

SPECIAL VALUATION BRANCH ('SVB')

1. SVB INVESTIGATIONS

Under Rule 2(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 ('CVR, 2007') every importer of goods, while filing a bill of entry, makes a declaration about whether the seller of imported goods is a related party or not. In cases, where any import transaction is between 'related persons', as defined under Rule 2 (2) of CVR 2007, such transactions are necessarily to be examined whether or not the relationship amongst the parties and circumstances surrounding the sale of the imported goods have influenced the import price. Accordingly, such transactions are required to be examined under SVB investigation.

2. JURISDICTION

The SVBs functioning at the Customs Houses are at Bengaluru, Chennai, Kolkata, Delhi and Mumbai, under supervisory control of jurisdictional Chief Commissioner, Principal Commissioner, Commissioner of Customs and Central Excise. The importer is free to select SVB of the Customs House of import or the Customs House most proximate to the corporate office.

3. TRANSACTIONS INFLUENCING SVB INVESTIGATIONS

Central Board of Excise and Customs ("The Board") has directed that cases with significant revenue implications only be subjected to SVB investigations. Apart from investigation of transactions involving related parties, cases involving possible additions to declared transaction value also need to be examined to determine whether SVB investigations are necessary. Accordingly, transactions where any related payments are involved, of the following nature, shall also be examined with respect to the need for SVB investigations:

- (a) 'royalty and license fee' under Rule 10 (1)(c) of CVR, 2007; or
- (b) where the value of any part of proceeds of any subsequent resale, disposal or use of imported goods accrues to the seller [i.e. Rule (10)(1)(d)] of CVR, 2007; or
- (c) where any other payments are made or are contemplated to be made in future by buyer to seller as a condition of sale of imported goods etc., [i.e. Rule 10(1)(e)] of CVR, 2007

3.1 Exemptions

Following cases shall not be taken up for inquiries by Special Valuation Branch ('SVBs')

- (i) Import of samples and prototypes from related sellers
- (ii) Imports from related sellers where duty chargeable (including additional duty of Customs etc.) is unconditionally fully exempted or nil.
- (iii) Any transaction where the value of imported goods is less than Rs 1 lac but cumulatively these transactions do not exceed Rs 25 lacs in any financial year
- (iv) Where any additions are sought to be made under Clauses (a) and (b) of Rule 10(1).

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4. REFERENCE TO SVB

4.1 Bill of Entry

Scrutiny of transactions between related persons or involving additions to value on account of royalty, license fee etc. due to complexities may cause delay in clearance. Therefore, such transaction should be disclosed 15 days prior to the import, through a prior bill of entry as provided under the second proviso to subsection (3) of section 46 of the Customs Act, 1962.

- ✓ Such advance filing of the Bill of Entry is expected to provide sufficient time for taking a decision on whether the transaction needs to be referred to SVB or not and therefore ensuring timely clearance of the goods. This would be necessary only in the first instance of import and once a decision has been taken regarding referring the matter to SVB or not, there would be no need for such advance filing of the Bill of Entry for each subsequent import.

Within 3 days of filing of Bill of Entry and receipt of prescribed information, the proper officer shall determine whether there appears a case for investigation by the SVB. The conclusion shall be submitted before the Commissioner.

4.2 Examination of Circumstances Surrounding Sale

While examining the information provided by the importer in terms of Rule 3(3) (b), if any, the proper officer shall bear in mind that the interpretative note to CVR 2007 states:

“A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 3(3)(b).”

The officer shall carefully evaluate the case on following parameters:-

- (i) Has the importer declared the price of the goods imported is a ‘transfer price’?
- (ii) What is the basis on which the price has been settled between the buyer & seller?
- (iii) Has the price been settled in a manner consistent with the way the seller settles prices for sales to buyer who are not related to the seller?

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- (iv) Does the nature of relationship between the buyer and seller appear to influence the price?
- (v) Is the information provided by the importer in terms of rule 3 (3) (b) able to demonstrate that the transaction is at arm's length?
- (vi) Are there any payments, such as royalty, license fee etc., actually made or to be made, as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation cast by the seller? Are such payments included in the price actually paid or payable?
- (vii) Whether any part of the proceeds of subsequent re-sale, disposal or use of the imported goods accrues, directly or indirectly, to the seller?
- (viii) What is the nature of other payments, if any, made or to be made by the buyer as a condition of sale of the imported goods?
- (ix) Has the importer entered into an Advance Pricing Agreement with the Income Tax Authorities or obtained an Advance Ruling?
- (x) Will the prices paid or payable by the importer be settled with the seller at the end of a defined period by means of a debit note / credit note?

4.3 Reference to SVB

After examining the transaction on the above parameters, the proper officer at the customs station of import shall submit the findings to the Commissioner for a decision on whether the case is fit for being referred to the SVB for investigations. The Commissioner shall after due consideration of the preliminary findings, take a considered view whether:

- (a) the matter be referred to the SVB for further investigations and the goods be provisionally assessed to duty in terms of section 18 of the Customs Act, or
- (b) the transaction does not merit investigations by SVB and that assessment be finalized on the basis of enquiries to be conducted by the proper officer in terms of Rules 4 to 9 of the CVR 2007 or
- (c) the transaction be assessed in terms of Rule 3 of CVR 2007

5. PROCEDURE FOR REFERENCE TO SVB

5.1 Transactions Where Investigations is not Required

In case where after examination of the transaction, it is decided by the Commissioner that a reference to SVB is not necessary, the Customs House shall issue a reference number to the importer and the Risk Management Division ("RMD") to indicate that the transaction has been examined from the point of view of need for SVB inquiries and it has been decided not to refer the same for SVB investigations.

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5.2 Transactions Where Investigations is Required

In the event of the Commissioner directing investigations by SVB, the proper officer shall promptly carry out provisional assessment in terms of section 18 of the Customs Act, 1962 and ensure that no delays occur in the release of the goods. In order to facilitate expeditious inquiries by the SVB, the proper officer shall alongside of provisionally assessing the bill of entry, requisition further information from the importer. The importer should furnish the documents and a duly indexed reply to the questionnaire to the jurisdictional SVB within 60 days.

5.2.1 *Proceedings*

Upon receipt of all related records and information

- a) SVB shall assign a case number and update the Central Registry Database ('CRD'). The SVB shall also inform the RMD of the details of the importer, his IEC code, and details of seller for inserting suitable instructions for assessing officers at all Customs Houses so as to ensure provisional assessments during the currency of SVB inquiries.
- b) SVB shall commence inquiries, during the course of which the Deputy Commissioner / Asst. Commissioner (SVB) may call for further documents or information as required. The importer shall also be given suitable opportunity to submit evidence in support of the declared value.
- c) The SVB shall, as far as possible, complete the investigations and issue its findings within two months from the date of receipt of information.
 - i) In cases where investigations are not completed within 2 months, the SVB shall seek the approval of the jurisdictional Commissioner for such extended time period as is deemed necessary to complete investigations.
 - ii) In cases where investigations are not completed within 4 months from the date of receipt of information, the matter shall be submitted before the Chief Commissioner for extension of period as is deemed fit.

5.2.2 *Submission of Findings*

Upon completing investigations, the SVB shall submit the findings before the Principal Commissioner/Commissioner, quantifying the extent of influence on the transaction value due to the relationship or payments towards royalty or license fee or other payments actually made or to be made as a condition of sale of the imported goods.

5.2.3 *Investigation Report*

Upon approval by the Principal Commissioner / Commissioner, an Investigation Report ('IR') shall be prepared incorporating all relevant facts, submissions made by the importer, investigative findings, grounds for acceptance or rejection of transaction value, and the extent of influence on declared transaction value, if any.

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6. FINALIZATION OF ASSESSMENTS

- 6.1 Upon receipt of the IR from the SVB, where investigative findings are that the declared value is found conforming to Rule 3 of the CVR, 2007, the customs stations where provisional assessments have been undertaken shall immediately proceed to finalize the same. There would be no need to issue a speaking order for finalizing the provisional assessments in such cases.
- 6.2 However, when investigative findings are that the declared value has been influenced by the circumstances surrounding the sale, the proper officer shall issue a show cause notice to the importer within 15 days of the receipt of the IR, under intimation to the concerned SVB.
- 6.3 In cases where imports have been cleared through multiple customs locations, the jurisdictional commissioner of the SVB shall, after issue of notices by the proper officers in the said locations, make a proposal addressed to the Commissioner (Customs), CBEC recommending appointment of a common adjudicating authority by the Board for the purpose of passing order for finalization of the provisional assessments.
- 6.4 The adjudicating authority shall, after following the principles of natural justice, pass an order quantifying the extent of influence on the declared transaction value. The appellate provisions under Section XV of the Customs Act would apply for filing appeals against the order passed by the adjudicating authority.

7. CHANGE IN CIRCUMSTANCES SURROUNDING THE SALE

In any case where, the circumstances of sale or terms and conditions of the agreement between the buyer and related seller change, or any other payments of the kind referred under Rule 10 (1) (c), (d) & (e) of the CVR, 2007 become payable, the importers shall be required to declare the same at the place of import. In all such cases, the proper officer shall examine the transactions as per procedures laid out above in this circular and the jurisdictional Commissioner shall refer the matter to the jurisdictional SVB, where required.



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