

# Self Assessment under the Customs Act, 1962 and On-Site Post Clearance Audit

The Government, keeping in view the international trend, brought about a paradigm shift in the Customs Act, 1962 (the Act), in the Budget of 2011 so as to introduce the concepts of self-assessment and post-clearance audit with respect to the import and export of goods. These concepts are in line with the international practice of administering the revenue without interference. The Self-Assessment would, however, be subject to a post-clearance audit at the Custom House. For a certain class of importers, the PCA at the port of import by the Custom House officials is also done away with and replaced by an ‘Onsite Post Clearance Audit’. These concepts also call for a robust IT infrastructure, a comprehensive database and systems to analyse the database that can assist and strengthen the tax administration and make it more effective. Such a system not only reduces the paperwork but also solves the problem of delayed clearances. The concept of Self-Assessment and OSPCA under customs is relatively new to India. Members specialising in the field of indirect taxes, particularly in the area of customs laws, may explore opportunities of conducting a compliance review for their clients, specially with regard to customs documentation. Read on to know more...



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A recent survey indicated that India's Central and State governments have just a fifth as many public servants as compared to the United States, in proportion to the population. The figures raise concerns over the efficient and effective administration to improve governance. The current trend in the industry shows increased purchasing power and consumption capacity due to technological advancements and economic growth in the country. The trade volume is increasing year after year. New ports, airports, ICDs and land customs stations are being set up to cope up with the industry requirements. On the other hand, there is also an increased expectation from the industry regarding faster and hassle-free clearances of goods traded across the frontiers. The Government, keeping in view the international trend, brought about a paradigm shift in the Customs Act, 1962 (the Act), in the Budget of 2011, so as to introduce the concepts of self-assessment and post-clearance audit with respect to the import and export of goods.

India has had a convincing experience with the direct tax collections over the past few years as a result of the constitution of the Tax Information Network for modernising the system of collection, processing, monitoring and accounting of direct taxes using information technology. Similarly, on the Customs front, we have the valuation database which has assisted the department to check undervaluation of imports. These databases have helped a compliant tax payer with accelerated clearances and approvals, while for the others the compliance levels have advanced. In a growing economy, a system of administration without interference yields better results than the sledge hammer approach of high level of scrutinies, searches and investigations.

### Changes Introduced on the Customs front

The Finance Act, 2011 brought about a series of changes in order to streamline the Indian tax regime. Amendments were made to Sections 2, 17, 18, 46, 50 and 157 of the Act. Firstly, the definition of Assessment in Section 2 of the Act was amended to include Self-Assessment. Secondly, Section 17 of the Act was amended to provide legal backing for Self-Assessment. Consequential amendments were carried out to Section 18 dealing with Provisional Assessment, Section 46 which deals with filing bills of entry electronically, Section 50 which deals with filing of shipping bills electronically and Section 157 in relation to the regulation making powers.

As per the new provisions, an importer or exporter has to file his declaration electronically and the moment a unique number for the document is generated in the information system, the document is deemed to have been filed and self-assessment is completed. The new provisions also provide that a proper officer may verify the self-assessment and if found necessary, he may open the assessment to re-assess the goods. The words 'may verify' gives an indication that the verification will be done in a select few cases with the assistance of Risk Management System (RMS) of the EDI, to select a consignment for the purpose of verification. Essentially, a trust-based system has been introduced which provides for a system to accept the assessee's declaration and allow him to pay duty based on his assessment. In other words, the new system provides a basis for progressive reduction in the level of customs interaction with the importers and exporters in the act of clearing the cargo.

### Aims and Objectives of Self-Assessment

The Central Board of Customs and Excise ('CBEC') issued the Circular<sup>1</sup> providing guidelines on the 'Implementation of Self Assessment in Customs'. The main aim of the new system is to move to a path of trust-based compliance management.

The major objective of the Self-Assessment procedure is to reconcile the two conflicting interests (i.e. Faster Clearance vs. Customs Check) on the basis of best international practices. There has been a paradigm shift in the procedures involved in clearance of goods where the onus of assessment of goods shifts from Customs Authorities to the importer or the exporter of goods. It is the paramount responsibility of the importer or the exporter to ensure that aspects such as classification, rate of duty, value of goods

and country of origin among other elements are appropriately factored at the time of Self-Assessment. The Self-Assessment would, however, be subject to a post-clearance audit (PCA) at the Custom House. Verification of self-assessment pertaining to such bills of entry or shipping bills or re-assessment by the customs authority is based on risk-based parameters with the assistance of RMS.

For a certain class of importers, the PCA at the port of import by the Custom House officials is also done away with and replaced by an 'Onsite Post Clearance Audit' (OSPCA). The facility of OSPCA is further extended to those covered by the Accredited Client's Programme (ACP) which was a part of the earlier system. ACP clients are established importers satisfying some basic criteria. CBEC, in its Circular<sup>2</sup> has clarified that the importers with ratings in excess of 60% RMS may also be brought under the ambit of OSPCA.

### Introduction of the System of OSPCA

As a corollary to deal with clearances based on Self-Assessment, On-Site Post Clearance Audit at the Premises of Importer or Exporter Rules, 2011<sup>3</sup> (OSPCA) has been introduced to protect the interest of the Revenue. CBEC's Circular<sup>4</sup> dealing with implementation of OSPCA segregates ACP importers into three categories viz. Assessee registered with LTUs, Multi-location units and Other assesseees. The circular further clarifies that, in order to avoid duplication of the audit, OSPCA shall be done simultaneously with Central Excise and Service Tax. In such cases, Post Clearance Compliance Verification (PCCA) at the Customs House shall be done away with. CBEC has operationalised OSPCA w.e.f 1<sup>st</sup> October 2011 for ACP importers only. These regulations outline the obligations of the importer and exporter, penal consequences for non-compliance and the procedure covering the manner in which the On-Site Audit is to be conducted.

Under the OSPCA, the officers of Customs and Central Excise visit the premises of the ACP importer and importers with ratings in excess of 60% RMS, once a year, to audit their import related documents and books of accounts. The assesseees are required to preserve relevant records for a period of five years. The term 'premises' include the registered office, factory, warehouse, etc., where the imported or export goods and books of accounts, and other documents are ordinarily kept by an importer or exporter. The audit

<sup>1</sup> Circular No.17/2011-Cus dated 8<sup>th</sup> April 2011

<sup>2</sup> Circular No. 15/2102-Cus dated 13<sup>th</sup> June 2012

<sup>3</sup> Notification No.72/2011-Cus (NT) dated 4<sup>th</sup> October 2011

<sup>4</sup> Circular No.47/2011-Cus, dated 21<sup>st</sup> October 2011

team can scrutinise the records or examine the goods and conclude their report after discussing their views with the importer/exporter. Self-assessment based clearances coupled with measures involving OSPCA would, therefore, lead to greater accountability of the importer on Customs Assessment and higher visibility of trend in the cross border trade and the financials of the company *vis-à-vis* the transfer pricing documents.

To facilitate electronic declaration for imports and exports, the Bill of Entry (Electronic Declaration) Regulations, 2011<sup>5</sup> and the Shipping Bill (Electronic Declaration) Regulations, 2011<sup>6</sup> have been issued to accommodate filing of electronic form of Bills of entry and Shipping Bills. These changes, combined with the evolving concept of Authorised Economic Operator (AEO), will help in reducing the dwell time of goods throughout the customs frontiers of India and also help in reducing the cost of insurance, storage and transaction as such.

Consequent to various statutory amendments, CBEC has issued Customs (Provisional Duty Assessment) Regulations, 2011<sup>7</sup> which has superseded the Customs (Provisional Duty Assessment) Regulations, 1963. This Regulation is issued in line with the new Self-Assessment provisions, procedures and it provides for imposition of penalty upto ₹ 50,000 in case of non-compliance.

### Advantages of Self-Assessment and OSPCA

- a. *Standardisation:* The policy of self-assessment is consistent with the Customs Risk Management Model endorsed by the World Customs Organisation. Across the world, Customs authorities have established standardised techniques of cargo management.
- b. *Risk Based Assessment:* The EDI is equipped with tools and techniques to identify shipments that represent a risk and subject those shipments to scrutiny that have high risks, while low risk shipments enjoy minimal scrutiny upon customs clearances.
- c. *Non-Intrusive Administration:* The companies having a clean track record and history of compliance with laws enjoy low risk of non-compliance with the customs laws and get benefited with less customs intervention and fewer delays.
- d. *Efficiency:* There has been a significant reduction in the level of customs interaction with the traders.

Moreover, the new system has also helped the Government to use statistical and analytical tools to effectively administer and monitor over the cross border trade.

### Conclusion

Self assessments represent a significant change for import and export operations in India that requires a proactive approach to customs compliance. An effective OSPCA in-turn helps the Government. Hence, the Government and the Trade need to prepare for these changes, including the implementation of procedures and internal controls to ensure that accurate data is declared to the Customs Authorities.

The new system has brought about faster clearance of cargo, reduction in the dwell time of ships and reduced transaction costs to the trade. The Department too is benefited by taking a holistic view during audit (PCA or OSPCA) and concentrate on sensitive areas. The techniques of audit should be more sophisticated using statistical analytical tools. The very possibility of quality PCA or OSPCA can be expected to improve compliance in correct description of goods and their valuation, including Retail Sale Price, passing on of discounts that are claimed, fulfillment of export obligations under various export incentive schemes, etc. The importers/exporters are advised to improve their record keeping. They should also strengthen their internal controls either through in-house expertise or through hired experts, so as to improve their compliance levels or for that matter, to ensure that all legitimate benefits and concessions are duly claimed.

### Professional Opportunities for Members

The concept of Self-Assessment and OSPCA under customs is relatively new to India. Members specialising in the field of indirect taxes, particularly in the area of customs laws may explore opportunities of conducting a compliance review for their clients, specially with regard to customs documentation. The advantage of conducting such review is not only to help the clients in rectifying the errors in a timely manner, but also help them mitigate the payment of interest and penalty by reason of non-compliance.

Chartered Accountants may also conduct internal audits in order to improve the level of compliance with laws and also help clients strengthen their internal controls. Audits may be conducted in the core areas dealing with eligibility of exemptions, classification of goods, valuation (related party imports), fulfillments of obligations, etc. ■

<sup>5</sup> Notification No.79/2011-Cus (NT) dated 25.11.2011

<sup>6</sup> Notification No.80/2011-Cus (NT) dated 25.11.2011

<sup>7</sup> Notification No.81/2011-Cus (NT) dated 25.11.2011