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BOC set to conduct audit on importers

On February 15, 2019, Customs Administrative Order (CAO) 01-2019 took effect, implementing the Post Audit Clearance provisions of the Customs Modernization and Tariff Act (CMTA).

Before the CMTA, the power of the Bureau of Customs to conduct post audit clearance was passed on to the Department of Finance (DOF). But, with the enactment of the CMTA, the authority to have a customs audit on companies is reinstated back to the BOC.

Along with this reinstatement, the implementing rules established under CAO 01-2019 are new compared to the previous authority being given to BOC.

Under the said Customs Order, the conduct of the post clearance audit will start upon the issuance of Audit Notification Letter by the Commissioner to the identified companies for audit. The ANL shall contain the name/s of the authorized customs personnel to perform the post clearance audit. It is similar to a Letter of Authority issued by the Bureau of Internal Revenue for the conduct of BIR audit assessment naming the authorized personnel and scope of the investigation. This ANL shall be valid only for 30 days from its issuance and which can be revalidated for another 30 days prior to its expiration. Failure to serve this Audit Notification Letter without proper justification makes the customs personnel in charge administratively liable.

This customs audit is set to commence not later the 60 calendar days from the service of the ANL. The audit proper shall take place when the audit actually conducts examination, inspection, verification, and investigation of accounting and financial records being kept and maintained by the importer. It shall be completed within 120 calendar days per year of audit from the receipt of

the importer of the ANL. The audit is said to be completed upon the issuance of the Final Audit Report with Demand Letter or Post Clearance Audit Group —Clean Report of Findings (PCAG-CRF) by the Commissioner.

This PCAG-CRF shall be deemed as proof that the importer or entity subject of audit has been found to have no deficiency in duties, taxes and other charges, and that the importer is compliant with its obligation to keep records as required by law.

Under the newly established rules for customs audit, the importer is given remedies in case of adverse findings against it. The same with the BIR audit, the importer who has been issued with deficiency assessment may file a request for reconsideration or reinvestigation to the Commissioner within 15 days from the receipt of the demand letter. And, if this request is thereafter denied, the importer may appeal the adverse decision to the Court of Tax Appeal (CTA) within 30 days from the receipt of the decision.

Aside from this remedy, CAO 01-2019 introduced the scheme called Prior Disclosure Program, formerly known as Voluntary Disclosure Program, which authorizes the Commissioner of Customs to accept as a mitigating factor, prior disclosure by the importer of errors and omissions in goods declaration resulting in deficiency in duties and taxes on past importations. This option can be availed of even if there was already an ANL issued against an importer. However, those goods declarations that are already subject of pending cases with any Customs office, filed and pending in courts and those declarations involving fraud can no longer be qualified to the PDP availment.

Availing of this PDP will help the importer get away with the higher penalties imposed under CAO 01-2019, in relation to Section 1005 of the CMTA. Penalties may amount to either 125 percent or 600 percent, depending on whether the act was due to negligence or fraud of the importer.

With the effectivity of CAO 01-2019 enforcing the provisions of Post Clearance Audit under CMTA, the BOC is now set to conduct audits on companies and importers for their duties and taxes on imported goods. Are importers prepared to be audited by the BOC?

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