

Self-Assessment of Import / Export Consignment & On-site Post Clearance Audit

By CMA Ashok Nawal

12th January 2012

Self-assessment in custom has been implemented w.e.f. 08/04/2011 vide Finance Act - 2011 by suitable changes to Section 17, 18, 46 & 50 of the Customs Act, 1962.

Self-assessment *interalia* requires importers/ exporters to correctly declared value, classification, description of goods, exemption notifications, etc and self-assess the duty thereof if any self-assessment is expected to usher in a new era of customs and freight partnership leading to greater facilitation of compliant traders. Self-assessment reposes trust on an importer / exporter to make correct import / export declarations in terms of description of goods, value and exemption notifications etc. for clearance of import / export goods. Self-assessment is a trade facilitation measure aimed at expediting clearance while safe guiding the interest of revenue. Section 17 of Customs Act, 1962 provide that proper officer may verify the self-assessment and such verifications is done with the help of Risk Management System (RMS) that validates all Bill of Entries on the bases of specified Risk Rule and if, foreign trade, identifies those that require review of assessment or examination or both . And other Bill of Entry are facilitated and goods covered thereby cleared without **ASSESSMENT AND EXAMINATION** moreover RMS identifies some Bill of Entries for detailed scrutiny **AFTER CLEARANCE OF GOODS** and such scrutiny is called as **POST CLEARANCE COMPLIANCE VERIFICATION (PCCV)** or **POST CLEARANCE AUDIT (PCA)**. However PCA / PCCV have not been properly conducted or and there are number of cases in delay in conducting PCCV / PCA and therefore it was felt necessary to introduce / implement '**ON-SITE POST CLEARANCE AUDIT**'.

Self-Assessment is supported by Sections 17, 18 and 50 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulations, 2011 and Shipping Bill (Electronic Declaration) Regulations, 2011. The On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011 issued in terms of Section 157 of the said Act would help the Department to verify the correctness of Self-Assessment.

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 seare 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

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- 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. CBEC have issued the Circular No.39/2011 CUS dt. 02/09/2011 and issued the instruction to streamline procedure and for effective implementation of self-assessment using RMS to facilitate the target of 80% of Air Cargo complexes 70% of Sea Ports and 60% of ICD.

It has to be ensured by importer / exporter to consider above aspects and change the existing system of depending only on CHA and expedite speedy clearance of the consignments.

Notification No. 72/2011 Custom NT. has been issued and made effective from 4th Oct.-2011 and 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.

It is important to understand the following information under the said regulation.

a) **'audit'** means examination of bills of entry, shipping bills, invoices, packing lists, import licences, books of account, and other records of transaction relating to imported and export goods, and may include inspection of goods at the premises, if available and where necessary, drawl of samples;

b) **'books of account'** includes ledgers, day-books, cash books, account-books and other accounts whether kept in the written or printed form and data stored on a floppy, disc, tape or any other form in electro-magnetic data storage device;

c) **'premises'** includes the place at which imported or export goods and connected books of account, records of transaction and other documents are ordinarily kept by an importer or exporter, as the case may be, and his registered office or the premises indicated in his Importer Exporter Code (IEC) issued by the Ministry of Commerce and Industry and the places wherever the imported or export goods, as the case may be, are ordinarily kept;

Audit will be conducted for the examination of bills of entry, shipping bills, invoices, packing lists, import licences, books of account, and other records of transaction relating to imported

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and export goods, and may include inspection of goods at the premises, if available and where necessary, drawl of samples; and the same will be cross check with ledgers, day-books, cash books, account-books and other accounts whether kept in the written or printed form and data stored on a floppy, disc, tape or any other form in electro-magnetic data storage device. In other words Officers of Custom / Excise are authorised to verify each and every transaction with all the available data / information kept at any place in any manner.

Similarly it will be observed that the premises includes all the places indicated in Importer Exporter Code (IEC) issued by the Ministry of Commerce and Industry and the places wherever the imported or export goods, as the case may be, are ordinarily kept.

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	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.
Classification	1) General principle of classification is to match correct and complete description of goods with that of Custom Tariff Act. 2) Classification should be in consonance 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.
Levy of duty/ Cess	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.

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Key Aspects	Check Points
Nature of the goods	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.
Quantity and Unit of Measurement	<p>1) 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.</p> <p>2) 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.</p>
Whether the notification benefit is conditional or otherwise	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 countervailing duty is applicable base don MRP	<p>1) Most of the times while clearing the goods the conditions of Notice No. 44 (RE 2000)/ 1997 -2002dt. 24/11/2000 not been strictly followed and the casual declarations are made. Since the goods will be available for inspection and audit proper declaration of MRP at the time of payment of CVD and affixing / printing of the lable on the goods is the requirement under Legal Metrology Act and should be complied with.</p> <p>2) Proper records to be kept for verification of MRP declared at the time of imports and the price list of such items otherwise unnecessary litigation will arise.</p>
Whether anti-dumping duty or safeguard duty is applicable	<p>1) 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 ascertained manufacture – supplier or exporter, country of origin of imported goods,</p> <p>2) Test Reports, Certificate of Analysis, Brochures and Catalogues, Sales Invoices will also be audited to ascertained the correctness of declaration and assessment of Anti-Dumping Duty and Safeguard Duty.</p>

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Whether duty benefit is available under a Free Trade Agreement	<p>1) Importer needs to be 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 .</p> <p>2) Importer needs to obtain necessary GSP as per countries specific Rules Of Origin and fulfill the conditions before claiming such benefits under the notification.</p>
Whether duty benefit is available as Project Import:	<p>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.</p>
Whether duty benefit is available under Export Promotion schemes	<p>1) If duty benefit is availed under various schemes under Chapter 3 of Foreign Trade Policy like SIS, FMS, FPS, MLFPS, Hi-Tech, SHIS, VKGUY etc.. the script and utilization thereof needs to ensured even after imports.</p> <p>2) 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.</p> <p>3) 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 alongwith duty, interest and penalty will be applicable.</p> <p>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.</p> <p>5) Product technical literature, application catalogues, certificate of analysis, inhouse test report, sales invoices, composition of raw-</p>

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	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	<p>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.</p> <p>2) The transactions with related parties needs 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.</p> <p>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.</p> <p>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.</p> <p>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</p> <p>6) The export value declared on excise return i.e ER- 1 / ER-2 should be matched with / reconcile with Shipping Bill, Bank Realization Certificate, Books of Accounts, Notes to Accounts.</p>

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Key Aspects	Check Points
	<p>7) Exporter needs to take due care while filing the declaration which should be accurate, true and complete.</p> <p>8) In case of High Sea Sales transactions value as accounted and received from buyer will be also subject for audit.</p> <p>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.</p>
Import and export restrictions and licensing	<p>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.</p> <p>2) The goods covered under prohibited / restricted goods should be under licensing provisions and conditions to be strictly fulfilled.</p>
Compulsory Compliance Requirement (CCR)	<p>During audit Custom Officer can verify the Compulsory Compliance Requirement as applicable under various laws as give 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 Drugand 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 in to India) Order,1989. • Trade Marks Act,1999. • Hazardous Waste (Management and Handling) Rules, 2003. • Plant Quarantine (Regulation of Import In to India) Order, 2003. • Food Safety and Standards Act,2006. • Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules,2011

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It is the statutory duty of the importer and exporter to provide all the information as mentioned above and also make available relevant documents during audit. Importer/ Exporter will be given advance notice of 15 days for conducting the audit and Custom Officers can obtain prior information before conducting such audit. Audit will be conducted in the premises of importer /exporter and draft audit report will objections if any, will be provided to the importer /exporter giving an opportunity to offer clarifications with supporting documents and if importer / exporter agrees with the audit findings either in part or full will make voluntary payment and same will be part of the audit report.

When on-site post clearance audit is conducted it should cover all import / export transactions and the records of import /export should be maintained for five years.

On-Site Post Clearance audit has been operationalize w.e.f. 01/10/2011 for the period beginning from 01/04/2011. Initially importer registered under Accredited Client Programme (ACP) and thereafter it will be extended and also periodicity of audit also will be extended.

Audit will be conducted as follows..

ACP Importer	Audit by
Registered with LTU	Audit Team by LTU wing
Multi location unit	Central Excise Commissionarate with Nodal Commissionarate having jurisdiction over registered office / HO
Others	Central Excise Commissionarate having jurisdiction over registered office / HO

It is also proposed to avoid duplication and interface audit of excise / service tax and On-site Post Clearance Audit will be done simultaneously.

Importer /exporter needs to respond to the proactive system of building, trust and record base self-assessment system and audit thereof and therefore substantial change in operating procedures and practices of custom clearance of import /export consignments needs to be made and issues mentioned therein above needs to be addressed without any delay to avoid any litigation and payment of differential duty, interest, penalty and redemption fine in lieu confiscation.