

EASE OF DOING BUSINESS & CUSTOM AUDIT



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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 disbursement 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) dtd 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.