

## Chapter 6

### Customs Valuation

#### 1. Introduction:

- 1.1 The rates of Customs duties leviable on imported goods and export goods are either specific or on ad valorem basis or at times on specific cum *ad valorem* basis. When Customs duties are levied at ad valorem rates, i.e., based on the value of the goods, it becomes essential to lay down in the law itself the broad guidelines for such valuation to avoid arbitrariness and to ensure that there is uniformity in approach at different Customs formations. Accordingly, Section 14 of the Customs Act, 1962 lays down the basis for valuation of import and export goods. The present version of the said Section 14 is applicable with effect from October 2007.

#### 2. Tariff value:

2.1 Board is empowered to fix values, under Section 14(2) of the Customs Act, 1962 for any item, which are called "Tariff Values". If tariff values are fixed for any goods, *ad valorem* duties thereon are to be calculated with reference to such tariff values. The tariff values may be fixed for any class of imported or export goods having regard to the trend of value of such or like goods and the same have to be notified in the official gazette. Tariff values have presently been fixed in respect of import of Crude Palm Oil, RBD Palm Oil, Other Palm Oils, Crude Palmolein, RBD Palmolein, Other Palmoleins, Crude Soyabean Oil, Brass Scrap (all grades) and Poppy Seeds.

[Refer Notification No.36/2001-Cus. (NT), dated 3-8-2001]

#### 3. Valuation of imported/export goods in general:

- 3.1 Section 2(41) of the Customs Act, 1962 defines 'Value' in relation to any goods to mean the value thereof determined in accordance with the provisions of Section 14(1) *ibid*. In turn, Section 14(1) states that the value of the imported goods and export goods shall be *"the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf"*. It is also provided that in the case of imported goods such transaction value shall include *"in addition...any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf."*
- 3.2 In accordance with the provisions of Section 14(1) of the Customs Act, 1962 the rules specified for the purpose of valuation may provide for:
- (i) The circumstances in which the buyer and the seller shall be deemed to be related;
  - (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case; and

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- (iii) The manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purpose of this section.
  - 3.3 The price paid or payable shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46, or a Shipping Bill or Bill of Export, as the case may be, is presented under Section 50 of the Customs Act, 1962.
  - 3.4 When compared to the earlier provisions of Section 14(1), the present provisions have discarded the concept of 'deemed value' and adopted the concept of 'transaction value'. Also, the present Section 14 contains therein provisions for specific rules to be made for determination of value and also for specific additions to value on account of cost and services. Some provisions deleted from the earlier Section 14 include:
    - (i) Reference to such or like goods. Thus, the value (transaction value) shall be the price actually paid or payable for the goods under consideration.
    - (ii) The reference to price of the goods ordinarily sold or offered for sale.
    - (iii) The price of the goods when sold for export to India is to be considered and not the price in the course of international trade.
  - 3.5 As provided in Section 14(1), the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 and the Custom Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed for valuation of imported goods and export goods, respectively.
  - 3.6 The provisions of Section 14(1) and the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 are based on the provisions of Article VII of GATT and the Agreement on implementation of Article VII of GATT. The methods of valuation prescribed therein are of a hierarchical (sequential) order.
  - 3.7 The importer is required to truthfully declare the value in the import declaration and also provide a copy of the invoice and file a valuation declaration in the prescribed form to facilitate correct and expeditious determination of value for assessment purposes.
- 4. Methods of valuation of imported goods:**
- 4.1 According to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the Customs Value should be the "Transaction Value", i.e., the price actually paid or payable after adjustment by Valuation Factors and subject to (a) compliance with the Valuation Conditions and (b) satisfaction of the Customs authorities with the truth and accuracy of the Declared Value.
- 5. Transaction value:**
- 5.1 Rule 3(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 states that the value of imported goods shall be the transaction value adjusted in accordance with the provisions of its Rule 10.
  - 5.2 The price actually paid or payable is the total payment made or to be made by the buyer to the seller or for the benefit of the seller for the imported goods. It includes all payments 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 of the seller.

- 5.3 If objective and quantifiable data do not exist with regard to the valuation factors, if the valuation conditions are not fulfilled, or if Customs authorities have doubts concerning the truth or accuracy of the declared value in terms of Rule 12 of the said Valuation Rules, 2007 the valuation has to be carried out by other methods in the following hierarchical order:
- (i) Comparative Value Method - Comparison with transaction value of identical goods (Rule 4);
  - (ii) Comparative Value Method - Comparison with transaction value of similar goods (Rule 5);
  - (iii) Deductive Value Method - Based on sale price in importing country (Rule 7);
  - (iv) Computed Value Method - Based on cost of materials, fabrication and profit in country of production (Rule 8); and
  - (v) Fallback Method - Based on earlier methods with greater flexibility (Rule 9).

**6. Valuation factors:**

6.1 Valuation factors are the various elements which must be taken into account by addition (factors by addition) to the extent these are not already included in the price actually paid or payable or by deduction (factors by deduction) from the total price incurred in determining the Customs value, for assessment purposes.

6.2 **Factors by addition** are the following charges:

- (i) Commissions and brokerage, except buying commissions;
- (ii) The cost of containers, which are treated as being one with the goods in question for Customs purposes;
- (iii) The cost of packing whether for labour or materials;
- (iv) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
  - (a) Material, components, parts and similar items incorporated in the imported goods;
  - (b) Tools, dies, moulds and similar items used in the production of the imported goods;
  - (c) Materials consumed in the imported goods; and
- (v) Engineering, developing, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country and necessary for the production of imported goods;
- (vi) Royalties and license fees related to goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

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- (vii) The value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller;
- (viii) Advance payments;
- (ix) Cost of transportation up to the place of importation including the ship demurrage charges on chartered vessels, lighterage or barge charges;
- (x) Loading, unloading and handling charges associated with transporting the goods; and
- (xi) Insurance.

6.3 As regards (v) and (vi) above, an Explanation to Rule 10 (1) clarifies that the royalty, licence fee or any other payment for using a process, whether patented or otherwise, when they are otherwise includible referred in terms of clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation.

[Refer Circular No. 38/2007-Cus, dated 9-10-2007]

6.4 **Factors by deduction** are the following charges provided they are separately declared in the commercial invoices:

- (i) Interest charges for deferred payment;
- (ii) Post-importation charges (e.g. inland transportation charges, installation or erection charges, etc.); and
- (iii) Duties and taxes payable in the importing country.

## 7. Cases where transaction value may be rejected:

7.1 The transaction value may not be accepted in the following categories of cases as provided in Rule 3(2) of the said Valuation Rules, 2007:

- (i) If there are restrictions on use or disposition of the goods by the buyer. However, the transaction value not to be rejected on this ground if restrictions:
  - (a) Are imposed by law or public authorities in India;
  - (b) Limit geographical area of resale; and
  - (c) Do not affect the value of the goods substantially.
- (ii) If the sale or price is subject to a condition or consideration for which a value cannot be determined. However, conditions or considerations relating to production or marketing of the goods shall not result in rejection.
- (iii) If part of the proceeds of the subsequent resale, disposal or use of the goods accrues to the seller, unless an adjustment can be made as per valuation factors.
- (iv) Buyer and seller are related; unless it is established by the importer that:
  - (a) The relationship has not influenced the price; and
  - (b) The importer demonstrates that the price closely approximates one of the test values.

7.2 The transaction price declared can be rejected in terms of Rule 12 of the said Valuation Rules, 2007, when the proper officer of Customs has reason to doubt the truth or accuracy of the value declared and if even after the importer furnishes further information/documents or other evidence, the proper officer is not satisfied and has reasonable doubts about the value declared. An Explanation to Rule 12 clarifies that this rule does not, as such, provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons that could form the basis for doubting the truth or accuracy of the declared value.

7.3 The interpretative notes are specified in the schedule to the interpretative rules.

## **8. Provisional clearance of imported goods:**

8.1 Section 18 of the Customs Act, 1962 read with the Customs (Provisional Duty Assessment) Regulations, 1963 allow an importer to provisionally clear the imported goods from Customs pending final determination of value by giving a guarantee in the form of surety, security deposit or bank guarantee. Rules 4(1)(a) and 5(1) of the Customs Valuation Rules, 2007 concerning identical goods and similar goods, respectively provide that the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.

## **9. Valuation of imported goods in case of related party transaction:**

9.1 Rule 2(2) of the said Customs Valuation Rules, 2007 enumerates the persons who shall be deemed to be "related". It has been made clear by Explanation II thereto that the sole agent, sole distributor or sole concessionaire can be termed as related only if they fall within the criteria of this sub-rule. Further, Rule 3(3) provides that where buyer and seller are related, the transaction value can be accepted if the examination of circumstances of the sale of the imported goods indicate that the relationship did not influence the price or if the importer demonstrates that the declared value of the goods being valued, closely approximately to one of the test values namely transaction value of identical/similar goods, in sales to unrelated buyers in India, deductive value for identical/similar goods or computed value for identical/similar goods ascertained at or about the same time can be used.

9.2 Related party transactions are examined by Special Valuation Branches (SVB) located presently in the major Custom Houses at Mumbai, Calcutta, Chennai and Delhi. In such cases the goods are first assessed provisionally and the importer is required to fill a questionnaire and furnish a list of documents so that finalisation of provisional assessments is expedited.

9.3. With effect from 1-1-2013, the functional and supervisory control over the SVBs has been vested with the Directorate General of Valuation (DGOV). DGOV would monitor the functioning of SVBs and be responsible for their quality control.

[Refer Circulars No.11/2001-Cus, dated 23-2-2001 and No. 29/2012-Cus., dated 7-12-2012]

## **10. Methods of valuation of export goods:**

10.1 The provisions of Section 14(1) of the Customs Act, 1962 specifically cover the valuation

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of export goods. Also, the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed to provide a sound legal basis for the valuation of export goods and check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes.

- 10.2 Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules 2007 that are framed in a format similar to the said Valuation Rules, 2007 for the imported goods emphasizes for acceptance of the transaction value, which is the primary basis for valuation of export goods. In cases where the transaction value is not accepted, the valuation shall be done by application of Rules 4 to 6 sequentially. As per Rule 7, exporter has to file Export Value Declaration relating to the value. Also, the value of the export goods declared by the exporter can be rejected under Rule 8.
- 10.3 Wherever there are doubts about the declared value of export goods and an investigation/enquiry is being undertaken to determine whether or not the Declared Value should be accepted, the export consignments should not be ordinarily detained. Due process envisaged under Rule 8, for rejection of declared value and consequent re-determination of value may be undertaken by applying valuation Rules sequentially.

### **11. Rights of appeal:**

- 11.1 The principles of natural justice are required to be followed in valuation matters also. When the Customs authorities do not accept the declared value and re-determine the Customs value, the importer or his representative is normally required to be given a written notice followed by a personal hearing. An adjudication order giving in detail the basis of determination of the value can be obtained, if the importer is aggrieved with the re-determination of value. Under the Customs Act, 1962, an importer can appeal against a decision on valuation to the Commissioner of Customs (Appeal) in the first instance. A second appeal lies to the Tribunal (CESTAT) consisting of administrative and judicial members. A third appeal lies to the Supreme Court of India. The importer is informed regarding his rights of appeal by each of the adjudicating and appellate authorities.

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