Today the common phrase used in the scn to justify invocation of larger period is " In the self-assessment regime, it is the onus of the assessee to properly assess and provide correct information but in the instant case, the assessee has not done so with an intention to evade payment of duty and hence…."

After the introduction of "self-assessment" in Central Excise, we witness the department alleging "suppression of facts and wilful mis-statement" right, left and centre in the show cause notices to invoke larger period of limitation under proviso to Section 11A of Central Excise Act, to demand duty from the assessees. Infact, this "self- assessment" is being used by the department to camouflage their deficienies.

Till date it had been Central Excise and Service Tax and now its Customs too…

CIRCULAR NO: 17/2011-Customs, Dated : April 8, 2011

Subject: Implementation of 'Self-Assessment' in Customs - regarding.

The Finance Bill, 2011 stipulates 'Self-Assessment' of Customs duty in respect of imported and export goods by the importer or exporter, as the case may be. This means 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. The proposed changes shall become effective immediately from the date of enactment of the Finance Bill, 2011. It is, therefore, necessary that the new legislative provisions are carefully studied and applied correctly to ensure that there is no disruption in the assessment work, and clearance of imported and export goods continues smoothly.

2. New Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (new Section 46 or 50). The importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill. This should not pose any new difficulties since the importers / exporters and CHAs have been filing these documents containing the required details regularly in the ICES.

3. Important changes are also made in Section 46 of the Customs Act, 1962 whereby it has been made mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the proper officer except for the cases where it is not feasible to make such entry electronically. While this is not a new requirement, it provides a legal basis for electronic filing. Where it is not feasible to file these documents in the System, the concerned Commissioner can allow filing of Bill of Entry in manual mode by the importer. These Bills of Entry would continue to be regulated by Bill of Entry (Forms) Regulations, 1976. However, this facility should not be allowed in a routine manner and Commissioner of Customs should ensure that manual filing of Bill of Entry is allowed only in genuine and deserving cases. Similarly, on export side also, Section 50 of the Customs Act, 1962 makes it obligatory for exporters to make entry of export goods by presenting a Shipping Bill

electronically to the proper officer except for the cases where it is not found feasible to make such entry electronically. The Commissioner concerned in these cases may allow manual filing of Shipping Bill. Again, this authority should be exercised cautiously and only in genuine cases.

4. Under the new scheme of self-assessment, the Bill of Entry or Shipping Bill that is self-assessed by importer or exporter, as the case may be, may be subject to verification with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. Such verification will be done selectively on the basis of the output of the Risk Management System (RMS), which not only provides assured facilitation to those importers having a good track record of compliance but ensures that on the basis of certain rules, intervention, etc. high risk consignments are interdicted for detailed verification before clearance. For the purpose of verification, the proper officer may order for examination or testing of the imported or export goods. The proper officer may also require the production of any relevant document or ask the importer or exporter to furnish any relevant information. Thereafter, if it is found thatself-assessment of duty has not been done correctly by the importer or exporter, the proper officer may re-assess the duty. This is without prejudice to any other action that may be warranted under the Customs Act, 1962. On re-assessment of duty, the proper officer shall pass a speaking order, if so desired by the importer, within 15 days of re-assessment. This requirement is expected to arise when theimporter or exporter does not agree with re-assessment, which is different from the original self-assessment. There may be situations when the proper officer of Customs finds that verification of self-assessment in terms of section 17 requires testing / further documents / information, and the goods can not be re-assessed quickly but are required to be cleared by the importer or exporter on urgent basis. In such cases, provisional assessment may be done in terms of Section 18 of the Customs Act, 1962, once the importer or exporter furnishes security as deemed fit by the proper officer of Customs for differential duty equal to duty provisionally assessed by him and the duty payable after re-assessment.

5. 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 at the premises of the importer or exporter. This provision will be applicable as a part of an 'On Site Post Clearance Audit' (PCA) programme, which is likely to be implemented soon. Suitable legal cover has been provided vide Section 17 and Section 157 of the Customs Act, 1962. The programme is being developed and detailed instructions will follow in due course. Till that time, the current Post Clearance Audit will continue.

6. In cases, where the importer or exporter is not able to determine the duty liability / make assessment for any reason, except in cases where examination is requested by the importer under proviso to sub-section (1) of Section 46, a request shall be made to the proper officer for assessment of the same under Section 18(a) of the Customs Act, 1962. In this situation an option is available to the proper officer of Customs to resort to provisional assessment of duty by asking the importer / exporter to furnish security as deemed fit by the proper officer for differential duty equal to duty provisionally assessed and duty finally payable

after assessment. In this regard, it is clarified that importer should not resort to this provision in a routine manner and it is expected that this would be done in deserving cases only where importer or exporter is not able to assess the goods for duty for want of certain information / documents etc. As far as possible, steps should be taken to provide guidance to importers/ exporters so that they are able to self-assess and file the Bill of Entry. It should however be made clear that such guidance is not legally binding.

7. Hence, in both the cases where no self-assessment is done and when self-assessment is done and reassessment is required under Section 17, the importer or exporter can opt for provisional assessment of duty by the proper officer of Customs. The difference is that when no self-assessment is done, the provisional assessment shall get converted into final assessment and when self-assessment is done, the provisional assessment shall get converted into re-assessment. Consequential changes are being made in the Customs (Provisional Duty Assessment) Regulations, 1963.

8. Bill of Entry (Electronic Declaration) Regulations, 2011 are being framed in supersession of the Bill of Entry (Electronic Declaration) Regulations, 1995. Bill of Entry (Electronic Declaration) Regulations, 2011 shall incorporate changes made vide Finance Bill, 2011 and mandate self-assessment by the importer or exporter, as the case may be. While amending the same, requirements of ICES 1.5 shall be taken into account since the migration to ICES 1.5 in respect of locations having ICES 1.0 application is almost complete at all major Customs locations. Similarly, Shipping Bill (Electronic Declaration) Regulations, 2011 are also being framed in tune with statutory provisions of Sections 17, 18 and 50 of the Customs Act, 1962. All these proposed changes viz. formulation of Regulations and amending formats of Bills of Entry / Shipping Bills requires detailed consultation with DG (Systems). Thus, these changes will take some time and till then, the existing Regulations and forms shall continue to apply to the extent these do not conflict with the amended statutory provisions that come into force from the date of enactment of the Finance Bill, 2011.

9. The aforementioned changes will come into effect when the Finance Bill is enacted. Thus, it is clarified that all Bills of Entry or Shipping Bills which have been presented either electronically or manually before the date of enactment of the Finance Bill shall be governed by provisions of erstwhile Section 17 or Section 18 of the Customs Act, 1962.

10. Suitable trade notice / standing order may be issued to guide the trade and industry.

11. Difficulty, if any, faced in implementation of these instructions may be brought to the notice of the Board immediately.

F.No.450/26/2011-Cus.IV