 Customs Valuation in related party transactions

Introduction

Special Valuation Branch ("SVB") is a branch of the Custom House that specializes in investigating the transactions involving relationship between the supplier and the importer. SVB examines the influence of relationship on the invoice value of the imported goods in respect of transactions between related parties. Under Indian laws, the valuation of imported goods where a duty of customs is chargeable by reference to their value is carried out under the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 ("the Rules").

The present bulletin while explaining the meaning of a related party, give details of the role of the SVB of the Customs House in cases of a related party transactions and the process by which a related party can register themselves with the SVB.

1.0 Related Parties

Under these Rules, importers who are related to suppliers are required to register with SVB. For the purpose of the Rules, persons shall be deemed to be “related” under Rule 2(2), if –

i) They are officers or directors of one another’s businesses;
ii) They are legally recognized partners in business;
iii) They are employer and employee;
iv) Any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
v) One of them directly or indirectly controls the other;
vi) Both of them are directly or indirectly controlled by a third person;
vii) Together they directly or indirectly control a third person;
viii) They are members of the same family.

Explanation I - The term “person” also includes legal persons.

Explanation II- Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purpose of these Rules, if they fall within the criteria of this sub-rule.

Apart from the above, those who are having collaboration agreement, technical assistance agreement or any other agreement/contract with the foreign supplier are also required to register with the SVB.
2.0 Valuation in case of related parties

The Rules lays down six (6) methods for the valuation of imported goods. The primary basis for valuation of goods is the transaction value which is determined in accordance with Rule 4 of the Rules. It says that the transaction value of the imported goods is the price actually paid or payable for the goods when sold for export to India. The transaction value is only accepted as the basis for valuation where there are no restrictions imposed upon the use of the goods by the buyer, the sale price is not subject to any consideration due to which the value cannot be determined and the exporter and the importer are not related.

If the value of the goods cannot be determined on the basis of the transaction value, the value of the goods would be determined by proceeding sequentially through transaction value of the identical goods, transaction value of the similar goods, deductive value, and the computed value as described under Rules 5 to 8. A prima facie case exists for investigation by the SVB where the importer is not able to provide evidence to the effect that the price has not been influenced by the relationship or where the importer is not able to demonstrate that the price for the said goods closely approximates to one of the following values ascertained at or about the same time sequentially:

(i) The transaction value of identical goods, or of similar goods, in respect of sales to unrelated buyers in India;

(ii) The deductive value for identical goods or similar goods; and

(iii) The computed value for identical or similar goods.

3.0 Procedure for Registration with SVB

All importers who are “related” to suppliers are required to follow the procedure for registration with the SVB as provided in the CBEC Circular No.11/2001-Cus. The registration can be done with the first transaction itself by a new company dealing with any related party or an existing company that is to initiate imports with related party. In case a related party is not registered, they are served a PD Circular along with a questionnaire to clarify their transaction process and the methodology adopted for valuation. Some of the points mentioned hereunder are just for the sake of instruction which can be useful for the importing company. Please note -

(i) At the time of filing of Bill of Entry (“BoE”) in the Appraising Group (“AG”), the related importer is required to furnish a declaration about the relationship in the GATT declaration form.

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1 This does not include any restriction which may be imposed by law or any public authority, any restriction which limits the geographic area in which the goods may be resold or any restriction by the buyer which does not substantially affect the value of the goods.

2 The valuation mechanisms provided hereunder are in order of hierarchy.
(ii) Upon examination of the conditions of sale and the invoice value of identical or similar goods, AG makes a reference to SVB for further investigation of influence of relationship on assessable value. Reference to SVB is done with the prior approval of the Commissioner of Customs.

(iii) Upon reference by the AG, the SVB investigates valuation of such related importer. SVB thereafter registers a case and issues a PD Circular for provisional assessment. Copies of the case are issued to the importer and AG.

(iv) The importer is required to indicate the PD Circular number at the time of provisional assessment of all their imports in the AG and execute PD Bond with 1% Extra Duty Deposit (“EDD”) on the assessable value of the goods.

(v) Along with the PD Circular a questionnaire is also issued to be filled up by the importer along with the list of all documents required to be submitted.

(vi) The importer is required to furnish complete reply to the questionnaire along with all the documents listed in Annexure thereto and explanations wherever required within 30 days of receipt of the questionnaire failing which the EDD is increased to 5% till the date of receipt of reply by the department.

(vii) On receipt of replies to questionnaire and other documents, the SVB examines the same and call for any other additional information that may be required. SVB decides within 7 days whether the importer has replied to the questionnaire substantively. Otherwise, immediate further information not furnished is sought before taking step for finalization of investigation.

(viii) After furnishing all the information, the importer may, if he so desires or asked by the department, appears for personal hearing and explains his case with regard to the acceptance of transaction value or otherwise.

(ix) An Order-In-Original is issued by the Deputy Commissioner, SVB and the same is intimated to the importer by registered post and copies are also endorsed to all AGs.

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3 If the importer is able to furnish evidence of the transaction value of identical or similar goods in respect of sales to unrelated buyers in India at the same price, then there is no need for any reference to SVB and the BoE will be assessed finally based on those contemporaneous import values. If there are no contemporaneous imports, and there is no way to compare the values at the time of assessment of the BoE, then a reference is made to SVB.

4 No application or representation to the SVB directly by the importers will be considered. All references shall be made through the AG at the time of filing of the BoE.

5 Traders who are importing the goods and selling them in the same condition as they are imported are supposed to furnish the invoice value, landed price, and their selling price in the Indian market. The difference between the selling price and landed cost should be properly explained.

6 The order by SVB is passed based on the replies/documents furnished by the importer. If there is any suppression of fact or mis-declaration on the part of importer, necessary penal action will be taken separately in accordance with the provisions of law.
Where provisional assessment is being resorted to investigation, finalization of the assessment must be completed within four (4) months from the date of reply. If no decision is taken within four (4) months, the extra duty deposit can be discontinued and the concerned DC/AC is held responsible for inexplicable delay in finalization.

Once the case is finalized by the SVB, the provisional assessments pending in the AGs is subsequently finalized and EDD paid at the time of provisional assessment is adjusted in accordance with the SVB order.

In all further cases of loading, it then becomes mandatory for the importer to quote Order-In-Original number of SVB and indicate the percentage of loading at the time of filing of each BoE by the importer. Failure to do so is construed as a mis-declaration on the part of importer and is dealt under Customs Act.

The Order-In-Original issued by the SVB remains in operation for a period of three (3) years.

If there is no change in the terms and conditions of the agreement or pattern of invoicing with the related party, the same shall be specifically stated by the importer in the form of an affidavit. Based on the examination of the submissions made, the SVB order issued in the past is renewed for a further period of three (3) years.

In all cases where the importer is aggrieved by the order passed by SVB, he may file an appeal to the Commissioner of Customs (Appeals) of the respective jurisdiction. This right of appeal is also indicated in the preamble attached in the Order-In-Original.

Conclusion

According to the Rules, the valuation of the imported goods shall be considered when they are sold for export to India, after adjustment by valuation factors, subject to: (i) Compliance with valuation conditions and (ii) Customs authorities being satisfied with the truth and accuracy of the declared value. It is pertinent for any company that is doing any business in India and is transacting with related party to register themselves with SVB. Non-registration or non-conformity with the Rules or SVB circulars may even lead to higher EDD up to 5%. In effect the purpose of this registration is to establish that the valuation method employed by the related party does not create any discrimination between related and unrelated parties while determining prices.

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