



# Customs Investigation and Enforcement in India

## Managing risks and exposures during customs investigation

### Post clearance audit – objective unfulfilled

Post Clearance Audit ('PCA') program was introduced in 2011 with the objective to undertake periodic administrative review, as a measure to check any revenue leakage arising out of the self-assessment regime. This task is currently being fulfilled through revenue investigation as against the desired path of periodic audits. The revenue investigation is usually conducted by Directorate of Revenue Intelligence ('DRI'), Special Intelligence and Investigation Branch ('SIIB'), and Rummaging & Intelligence ('R&I') wings of customs.

### Role of DRI investigations in regular imports

Primary focus of DRI used to be anti-smuggling activities. It is now seen to be proactive in investigating cases relating to classification and consequent duty differentials, claim of Free Trade Agreement duty benefit, temporary imports related



### How Deloitte can help

Our team of Customs and Global Trade specialists has the expertise to handhold/ guide your organization and help respond appropriately to any customs investigation. Deloitte support would include:

- Advising on interplay of business facts with customs laws and procedures;
- Developing strategies for risk mitigation during adversarial investigation proceedings;
- Deploying measures to reduce the adverse outcome of litigation through well documented facts;
- Assisting in drafting appropriate written submissions;
- Continuous ideation to identify grounds of defense (legal as well as on merits);
- Guidance on protecting the legal rights of the organization and its employees; and
- Exploring alternate judicial forum to defend any coercive behavior from the authorities.

With our worldwide presence and a coordinated Customs and Global Trade team, we endeavor to bring significant value and insight on the table which can be very helpful in quickly onboarding an experienced and time tested thought process in cases of sudden and disruptive investigation proceedings.



duty exemptions, depreciation claims of capital goods by STP units, addition of royalty and others costs to the transaction value etc.

### Changing risks in customs investigation

Increased involvement of DRI is a new trend. By its very nature, DRI investigations can be more intrusive, and adversarial as compared to a regular audit under PCA program. These investigation generally look back in the imports over five years and hence quantum of demand of duty and interest becomes significant. Duration of these investigations may extend from a few months to a few years and thus can be quite demanding on senior management time and resources.

The risks embedded in such investigations are also not limited to financial risks only; risks very often extends to reputational risk, business discontinuity risk, and prosecution risks. Hence, preparedness for such investigations requires a different risk mitigation approach during

investigation and a different approach after issuance of show cause notice.

### Seeds of dispute – contradictory and divergent views

The seeds of dispute are generally embedded in one or more of the following causes:

- Complex wording of statutory provisions;
- Contrary instructions issued by revenue authorities;
- Conflicting judgments;
- Revenue bias of administration; and
- Differences in interpretation.

Investigating agencies approach any issue with a strong bias towards revenue recovery, even before issuance of a show cause notice and there is always a possibility of the investigating agency to raise a demand against threat of business disruption, prosecution, etc. It is in such situations that protecting the legal rights of an organization and its people involved becomes even more important.

### A typical investigation framework

A typical customs investigation would involve:

- Issuance of multiple summons to the business leadership;
- Recording statements of senior leadership team—the statement recording process can be lengthy and exhausting before the investigating authority;
- Threat of arrest against key members of the team;
- Search and seizure operations at business premises;
- Restrain orders being issued for goods imported and used for business purposes;
- Coercive and prejudicial approach for demand of duty, without following the principals of natural justice
- Possible reporting by the media on the investigation

Given the adversarial and aggressive approach of investigating agencies, business also needs a differentiated risk mitigation strategy.

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