



## **CONCEPT PAPER**

## **OF GROUP II**

**ON**

## **EFFECTIVENESS OF THE PCA CONCEPT IN INDIAN CUSTOMS AND ALTERNATIVE SOLUTIONS**

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# Executive Summary

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The National Academy of Customs Excise & Narcotics (NACEN) vide, its letter F.No.II(15)32/2015-NACEN/Pt. dated 23.09.2015 constituted seven Project Groups of officers attending Mid-Career Training Program (MCTP) in Group II of Phase III for preparation of Project Papers and Power Point Presentation with the direction that the Concept Paper and Power Point Presentation must be submitted to NACEN, Faridabad within three days of the completion of the overseas component.

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# **Effectiveness of the Post-Clearance Audit (PCA) Concept in Indian Customs and alternative solutions**

## **1. Brief Introduction:**

1.1 The Revised Kyoto Convention is an international agreement that provides a set of comprehensive Customs procedures to facilitate legitimate international trade while effecting Customs controls including the protection of Customs revenue and society (1). It deals with key principles of simplified and harmonized Customs procedures, such as predictability, transparency, due process, maximum use of information technology and modern Customs techniques [e.g. risk management, pre-arrival information and post-clearance audit (2)].

1.2 World Customs Organization Guidelines on post-clearance audit (PCA) resulted in a comprehensive review and update of the previous PCA Guidelines developed in 2006. It highlights Members' growing need to secure revenue while facilitating legitimate trade, and also the emerging and increasing migration of Customs activities away from traditional border controls to the post-clearance environment embedded in a wider trade facilitation context.

1.3 Post Clearance Audit (PCA) has been adopted in many countries all over the world. Audit control systems introduced by Customs administrations differ in scope and methodology. Practice has also demonstrated that launching a fully-fledged audit system in a country with high levels informal trade is very difficult. Nevertheless, Members are encouraged to work towards aligning their practices with the Guidelines in order to ensure that they are using an approach which was developed from Members' experiences and is consistent with modern Customs techniques.

1.4 The growth in international trade, coupled with declining resources for Customs administration worldwide relative to the increase in volume of international trade and the need for trade facilitation, has necessitated the adoption of risk management and audit based control (2). These permit Customs authorities to release the vast majorities of shipments and retain only consignments matching the risk profiles. Non-selected cargo is released immediately but may be subjected to Post Clearance Audit.

1.5 Administrations that do not use audit-based controls usually concentrate their controls entirely at the border and at the time of import, and often apply a 100% physical examination approach (6). This leads not only to unnecessarily long delays at the border but is also a very ineffective and inefficient use of the limited control and inspection staff at the border. In addition, 100% physical examination creates and

enabling environment for corrupt practices. Audit-based controls are a pre-requisite for administrations to successfully apply other trade facilitation measures, such as segregation of release and clearance, simplified procedures for authorized traders and AEOs or the WTO valuation rules (7).

1.6 Faster release of goods at borders is expected to reduce trade costs for businesses. A saving of one day in shipping manufactured goods could be equivalent to 0.8% of the value of goods (8). Assuming that trade costs were reduced by 1% on average worldwide, it is estimated that world income would increase by about USD 40 billion (3). Increased revenue collection remains a core role for many Customs administrations. It is widely recognized that specific PCA measures potentially strengthen the capacity of Customs administrations to improve revenue collections. Firstly, revenue could increase as a result of a larger tax base (more imports) attracted by faster release of goods and lower trade costs as discussed above. Secondly, trade facilitation measures could reduce the incentives for “informal” cross border trade, on which traders do not pay Customs duty and VAT (3). Lastly, a specific Customs technique such as post-clearance audit could enhance revenue collection.

## **2. Indian context and the problem areas ;**

2.1 PCA requires an enabling environment such as a dedicated PCA organization within Customs. The legal powers to access commercial records and to enter traders' premises, properly trained staff, as well as the existence and proper application of accounting standards [e.g. based on the International Financial Reporting Standards (IFRS) as adopted by the International Accounting Standards Board] based on which companies keep their records (9). Only by following such accounting standards, Customs were in a position improve revenue collection. It is against this background that this study requires to establish the effect of Post Clearance Audit on revenue collection in India.

2.2 The existing system of concurrent audit has been replaced by a Post-Clearance Compliance Verification (Audit) function with the introduction of Risk Management System (RMS) vide CBEC Circular No. 43/2005 – Customs dated 24<sup>th</sup> November, 2005.

2.3 In actual sense, CBEC vide Circular No. 17/2011-Customs dated 8<sup>th</sup> April, 2011 implemented 'Self-Assessment' of Customs duty in respect of imported and export goods by the importer or exporter, as the case may be as stipulated in the Finance Bill, 2011 meaning that while the responsibility for assessment would be shifted to the importer / exporter, the Customs officers would have the power to verify such assessments and make re-assessment, where warranted. One of the salient features of self-assessment scheme is that verification of declarations and assessment done by the importer or exporter, except for cases wherein a speaking order has been passed by the proper officer while re-assessing the duty, can also be done after clearance transaction wise or at the premises of the importer or exporter.

2.4 The objective of the Post Clearance Verification Programmewas to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo. In Transaction Based System of PCA, the RMS will select the bills of entry for audit after clearance of the goods and these selected bills of entry will be directed to the audit officers for scrutiny by the EDI system. In case any possible short levies are noticed, the officers will issue a Consultative Letter setting out the grounds for their view to the Importers/CHAs. This is intended to give the importers an opportunity to voluntarily comply and pay the duty difference if they agree with the department's point of view. In case there is no agreement, the formal processes of demand notices, adjudication etc. would follow. It may also be noted that the auditors are specifically being instructed to scrutinize declarations with reference to data quality and advise the importers/CHAs suitably where the quality of their declarations is found deficient. Such advice is expected to be followed and will be monitored by the local risk managers. It hardly

needs emphasis that compliance in all its dimensions is in the mutual interest of the Government and the Trade and Industry and it will enable the government to give increasing levels of facilitation to the trade. The Importers/CHAs have been urged to cooperate in the department's efforts in this direction. The appraising facilities have been right-sized in tune with the reduced quantum of Bills of entry coming for assessment after implementation of RMS. Such staff is also diverted to the Post Clearance Audit.

2.5 On the other hand, the provision of 'On Site Post Clearance Audit' (OSPCA) programme has been introduced by the Board at premises of importers and exporters' vide Notification No. 72/2011-Cus. (NT) dated 4.10.2011 w.e.f. 01.10.2011. OSPCA was rolled out only in case of Accredited Clients Programme (ACP) in imports vide CBEC Circular No. 47/2011 – Customs dated 21<sup>st</sup> October, 2011. Guidelines for the conduct of OSPCA had been circulated on 13.5.2011. Suitable legal cover has been provided vide Section 17 and Section 157 of the Customs Act, 1962. Till that time, OSPCA is rolled out in case of all importers, the current Post Clearance Audit will continue.

2.6 The foremost function of the PCA is to verify the self assessed import clearance and to find the improperly self assessed Bills of Entry so that to demand the revenue which is short paid or not paid. However, going by the data available, it appears that the PCA is not functioning effectively, both in terms of revenue realization as well as efforts made by Customs officers in field formations. The implementation of the PCA in India has been ineffective due to various perceived reasons and this group has gone into study those areas which require attention to improve the efficacy of Post Clearance Audit (Transactional audit), as the same being a penultimate approach to extend the concept of OSPCA.

2.7 Though efforts were made to gather details of the PCA scheme like data regarding pendency and revenue realized in order to examine whether PCA is effective or not, but of little success. However, Group was able to get some data from JNCH regarding audit of Bills of Entry selected for PCA, pendency and revenue realized thereof which is discussed below.

Performance report of PCA for the month of May, 2015 (JNCH)							
No. of OCC granted	No. of B/Es selected for PCA	No. of B/Es audited out of total selection for PCA from beginning	Closing balance	Extra revenue realized in (Rs.)	No. of consultative letters issued	No. of show cause notice issued	
57273	9845	900	8945	Nil	Nil	Nil	

2.8 However, on the basis of working experience of the Group members and through discussions, it is known that there was hardly any revenue realized through transactional PCA. At the same time, though data of CAG is little old but shows the pendency of Bills of Entry for PCA almost in each Custom House as below:

Commissionerate	Cases of Pending cases with PCA as on 31 <sup>st</sup> March, 2013
Chennai Sea	87075
Chennai Air	43472
Tuticorin	5026
Mumbai Zone I NCH	19281
Mumbai Zone III ACC	92577
Nagpur	934
New Delhi NCH	283182
Kolkata Port	47304
Kolkata Airport	15737
Ahmedabad	9482
JNCH, Mumbai Zone II	371631

Some recent pendency details like of ICD, TKD and JNCH:

**ICD, TKD:**

	Less than 1 month	1 to 3 months	3 to 6 months	6 to 12 months	1 to 3 years	Above 3 years
AO	1260	2271	2885	5660	33541	5908
AC	-	1	80	993	14293	10984
JC	-	-	-	-	3	29

**JNCH data of PCA disposal (5) as well current pendency are as under:**

Year	Total OOC	Selected for PCA	%age
12-13	6,42,243	1,44,484	22.50
13-14	6,39,184	1,14,388	17.90
14-15	7,03,751	1,19,461	16.97

1 <sup>st</sup> April, 2015- 1 <sup>st</sup> June, 2015	2,93,241	45,120	15.39
1.8.2015 – 31.08.2015	59079	8212	13.90

Out of the pendency for the year	AC/DC	AO/Supdt
11-12	10,434	9,775
12-13	12,204	17,368
13-14	46,694	70,587
14-15	34,667	30,360
<b>15-16 (till 31.08.15)</b>	<b>58287</b>	<b>1,08,729</b>
<b>Total disposal till date</b>	<b>1,60,719</b>	<b>236819</b>

2.9 Bills of Entry processed in case of PCA are more in the nature of formality resulting in minimal recovery of revenue. This is more because of the reason that effective system is not put in place. There are certain **Structural and Functional challenges** in the present form of PCA (Transactional Audit). Given the field level exposure in Customs establishment in India by this project group of officers, it is professed that difficulties faced on achieving the efficacy of PCA, can be classified into two major areas for the convenience to study it, they are (i) Structural problems and (ii) Functional problems.

#### **A. Structural Problems:**

- (i) Resistance to change in the mind set of officers, hence due importance appears to have not been given to this area which is a large area for control and verification on post import/clearance in the era of self-assessment and facilitation in RMS ambience.

- (ii) Across India in Custom Houses' staff strength associated with this PCA sections seem to be very bleak in number, and due force are not allocated as in the case of assessment and examination. May be the latter handles the live consignment and hence more number of officers are provided unlike for PCA sections which apparently transact in the post import circumstances.
- (iii) Exclusive and dedicated officers are found missing for PCA work. Due to severe shortage of field level officers, PCA work is an additional charge/work assigned to the field level officers who are otherwise involved in routine assessment, examination and clearance. Thus PCA is not a priority.
- (iv) Lag in the /Lack of - movement of documents (dockets) from the CFSs to PCA section, which result audit not done in time.
- (v) No uniform common procedure has been prescribed for collection of documents before OOC. Improper collection of documents at the time of OOC, handicaps the auditing officer during verification.

**B. Functional Problems:**

- a) Insufficient training for officers on audit in self-assessment and PCA, especially for those officers who are posted in PCA. The importance of PCA is not felt within the department due to this. Need for upgrading the skills of officers posted for PCA on the lines of CRA audit officers who are given regular skill promotions.
- b) It is observed that there is no prescribed basic check list for weak link areas in the BEs to be audited in PCA. Hence audit becomes an individual and customized verification procedure, which departs from scientific method of analysis.
- c) At the Commissionerate level, depending on the availability of staff strength and pendency of PCA bills, the percentage of BEs to be targeted for PCA can be tweaked in RMS PCA. However, it appears no concrete steps have been taken towards that, which results in lack of correlation amongst the percentage of facilitation , the number of BEs picked up for PCA and number of officers posted for PCA.

### 3. International perspective:

PCA has been adopted in many countries all over the world. The implementation of PCA in the New Zealand Customs Service made a commitment to itself that an application for both import and export permission is to be processed within 0.5 hours by EDI and within 24 hours by non EDI. Low – risk goods identified by Customs RMS are less likely to be subject to Customs physical examinations at borders. Furthermore, a series of surveys by Japan Customs on the time required for the release of goods showed that release times have been reduced by the introduction and improvement of various Customs procedures and techniques. With Pre-Arrival information, for example, the survey in March, 2009 indicated that the average release time for sea cargoes was 1.7 hours which was 60% shorter than 4.1% hours average in cases without Pre-Arrival information.

On comparison with PCA adopted in other Customs administration, it is observed that the OSPCA form of PCA has been adopted in most of the countries and resulting in to substantial revenue realization. PCA is an example of the measures used to recover revenue loss in the process of facilitation. With PCA, for example, Japan Customs collected approximately US\$ 300 million in the 2012 fiscal year, the equivalent of approximately 1% of the annual Customs revenue. PCA referred to as Post-Release verification in Canada, led to a fiscal injection of US\$ 128 million in the fiscal year 2010 (4). Taking into account, the number of verification officers, each officer in Canada annually collected US\$ 0.35 million on average through PCA as mentioned below:

Verification officers	369
Verifications completed	3,143
Value of duty identified to be in error	US\$ 2.9 billion
Total revenue assessed (duties and taxes)	US\$ 53 million
Percentage error rates in total value of duty by Program:	
Tariff classification	18.80%
Origin	6.44%
Valuation	7.13%
Value for duty of Entry Adjustments processed	US\$ 17 billion
Duties and Taxes collected from Entry Adjustments processed	US\$ 128 million

### **3.1 Japan**

3.1.1 Japan Customs is formulating and implementing the appropriate and fair tax / tariff policies to realize a healthy national economy and robust public finance. Japan Customs collected Customs duties and Consumption Tax in totaling about 5.4 trillion yen (approximately US\$ 47 billion) in 2006. This is about 10% of the total national tax revenue, which indicates that Japan Customs is working as an important revenue agency after implementing PCA. In partnership with the National Tax Agency, Japan Customs is collecting duties and taxes in a fair and appropriate manner with due consideration to the effectiveness of its operations. The implementation of PCA in ASEAN Customs has helped to strengthen enforcement and provide the necessary support and confidence in the implementation of trade facilitating measures and simplified procedures in cargo processing and valuation specifically.

3.1.2 Post Clearance Audit (PCA) in Japan started in 1966, to supplement the Self-Assessment System, as a trade facilitation measure. Japan Custom's PCA is same as the On-site Post Clearance Audit (OSPCA) that India has introduced wef 1<sup>st</sup> October, 2011. The Customs and Tariff Bureau (CTB) in their Ministry of Finance deals with the matters relating to Customs Laws and Procedures which is akin to the Central Board of Excise & Customs (CBEC), Department of Revenue in India. The CTB has nine regional Customs set ups located at cities of Hakodate, Tokyo, Yokohama, Nagoya, Osaka, Kobe, Moji, Nagasaki and Okinawa. The main tasks of Post Clearance Audit, Investigation and Intelligence Division under CTB are as below:-

- Research and enquiries concerning values, freight, insurance charges etc. of imported goods for the tariff application.
- Matters relating to collection and analysis of information on violations of the Customs law, other related laws and regulations and investigations thereof.
- Contact and coordination with Customs administrations of foreign countries on information concerning violation of the Customs law etc.
- Compilation and publication of foreign trade and other Customs related statistics

3.1.3 PCA in Japan (same as India's OSPCA) is based in Custom Houses of the regional Customs formations and is divided in groups chapter-wise (as is also being done in India) at the time of assessment. The PCA officers verify declarations,

after clearance of goods, in order to confirm whether declarations were appropriately made by importers / exporters. Wherever erroneous or inappropriate declarations are detected during the PCA, the Customs gives instructions and advice to importers and suggest they amend declarations and pay the short levied amount of duty/ tax which is termed by them as Additional Duty. PCA is conducted by the auditors at the premises of the Importer / Exporter by inquiring importers / exporters, consignees / consignors, customs brokers etc. and by auditing their books, documents, records etc. Objectives of PCA are to ensure fair taxation, to keep order in customs clearance procedure and not to disturb smooth flow of cargo distribution.

PCA Section is known as the PCA Investigation and Intelligence Division consisting of PCA Section, Investigation Section and Intelligence Section. PCA Section is further divided into Control Units, Field Audit Units, Computer Assisted Audit Units and Archive & Intelligence Units. Most of the consignments are facilitated through self-assessment system and only few cases are assessed and cleared after examination / inspection. PCA is normally conducted once in 3 years and / or 5 years in case of low risk / most complied importers.

3.1.4 Japan PCA is persuasive in nature. When the officers during audit of premises notice any short levy the importer is persuaded to make amendment of the declaration and deposit the differential duty. They do not issue show cause notices in case importers are not agreeing with the audit detection. The Director General of Customs House (akin to India's Chief Commissioner) decides the case.

## **3.2 Singapore**

3.2.1 Post-clearance audit is the structured examination of a trader's relevant commercial systems and processes, financial and non-financial records, physical stock and other assets as a means to measure and improve compliance. It is conducted subsequent to the release of the goods from customs control. The purpose of post-clearance audit is to verify the accuracy and authenticity of declarations and other returns made to Singapore Customs. Such an audit can take place at the traders' premises or at Customs premises, and may take into account specific transactions, or cover imports and/or exports undertaken over a certain period of time.

3.2.2 All traders and declaring agents dealing with Singapore Customs may be subjected to post-clearance audit and are selected in accordance with our risk

management framework. Typically, an audit involves a series of steps as described below:

- a. Customs audit team will contact the company to be audited (“auditee”) to arrange for an interview with relevant personnel of the auditee. At the point of contact, the audit team will inform the auditee of the purpose, location, scope and requirements of the audit.
- b. During the interview, the audit team will be interested to find out more about the auditee’s business model, operations, systems and accounting practices. Auditees are encouraged to take the opportunity to seek clarification on any issues pertinent to legislation and procedures administered by Singapore Customs.
- c. After the interview, the audit team will verify the accuracy of the trade declarations and/or other returns made to Customs against the relevant trade documents to be provided by the auditee. Depending on the circumstances, this may be conducted at either Customs or the auditee’s premises. Examples of relevant trade documents include TradeNet permits, invoices, packing lists, bills of lading, airway bills, certificates of origin, payment records and product specifications.
- d. Upon completion of the audit, the audit team will inform auditee of the audit outcome and when applicable, discuss any errors detected and provide suggestions to improve the auditee’s compliance level.

### **3.3 Korea**

3.3.1 In July 1996, the Korea Customs Service (KCS) introduced the Post-Clearance Audit to deal with the rapid increase in the volume of imports and exports, and to expedite customs clearance procedures. Under this new audit system, imported goods are immediately cleared after Customs Officials check basic import declaration documents (e.g., invoice and B/L) in conjunction with payment of duties and taxes by the importers. The accuracy of the amount of duties and taxes paid is checked after the clearance. To effectively utilize this new system, KCS established the Audit Bureau, whose main responsibility is to prevent customs duty and tax evasions as well as to detect false declarations by traders. This brief introduction of Korea’s Post-Clearance Audit system will hopefully assist other Members in expediting their own customs clearance system.

3.3.2 The assessment of customs duties and taxes can be divided into “Pre-Clearance Audit” and “Post-Clearance Audit” depending at which stage the audit is being carried out. The Pre-Clearance Audit is performed by Customs Officials prior to the clearance of import goods, whereas latter is conducted by Customs Officials after the clearance of import goods. The Post-Clearance Audit is categorized into three groups: Case-by-Case Audit, Planned Audit, and Comprehensive Audit.

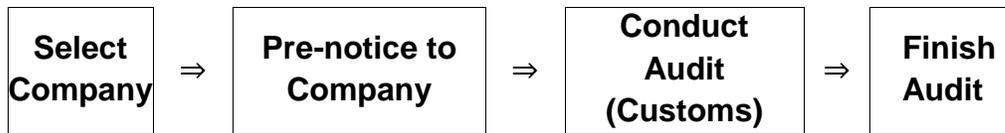
- **Case-by-Case Audit** : Within 90 days after acceptance of import declaration, KCS examines, on case-by-case basis, correctness of payment of duties and taxes on selected import cases, which are electronically selected by KCS’ risk management method. This is mainly a paper-based audit.
- **Planned Audit**: KCS examines companies' import transaction patterns and items with a high risk of tax evasion. This is either a paper-based or on-the-location audit.
- **Comprehensive Audit**: This is a self-assessment audit system conducted by the selected companies. Import cases that Customs Officials have selected as “audit subjects” are self-examined by those selected companies.

3.3.3 Under the Korean Customs law, in principle, KCS utilizes Post-Clearance Audit. However Pre-Clearance Audit is also exercised, among others, under the following exceptional cases:

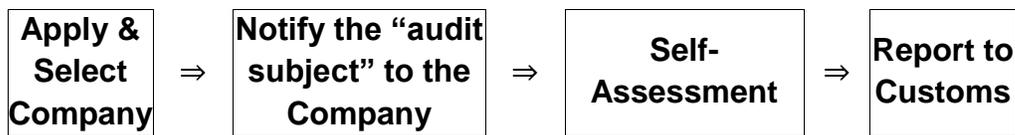
- Goods entitled to tariff reduction and instalment payment;
- Goods with large price fluctuations, making them inappropriate to audit after clearance;
- Other goods imported by traders deemed untrustworthy declarants by KCS.

3.3.4 Below is a detailed description of the Planned Audit System and the Comprehensive Audit System, which are the major components of the Post-Clearance Audit.

- The Planned Audit System was introduced in 2000 as a complementary scheme to counter systematic weakness existing within the Case-by-Case Audit that can be abused by untrustworthy companies dealing with tax-evasion-prone goods. Under this audit system, Customs Officials would perform audit on import cases that are selected employing strategically planned investigation with latest information on specific areas or items having a high risk of tax evasion. Planned Audit procedure is outlined below:



- The Comprehensive Audit System, which was introduced in 2001, is an Importer's Self-Assessment (ISA) based system. Here, Self-Assessment means an audit system where importers themselves check the appropriateness and correctness of their customs duties and taxes paid, and the legitimacy of customs clearance in compliance with procedures by Customs regulations.
- Under the system, the selected company reports the outcome of the self-assessment to KCS. If an incorrect or unfaithful self-assessment report is made to KCS, KCS has authority to conduct a paper-based or on-the-location audit and can cancel the self-assessment status of the selected company.  
Comprehensive Audit procedure is outlined below:



- The introduction of ISA helps companies focus more on their own business and relieves them from the pressure over future unforeseeable audits by KCS. The ISA also helps to improve the accuracy of duty payment declarations by companies since companies with a higher level of compliance receive preferential treatment under the name of Comprehensive Audit System while the main resources of KCS' Audit Teams focus on high-risk companies.

3.3.5 88% of approximately 4 million import declarations submitted each year underwent Post-Clearance Audit. As a consequence, there was a sharp decline in the time taken for customs clearance, which has also contributed to cost savings for businesses as well as for the government. In addition, KCS' Post Audit Teams detected violations such as tax evasions or false declarations, bringing in about US\$100 million in additional revenues in 2001, and approximately US\$480 million in 2004, which in return motivated importers to more carefully and accurately declare their goods.

Furthermore, based on KCS' experience, it is noted that the Post-Clearance Audit system is one of the effective means to facilitate clearance procedure that does not require significant investment in IT infrastructure or additional manpower.

3.3.6 Most important purpose for introducing Post-Clearance Audit in Korea is to accelerate customs clearance. Combined with improvement in risk management and capacity of customs officials, the Post-Clearance Audit can not only reduce the time and burdens associated with customs clearance, and provide friendlier environment for companies that faithfully pay their duties and taxes, but can also contribute to reductions in tariff and tax evasions. In this context, KCS has been devoting a substantial amount of time and resources to training programmes for building capacity in developing countries, and Korea continues to commit itself to technical assistance in this field.

#### **4. Lessons learnt:**

4.1 It is seen that Japan and Korea have a well developed PCA (more precisely OSPCA) system since long time and have been refined by changes made from time to time. We have seen that only Customs is involved in PCA (chapter wise Groups are made as done in the clearance section at the time of initial processing of import declarations) and working very effectively by coordinating with different sections of Customs. PCA is carried out in importer's premises. After detection at the time of PCA, importer is asked to amend declaration or Customs officers revise / amend the declaration so that importer pays the short levied duty. Additional duty levied by the Japan Customs is an administrative type of penalty.

4.2 We have also seen that in Japan, PCA Section itself is known as the PCA Investigation and Intelligence Division consisting of PCA Section, Investigation Section and Intelligence Section. PCA Section is further divided into Control Units, Field Audit Units, Computer Assisted Audit Units and Archive & Intelligence Units. Most of the consignments are facilitated through self-assessment system and only few cases are assessed and cleared after examination / inspection. PCA is normally conducted once in 3 years and / or 5 years in case of low risk / most complied importers. Only in case of high risk importers, PCA is done annually. PCA laws have penalty provisions for the person who fails to answer or tender a false statement in response to any inquiry made by Customs officials. The penalty may go upto imprisonment with work upto JPY500,000/- (equivalent to approximately Rs.3,40,000/-). For any person who fails to keep the register as required or makes false entries in such registers or conceals such registers the penalty could be imprisonment with work not more than one year or fine upto JPY300,000/- (equivalent to approximately Rs.2,04,000/-). They further impose additional duties like 10% in case of deficient declaration and 15% in case of no declaration. In year 2005, higher additional duty of 35% in case of deficient declaration and 40% in case of no declaration were introduced.

4.3 In Indian PCA, above discussed provisions of fine and penalty are available by way of adjudication but since the case itself is not detected, hence question of adjudication and penalty hardly come into the picture. Though in case of OSPCA rolled out with ACP importers, we have introduced penal provisions for the importers / exporters who contravene any provisions of the Act, Rules or Regulations or abet such contravention or fails to comply with such provisions that was his duty to comply. They are liable to a penalty upto Rs.50,000/-. Similarly OSPCA has requisite legal authority in terms of Sections 17 and 157 of the Customs Act, 1962. In this context, we also have the On-Site Post Clearance Audit Regulations, 2011.

4.4 In Japan, documents to be prepared by the Customs auditors are Company outline, Brochures, Financial documents, Customs clearance documents (importer & exporter), Documents related to transactions and Other related information. Auditors do Pre-Audit Survey – This includes data / information analysis, further meeting for brainstorming, clear target and strategy approach before visiting the premises of the importer; auditors are also required to study profile of importers, characteristics of their business, past records of import and export, records of the last audit, review contraventions by other importers in similar fields and information from other sections; field audit – The visit is conducted on subjects of audit which may consist of inquiry of persons (importers and consignees, Customs brokers etc)andfollow-up – auditors will report to the Director in charge of PCA, send forms for amendment to the importer, input audit results data into CIS and confirm if amendment was done. After field audit the review of contravention data, informing Control Unit of result, consultation with related sections like Valuation section, Customs classification Appraiser and Origin investigator is done before making audit report. The results of audit are also informed to the Auditee.

4.6 The OSPCA has only started to begin with for the Accredited Clients Programme (ACP) registrants. It is to be conducted by the auditors of the jurisdictional Central Excise Commissionerate under region the premises of ACP importer falls. To this extent the Indian system is different from that prevailing in Japan PCA. However, when we extend the OSPCA for all other importers / exporters (in addition to the ACP registrants), the Japanese PCA module may be useful since it covers everything related to Customs expertise like valuation, classification, risk assessment, amendment of declarations (re-assessment in Indian Customs), information from clearance Section, IPR related issues etc.

## **5. Conclusion:**

5.1 Though PCA in its present form is not effective and merely considered by the field formations as a tool to do the formality of audit without making any effort to check revenue evasion by way of wrong classification of goods, mis-declaration of value and wrong claim of notification exemption.

5.2 On the other side, OSPCA is effective in India to a great extent as being done in case of ACP importers which are more compliant and low risk involved. There is some detection and revenue realization by the Central Excise Commissionerate, Bangalore-I in 3 audits conducted under OSPCA in 2012 where they detected short levy and recovery of Rs. 1.04 Cr. It will be more effective if done in Customs as Customs officers are well versed with Customs laws, procedures as well as documents. Nevertheless it is more effective than transactional audit being done in PCA. Hence time has come that OSPCA should be rolled out with manufacturer importers but by involving Customs meaning based in Custom House and not in Central Excise as being done successfully globally and more specifically in Japan Customs.

5.3 In the next phase, OSPCA should be made operational in case of all importers and exporters and that only Customs is involved in PCA (chapter wise Groups are made as done in the clearance section at the time of initial processing of import declarations) and working very effectively by coordinating with different sections of Customs.

5.4 Till the time, OSPCA is made operational in case of all importers and exporters, transactional PCA can be made effective by creating a separate Audit Commissionerate so that dedicated and trained staffs and officers are posted and that too for a fixed time. This will also help in rolling out full fledged OSPCA with all importers and exporters.

5.5 Further based in separate Audit Customs Commissionerate require some improvement like commitment and long-term support, PCA unit created would need to have the resources and professionally trained staff to undertake comprehensive audits, need to effectively use and allocate scarce personnel resources and given the importance of PCA in the RMS era, where majority of consignment gets facilitated. As more the suitable officers for audit and an Effective PCA in Customs would give a clear understanding of the profile of importers and the commodity in a particular custom location and their overall ability and interest in complying with customs requirements, which can provide excellent feedback into the customs risk management cycle, i.e., for NRM/LRM/RMS-PCA to place suitable targets or intervention in place. Document Management System needs to be made effective for better access of documents by the auditors.

## **6. Recommendations:**

- ◆ Separate Audit Commissionerate
- ◆ OSPCA under Customs
- ◆ OSPCA for manufacturer importers too.

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