

EY Tax Alert

CBIC notifies Regulations for verification of identity of importer, exporter and customs broker

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Executive summary

This Tax Alert summarizes the Customs (Verification of Identity and Compliance) Regulations, 2021 (the Regulations)¹ notified by the Central Board of Indirect Taxes and Customs (CBIC).

- ▶ The Regulations are applicable to :
 - ▶ importers, exporters and customs brokers newly engaging in import or export activity after commencement of the Regulations; and
 - ▶ Any other person, as selected by the Commissioner of Customs, engaged in import or export activity or has availed specified benefits prior to the commencement of Regulations.
- ▶ For the purpose of verification, document of incorporation, Permanent Account Number (PAN), GST Identification Number, etc. are required to be submitted on the Common Portal within 15 days/ 30 days of intimation of selection or engagement in import/ export activity.
- ▶ Every individual, karta, managing director, whole time director, partner and authorized signatory shall undergo Aadhaar authentication and PAN verification on the Common Portal within the prescribed time limit.
- ▶ Upon failure of verification, the Commissioner may either suspend or deny the benefits to such person, under Section 99B of the Customs Act, 1962.

The Regulations shall come into effect from the date to be notified.

^[1] Notification No. 41/2021-Cus (NT) dated 5 April 2021

Background

- ▶ Section 99B was inserted in the Customs Act, 1962 (the Customs Act) *vide* Finance (No. 2) Act, 2019, effective from 1 August 2019.
- ▶ Section 99B(1) empowers the proper officer to undertake verification of a person where he considers it necessary for protecting the interest of revenue or preventing smuggling.

Verification can be done through Aadhaar authentication or by furnishing proof of possession of Aadhaar number. Where verification on the basis of Aadhaar cannot be done, then the person shall be required to furnish other alternative and viable means of identification as may be prescribed.

- ▶ In exercise of powers conferred by section 99B read with section 157 of the Customs Act, CBIC has issued the Customs (Verification of Identity and Compliance) Regulations, 2021 (the Regulations)².
- ▶ The Regulations shall come into effect from the date to be notified.

Key features

Applicability

- ▶ The Regulations shall apply to importers, exporters and customs brokers who are newly engaging in import or export activity after the commencement of the Regulations.
- ▶ In addition, the Commissioner may select any person who was engaged in import or export activity or availed/ claimed the following benefits³ prior to the commencement of the Regulations, for verification:
 - ▶ Clearance of imported goods or export goods
 - ▶ Sanction of refund
 - ▶ Sanction of drawback
 - ▶ Exemption from duty
 - ▶ License or registration granted under the Customs Act
 - ▶ Any benefit, monetary or otherwise, arising out of import or export

The Regulations shall not apply to the Central Government, State Governments and Public Sector Undertakings.

- ▶ The person shall be informed about such selection through the Common Portal or other appropriate means.

Verification

- ▶ The person selected for verification of identity shall furnish the documents or information on the common portal within 15 days of intimation of selection.
- ▶ A person who is newly engaging in import or export activity after the commencement of Regulations shall furnish the documents within 30 days of engaging in such activity.
- ▶ The following documents are required to be furnished for the purpose of verification -
 - ▶ Document of incorporation for persons other than individual (i.e. partnership deed, Certificate of Registration, LLP Agreement, Memorandum of Association and Articles of Association or any other document evidencing constitution)
 - ▶ Document evidencing appointment of authorized signatories, if applicable
 - ▶ PAN
 - ▶ GST Identification Number
 - ▶ Documents such as bank statement, income tax return, etc. evidencing the financial standing of a person.

- ▶ Further, every individual, karta, managing director, whole time director, partners, member of managing committee of association, board of trustees, authorized representative and authorized signatory shall undergo Aadhaar authentication and PAN verification on the Common Portal within the prescribed time limit.

Where Aadhaar authentication cannot be completed due to its non-assignment or technical reasons, the person shall furnish a notarized copy of valid passport or electoral photo identity card within the specified period.

- ▶ The proper officer or an officer authorized by him shall undertake physical verification of principal place of business within 45 days from the date of submission of documents and evaluate the financial standing of the person.

The officer may verify documents in lieu of physical verification, for reasons to be recorded in writing and with approval of the specified officers.

However, where verification is completed by means other than Aadhaar authentication, the physical verification is mandatory.

² Notification No. 41/2021-Cus (NT) dated 5 April 2021

³ Sub-clauses (a) to (f) of Section 99B(3)(i) of the Customs Act

- ▶ The outcome of the verification of identity shall be captured in the Customs Automated System (the system) and informed to the person verified.
- ▶ In addition to the above, the Commissioner may require a person to produce any document or information for verification of compliance with the provisions of the Act or any other law for time being in force.
- ▶ The verification report shall be prepared within 30 days of the submission of documents and information and within 60 days in case of physical verification. The Commissioner may further extend the period by 15 days.
- ▶ Basis the verification report and other evidence, the Commissioner shall determine the outcome of verification within 15 days. The same shall be informed to concerned person on the Common Portal within 7 days from the date of determination.

Suspension and restoration of benefits

- ▶ The Commissioner may order suspension of the benefits³ where the person has failed to comply with the requirements relating to verification of identity or submitted incorrect documents or information.
- ▶ However, the person shall be given an opportunity of being heard within 15 days from the date of suspension. Thereafter, the order shall be passed within a period of 15 days from the date of hearing, either revoking the suspension or continuing it.
- ▶ The benefits suspended shall be restored when the person complies with the requirements or furnishes correct documents or information.

Denial of benefits

- ▶ In case of failure of authentication as required under section 99B(1), the Commissioner may direct that such person shall not avail any benefit³.
- ▶ The order shall be issued after providing an opportunity of being heard by following the procedure prescribed under section 122A of the Act (Adjudication Procedure).

Appeal

- ▶ The person aggrieved by any suspension or denial of benefits order may prefer an appeal before Customs, Central Excise and Service Tax Appellate Tribunal under section 129A of the Act.

Penalty

- ▶ The Commissioner may impose a penalty up to INR 50,000 for contravention or failure to comply with the provisions of these Regulations.

Comments

- a. Since the regulation is aimed at plugging revenue leakage, specified persons may be required to properly follow verification related compliance to avoid withdrawal of custom benefits. On the other hand, the Government will need to ensure that genuine taxpayers do not face unnecessary hassles.
- b. Aadhar authentication and physical verification of place of business was also introduced under GST to identify fictitious entities and prevent fake invoicing.

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