Circular No. 47/2011-Customs.

F.No.450/1/2010-Dir(Cus)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
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227-B, North Block,
New Delhi - 110 001.

21st October, 2011

To

All Chief Commissioners of Customs / Customs (Pre.)
All Chief Commissioners of Customs & Central Excise
All Commissioners of Customs /Customs (Pre.)
All Commissioners of Customs (Appeals)
All Commissioners of Customs and Central Excise
All Commissioners of Customs and Central Excise (Appeals)
All Directors General under CBEC.

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Sir / Madam,

Subject: Implementation of 'On Site Post Clearance Audit' - Regarding.

CBEC has introduced the scheme of 'On Site Post Clearance Audit' or OSPCA at premises of importers and exporters' vide Notification No. 72/2011-Cus. (NT) dated 4.10.2011. Guidelines for the conduct of OSPCA had been earlier circulated on 13.5.2011. This scheme complements the legislative change resulting in self-assessment of import / export duties by importers / exporters vide the Finance Act, 2011.

2. OSPCA is a trade facilitation measure aimed at expediting clearances while safeguarding the interest of revenue. 'Self-assessment' reposes trust on an importer / exporter to make correct import / export declarations in terms of description of goods, value, exemption notification etc. for clearance of import / export goods. Further, Section 17 of the Customs Act, 1962 provides that the proper officer may verify the self-assessment. On the import side, the verification is done with help of a 'Risk Management System' (RMS) that validates all Bills of Entry on basis of specified risk rules and, if warranted, identifies those that require review of assessment or examination or both. Other Bills of Entry are 'facilitated' and goods covered thereby are cleared without assessment and examination. Further, RMS

identifies some Bills of Entry for detailed scrutiny after clearance of goods. This scrutiny is called 'Post-Clearance Compliance Verification' (PCCV) or is loosely referred to as Post Clearance Audit or PCA. PCCV or PCA is, however, a transaction based check and it does not provide an opportunity to verify or scrutinize the correctness of declarations, books of account and other documents over a period of time. Moreover, some importers feel harassed when asked to submit documents to confirm assessment long after the goods have been cleared. There are also cases of delay in conducting PCCV or PCA. On account of these reasons the Department felt constrained in enhancing the facilitation level for importers to further reduce the dwell time. Therefore, a necessity was felt to introduce OSPCA.

3. OSPCA allows verification of self-assessment on periodic basis by scrutiny of relevant business records at the importers / exporters premise. Thus, an importer or exporter can benefit from reduced clearance time and can deal with the goods promptly, saving on insurance, warehouse and storage charges. On the other hand, the Customs can do a comprehensive company oriented check to ensure that imports or exports conform to the declarations.

4. OSPCA is provided for vide Section 17(6) of the Customs Act, 1962, which empowers the proper officer for verification of correctness of assessment of duty on imported or export goods at the premise of importer or exporter. Further, Section 157 of the said Act empowers the Board to frame regulations on the manner of conducting audit at the premise of the importer or exporter. Accordingly the 'On Site Post Clearance Audit at the Premises of Importer or Exporter Regulations, 2011' has been notified w.e.f. 4.10.2011. Other recent supporting legislative changes include enhancing time limit to one year for refund of Customs duty and for demanding Customs duty under Sections 27 and 28 of the Customs Act, 1962 respectively.

5. When OSPCA is conducted it should cover all import / export transactions including those under the export promotion schemes. To facilitate this, the On Site Post Clearance Audit at the premises of Importer or Exporter Regulation 2011 makes it mandatory for an importer / exporter to make available in a timely manner all documents and record including electronic records relating to import and export of goods to the proper officer conducting OSPCA. An importer or exporter is also required to maintain relevant records and documents including electronic details pertaining to import or export of goods for a period of five years from the date of import or export. Further, the Regulations envisage that the auditor shall verify the correctness of declaration and may take sample of imported or export goods, if required. There is also a provision of imposing penalty on an importer / exporter in case of contravention of any provisions of the said Regulations.

6. To begin with, Board has operationalized OSPCA w.e.f. 1.10.2011 only for importers registered under the Accredited Client Programme (ACP). It has also been decided that ACP importers shall be subjected to OSPCA on annual basis i.e. once during each financial year. However, during the transitional phase of the current financial year, the records for previous months beginning from 1.4.2011 may be taken up for audit. Coverage of OSPCA shall be increased in subsequent phases and the periodicity of audit in respect of other entities prescribed at that stage.

7. For a coordinated and effective OSPCA, the ACP importers have been segregated as under:

(i) Those that are registered with LTU Commissionerates - to be audited by the audit wing of LTU concerned;

(ii) Multi Location Units - to be audited by the Central Excise Commissionerates with the nodal Commissionerate being the one having jurisdiction over the registered / head office of the ACP importer; and

(iii) Others ACP importers - to be audited by the Central Excise Commissionerate having jurisdiction over the head office / registered office of the ACP importer.

8. As aforestated, OSPCA is viewed as a trade facilitation measure and one way to do away with avoidable interface with the Department. ACP importers with manufacturing facilities and / or those registered as service providers / recipients with the department would already be undergoing Central Excise and / or Service Tax audit. Therefore, in order to avoid duplication of exercise and reduce interface, OSPCA shall be done simultaneously with Central Excise and Service Tax.

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9. Further, in respect of ACP importers to be audited under the scheme within a period of one year, Board has decided that carrying out PCCV or PCA at the respective Customs House shall be a duplication of effort for both Department and ACP importers. Therefore, Board desires that in respect of ACP importers PCCV or PCA at the Customs Houses shall be dispensed with henceforth.

10. Suitable instructions may be issued and wide publicity be given for guidance of trade and industry.

11. Difficulty faced may be brought to the notice of the Board immediately.

Yours faithfully,

(R P Singh)
Director (Customs)