

F.No.450/61/2018-Cus. -IV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)

Room No. 227B, North Block

Dated the 8th January, 2019

To,

All Principal Chief Commissioners/ Chief Commissioners of Customs/ Customs (Preventive)

All Principal Chief Commissioners/Chief Commissioners of Customs & Central Tax.

All Directors General under CBIC

All Principal Commissioners/Commissioners of Customs/Customs (Preventive)

All Principal Commissioners/Commissioners of Customs, Central Excise & Central Tax

Subject: Customs Post Clearance Audit- reg.

Sir/ Madam,

A new audit approach is envisaged in view of the experience gained over the past years in implementation of Customs Post Clearance Audit, as well as the exposure to international best practices. Further, under the WTO's Trade Facilitation Agreement, it has been inter-alia provided that with a view to expediting the release of goods, each member shall adopt or maintain post clearance audit to ensure compliance with customs and other related laws and regulations; each member shall select a person or a consignment for post-clearance audit in a risk-based manner; each member shall conduct post clearance audits in a transparent manner. Customs Post Clearance Audit (PCA) is an initiative based on global best practices which promotes a culture of voluntary compliance. It is aimed at creating an environment of increased compliance while allowing the Department flexibility to enhance the facilitation for importers and exporters. PCA allows Customs to reduce border controls by shifting compliance checks from the clearance stage to the post clearance stage.

2. PCA was first introduced in 2005 (when the Risk Management System was operationalized). It replaced the conventional system of concurrent audit, which formed a part of the assessment process, by separating the audit function from assessment function, thereby facilitating expeditious clearance of goods. Onsite Post Clearance Audit (OSPCA) was also introduced in 2011, which envisaged a more comprehensive audit carried out at the premises of importers and exporters. Hitherto, OSPCA was conducted under section 17(6) of the Customs Act, 1962 as the provisions empowered the proper officer to audit the assessment of duty on the imported goods or export goods at his office or at the premises of the importer or the exporter.

3. Customs clearance over the years has undergone a paradigm shift. From a dedicated focus on duty/ revenue, the attention has expanded to trade facilitation, regulatory compliance and intelligent enforcement. Even though the OSPCA provisions have served their objective, however, their limited scope has proved to be restrictive inasmuch as only an importer or an exporter could be audited. As per the scope and coverage of audit under the erstwhile provisions, not only transaction level details but more importantly the trader's commercial systems were also to be evaluated for compliance. Therefore, it was felt that a more comprehensive legal framework was required. The legal framework would define the scope of entities that would be subjected to customs audit, the manner, rights and obligations of the auditee and other related issues. In the light of the revised focus, a new section 99A (under Chapter XIIA) was introduced in the Customs Act through the Finance Act 2018, to provide a statutory framework for audit. An exhaustive definition of 'Auditee' to include custodians or licensees of a warehouse, customs brokers and any other person concerned directly or indirectly in clearing, forwarding, stocking etc. was introduced making it distinct from the scope of the audit prior to these statutory changes. Along with the expanded definition of auditee, a complementary amendment has been made in the sub-section (2) of section 17 as well. The changes in the said sub-section have broadened the ambit of assessment from "assessment of duty" to "assessment of the entries made under section 46 or section 50 and the self-assessment of goods". These statutory changes have been made given the prominent role Customs audit is going to play in future in the context of increasing trade facilitation.

4. Board has also issued 'Customs Audit Regulations, 2018' vide [notification No. 45/2018-Cus \(NT\) dated 24.5.18](#) in supersession of the On-site Post Clearance Audit regulations consequent to omission of sub-section (6) of section 17. In order to operationalize customs audit under the new provisions in the Customs Act, 1962, Board vide [notification No. 85/2017-Customs \(N.T.\), dated 7th September, 2017](#) has notified Audit Commissionerates in Chennai, Delhi and Mumbai Zone-I with all India jurisdiction. These Commissionerates have become functional with effect from the 1st April, 2018 under the administrative control of the Chief Commissioner of Customs Chennai, Delhi and Mumbai Zone-I respectively. Audit Commissionerate at Nhava Sheva under the administrative control of the Chief Commissioner of Customs, Mumbai Zone-II, with all India jurisdiction has also been notified vide amending [notification No. 100/2018-Customs \(N.T.\) dated 27th December, 2018](#). Audit Commissionerates are headed by an officer of the rank of Principal Commissioner/ Commissioner of Customs. Board vide [notification No. 39/2018-Customs \(N.T.\) dated 11th May, 2018](#) has appointed officers in Customs Audit commissionerates of specified ranks as officers of Customs for the purpose of carrying out audit under section 99A of the Customs Act.

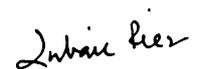
5. Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed. **Transaction based audit (TBA)** was actually introduced in 2005 (when the risk management system was operationalized). Transaction Based Audit is a form of the erstwhile PCA. It may also be noted that a TBA may subsequently be converted into a Premises based Audit (PBA). **PBA** was first introduced in the year 2011 by way of On-site Post Clearance Audit at the premises of Importers and Exporters Regulations, 2011 whereby it was laid down that audit shall also be conducted at the premises of the importers / exporters.

However, the new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any **criteria** or **Theme for the audit**.

6. Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit. Audit Commissionerates have started functioning in right earnest with encouraging results.

7. The officers of the respective jurisdictional executive Customs Commissionerates have also been empowered by the Board as proper officers under section 99A vide [notification No. 44/2018-Customs \(N.T.\) dated 24th May, 2018](#). The Commissionerates falling in the customs zones other than Mumbai-I, II, III, Delhi and Chennai shall continue to conduct Transaction Based Audit within their jurisdiction. Executive Commissionerates would also be assigned PBA, wherever necessary. Customs Audit Commissionerates would be interacting frequently with executive Commissionerates. The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit. The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures. All Chief Commissioners are therefore requested to assess the nature of objections raised and ensure that good detections are replicated in other field formations, creating a domino effect thereby.

Yours faithfully,



(Zubair Riaz)

Director (Customs)