of Customs would require to be taken.
- (e) Cases where re-assessment is not done or when re-assessment is done but a speaking order is not passed will be subject to audit that may include On Site Post Clearance Audit (OSPCA) at the premise of the importer / exporter.

Key Elements of Self-Assessment of Imported /Exported Goods :

- Description of goods
- Classification
- Levy of duty / Cess
- Nature of the goods
- Whether the notification benefit is conditional or other wise

- Whether countervailing duty is applicable based on MRP
- Whether anti-dumping duty or safeguard duty is applicable
- Whether duty benefit is available under a Free Trade Agreement
- Whether duty benefit is available as Project Import
- Whether duty benefit is available under Export Promotion schemes
- Valuation
- Import and export restrictions and licensing
- Compulsory Compliance Requirement (CCR)
- Selection of Export Promotion Schemes

While clearing the import / export consignment, it is the responsibility of the importer / exporter to make proper declaration and consider all above aspects while filing Bill of Entry or Shipping Bill under the Self-Assessment Scheme.

It is important to note important definition as given in the Customs Audit Regulations, 2018, which will provide some inputs for focus of audit to be carried out by the department.

- (a) **'audit'** includes examination or verification of declaration, record, entry, document, import or export license, authorisation, scrip, certificate, permission etc books of account, test or analysis reports and any other documents relating to imported goods or export goods or dutiable goods and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples.
- (b) **"Auditee"** means a person who is subject to an audit under Section 99A of the Act and includes an importer or exporter or custodian approved under Section 45 or license of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.
- (c) **"Books of Account"** includes ledgers, day-books, cash books, account-books and other accounts related record, whether kept in the written or printed form or stored electronically
- (d) **"Electronic Records"** means data or record stored in any form and manner relevant for the purpose of audit under Section 99A of the act.
- (e) **"Premises"** includes the registered office, branch office, warehouse, factory, or any other premises at which , imported goods or export goods or dutiable goods or books of accounts or records of transactions or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an auditee.

In view of the above importer / exporter needs to ensure and have the internal controls on all import / export transactions and declarations given at the time of import and export. We give below some of the important check points on each aspects herein mentioned above.

Key Aspects	Check Points
Description of goods	<ol style="list-style-type: none"> 1. Check description of goods matches with ERP system / Store Accounting Systems, Purchase Orders, Brand, Grade, Specification. If brand, grade and specifications are not properly declared value can be rejected under Rule 12 of Customs Valuation (determination of value of imported goods) Rules 2007. 2. The description should be generic based merely on description of the drawback schedule. It should provide descriptive and technical details of export / import goods. 3. Ensure test reports submitted by you and test reports available with you do not have much variation.
Unit of Measurement &Quantity	<ol style="list-style-type: none"> 1. Check whether unit of measurement declared on the import documents are matching with records maintained by Auditee. 2. Check correctness of the quantity imported and declared under Bill of Entry and recorded in the books of accounts including electronic records and find out the discrepancies
Quality	<ol style="list-style-type: none"> 1. Check the test reports submitted at the time of import and actual records maintained by the importer / exporter including withdrawal of samples and re-checking thereof.
Classification	<ol style="list-style-type: none"> 1. General principle of classification is to match correct and complete description of goods with that of Custom Tariff Act. 2. Classification should be inconsonance with International Convention of Harmonized System of Nomenclature as made effective. 3. Product technical literature, application catalogues, certificate of analysis, inhouse test report, sales invoices, composition of raw-material/ intermediate goods, manufacturing of finished goods, using the raw-material / intermediate goods also will be subjected for audit for verifying import / export consignments. 4. Classification of the goods have been correctly made in terms of Interpretative Rules of classification read with section note and chapter notes. 5. Correct availment of exemption notification and fulfilling the condition of the notification
Levy of duty/ Cess	<ol style="list-style-type: none"> 1. Importer / Exporter are required to carefully verify whether their items of import / export is liable for any duties / cess and also ensure correct rate of duty considering the Notification issued under Section 25 of Customs Act, 1962 and fulfilling the conditions of the notification like following Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2017, end use based notification etc. etc.
Nature of the goods	<ol style="list-style-type: none"> 1. While considering the Tariff Rate of Duty or Effective Rate of Duty, plain many of the language used in the Notification is to be taken to decide applicability of the Notification and should not be stretch to avail the benefit which is not intended in the Notification.

Key Aspects	Check Points
Quantity and Unit of Measurement	<ol style="list-style-type: none"> Quantity and unit of measurement as mentioned in the Bill of Entry or Shipping Bill at the time of import or export as the case may be should be the same and match with the books of accounts as mentioned above and all records manual or electronics, electronically maintained. It has been observed that the quantity reported in system / books of accounts are different than that of reported in declaration made at the time of import /export and therefore such goods are liable for confiscation and there will be litigation and demands of duty, penalty and interest and fine in lieu of confiscation.
Whether the notification benefit is conditional or otherwise?	<ol style="list-style-type: none"> Conditions applicable to the exemption of Notification to be fulfilled either Pre-Import Or Post-Import, or Pre-Export Or Post-Export as the case may be. Since the audit will be conducted after one year it is easy to verify fulfillment of the conditions by the Customs Officers.
Whether anti-dumping duty or safeguard duty is applicable?	<ol style="list-style-type: none"> Importer should closely examine the records like Bill of Lading / Air Way Bill, Country of Origin Certificate, Contract Copy, Sales Brochure and Catalogues, Invoices etc to ascertain manufacture – supplier or exporter, country of origin of imported goods, Test Reports, Certificate of Analysis, Brochures and Catalogues, Sales Invoices will also be audited to ascertain the correctness of declaration and assessment of Anti-Dumping Duty and Safeguard Duty.
Whether duty benefit is available under a Free Trade Agreement?	<ol style="list-style-type: none"> Importer needs to confirm the Tariff Notification for the Rate of Duty applicable on specific goods imported under Free Trade Agreement with Japan, Korea, Singapore, Asean, Malaysia, Thailand, EU, Australia, New-Zealand, SAARC countries . Importer needs to obtain necessary GSP as per countries specific Rules of Origin and fulfill the conditions before claiming such benefits under the notification.
Whether duty benefit is available as Project Import?	If duty benefit under project import has been availed, then conditions of project import approvals needs to be fulfilled and proper documentation of installation and start-of commercial production needs to be complied with.
Whether duty benefit is available under Export Promotion schemes?	<ol style="list-style-type: none"> If duty benefit is availed under various schemes under Chapter 3 of Foreign Trade Policy like MEIS, SEIS, etc. the script and utilization thereof needs to be ensured even after imports. Similarly if duty exemption benefit has been availed under Chapter 4 & 5 of Foreign Trade Policy then the records import / export and conditions of the authorization needs to be fulfilled and records should be available in the premises of importer / exporter and match with the requirement. It has been observed that records of consumption either not maintained or do not match with Books of accounts / ERP system. Moreover the inputs mentioned in the SION are imported but not been utilized can be well verified from ERP system or Store Accounting Systems, Costing Systems, Bill of Material and Number of internal documents including designs and therefore proper care has to be taken to avoid litigations and allegations of mis-declaration or suppressions of facts which will result into confiscation of goods and such goods are not available during audit still it is liable for confiscation and redemption fine along with duty, interest and penalty will be applicable.

Key Aspects	Check Points
	<ol style="list-style-type: none"> 4. If goods are imported claiming exemption under Chapter 6 of Foreign Trade Policy i.e EOU / STPI / EHTP /BTP during audit fulfillment of conditions of the notification will be verified and therefore internal records should be in line with the conditions therein. 5. Product technical literature, application catalogues, certificate of analysis, inhouse test report, sales invoices, composition of raw-material/ intermediate goods, manufacturing of finished goods, using the raw-material / intermediate goods also will be subjected for audit for verifying import / export consignments and such consumptions also will be checked with declarations made at the time of making application with DGFT, declarations filed at the time import /export, and actual books of accounts including system reports / records.
Valuation	<ol style="list-style-type: none"> 1. Importer / Exporter needs to declare the value in accordance with Section 14 of Customs Act, 1962 read with Customs Valuation (determination of valuation of imported goods) Rules 2007 /Customs Valuation (determination of value of export goods) Rules 2007. 2. The transactions with related parties need to be declared correctly and value to be assess in terms of (1) above . Most of the time it has been observed that declarations and facts made before adjudicating officer while fixation of value by SVB /GATT Cellare different and therefore the said order may not be valid and hence it has to be ensured if facts are different then it has to be brought to notice before SVB Cell otherwise value can be rejected at the time of audit also. 3. Importer / Exporter has to be aware of the Data Bank of recent imports and the prices thereof so as to determine identical value / similar value / deductive value / computed value otherwise there may be possibility during audit to determine value based on the principles of residual method and differential duty interest penalty may be demanded. Under the self-assessment onus of determining the correct value in sequential method and providing evidence has been shifted on the importer from custom offices. 4. When exports are made under various export promotion schemes or exemption schemes or remission schemes then it is utmost important to declare correct FOB value in accordance with Rule 3 of Export Valuation Rules 2007. 5. If exports are made to the related party then onus will be on exporter that price will not influence due to relationship otherwise exporter has to provide the evidences of determining the value sequentially in terms of Rule 4, 5 / 6 of Export Valuation Rules, 2007 6. The export value declared on excise return i.e. ER- 1 / ER-2 / GSTR-1 should be matched with / reconcile with Shipping Bill, Bank Realization Certificate, Books of Accounts, Notes to Accounts.

Key Aspects	Check Points
	<ol style="list-style-type: none"> 7. Exporter needs to take due care while filing the declaration which should be accurate, true and complete. 8. In case of High Sea Sales transactions value as accounted and received from buyer will be also subject for audit. 9. The cost of pre-goods and services in accordance with Rule 9 can be verified from the books of account, similarly treatment of royalty, technical know-how, discounts, payment / receipts in foreign exchange various agreements and contracts will be subjected to audit for verification of value declared at the time of self-assessment.
Import and Export Restrictions and Licensing	<ol style="list-style-type: none"> 1. Under Section 2 (33) of the Customs Act prohibited goods are defined and such goods either should not be imported or exported. In accordance with Section 111 (d) Section 113 (d) such goods are liable for confiscation and also the importer / exporter is liable for imprisonment. 2. The goods covered under prohibited / restricted goods should be under licensing provisions and conditions to be strictly fulfilled.
Compulsory Compliance Requirement (CCR)	<p>During audit Custom Officer can verify the Compulsory Compliance Requirement as applicable under various laws. Illustrative list is given below:</p> <ul style="list-style-type: none"> • Explosives Act, 1884 and Explosive Rules, 1983,. • Live Stock Importation Act, 1898. • Drugs and Cosmetics Act, 1940 and Drug and Cosmetics Rules, 1945 • Copyright Act, 1957 and Copyright Rules, 1958 • Arms Act, 1959. • Atomic Energy Act, 1962. • Insecticide Act, 1968. • Patents Act, 1970 and Patent Rules, 2003 • Wild Life Protection Act, 1972. • Gas Cylinder Rules, 1981 and S&MPV (Unfired) Rules, 1981. • Environment (Protection) Act, 1986 and Rules, 1986 • The Bureau of Indian Standards Act, 1986 and Rules, 1987 • Motor Vehicles Act, 1988 • Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989. • Trademarks Act, 1999. • Hazardous Waste (Management and Handling) Rules, 2003. • Plant Quarantine (Regulation of Import into India) Order, 2003. • Food Safety and Standards Act, 2006. • Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011

Key Aspects	Check Points
Import Payment	Whether payment of import consignment has been made within the period permitted under FEMA.
Export Remittances	Whether export remittances of export consignments have been received within the stipulated period and treatment of non-receipt of such export proceeds i.e. payment of duty drawback along with interest, re-payment export benefits and following FEMA regulations.
Re-Exports & Re-Imports	Detailed verification of re-import and re-export documentation and fulfilling the conditions of the notification including identification thereof.
EOU/EHTP/STP	<ol style="list-style-type: none"> 1. Checking of duty-free entitlement w.r.t. LUT submitted with Jurisdictional Development Commissioner and intimation given under Rule 5 of IGCRD Rules 2017 2. Clearances of goods on following of the conditions of Notification No. 52/2003 Cus dt. 31.03.2003 as amended. 3. Checking of ER-2 Return or Annexure A / Form A or Annexure B for receipt and consumption of imported goods. 4. Duty Payment on domestic sale of finished goods 5. Exit formalities and Duty payment thereon 6. Strict adherence of all the conditions of Notification No. 52/2003 Cus dt. 31.03.2003 as amended time to time. 7. Documents and material movements sent to &fro such sub-contractor and payment of duty on clearance of scrap
Project Imports and Project Exports	<ol style="list-style-type: none"> 1. Imports under project import condition and fulfilling conditions thereof. 2. Shipments under Project Exports and availing benefits of export and correctness thereof.
Standard Input Output Norms (SION)	<ol style="list-style-type: none"> 1. Checking of imports duty free allowed under norms fixed and actual consumption as per ERP Reports / Books of Accounts / Cost Records & Cost Audits as against declaration submitted at Customs Office and DGFT Offices or Development Commissioner's Office

It is worthy to note when department can appoint experts like Chartered Accountants / Cost Accountants for conducting such audits, it is advisable to get audited internally by expert team to avoid adverse findings by Departmental Offices, which will attract additional duties & penalties thereon, interest, fine, confiscation and seizure of the goods and revocation of benefits granted by various government authorities.

Government has walked through a lot trusting importers and exporters, which is now importers and exporters to reciprocate and be proactive during the audit by taking preventive care and keeping all the documents ready before audit.