

## **Special Valuation Branch (SVB) under Customs - Valuation for Goods imported from Related Parties**



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### **Introduction:**

Special Valuation Branch is a special unit of the Customs department which is specializing in investigating the transactions which are entered into by importer based out in India and a supplier based in foreign country who have relationship like joint ventures, partnerships, holding-subsidary etc. which could possibly influence the price of the transaction entered. The main task of the special valuation branch is to verify that the relationship has not influenced the terms and conditions of the transaction and in turn the transaction value between the parties. Apart from investigation of special relationship case, SVB also handles more complicated cases of additions or deletions with respect to transaction value that has been declared by the importers under Rule 10(1)(c) or Rule 10(1)(d) or Rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

### **Requirement of Special Valuation Branch as special unit:**

Import and Export transactions are the starting point for this special institution to be formed wherein the valuation mechanism adopted by the importer might be in terms of agreement not in line with the market scenario and some beneficial position as to importer and the other party might be adopted by the importer and due to this reason Customs department has issued Circular No. 1/98 dated 01.01.1998 making the Special Valuation Branch as a functional institution for the cases involving transactions between the related parties.

Both the circulars were issued upon the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 which has been now superseded by the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Previously there were some stringent provisions in relation to regular renewals, provisional assessments, procedural part which were complex in terms of great time-consuming process & burdensome as to work which have been now streamlined and as per Circular No 05/2016 dated 9<sup>th</sup> February 2016.

The transactions undertaken by related parties differ from situation to situation where the transaction value might be impacted due to the relationship involved

between the two parties. The definition of related parties' changes from each law or statutory provision like in income tax, company law, accounting standards, SEBI, Goods and Service tax, and even in Customs. Hence whenever the relationship gets attracted by that particular provision of law, we need to go back to the provisions and check the relevant other facts of the provision with respect to either valuation, assessment, & other parameters and relevant adjustment with respect to such pricing would be required. We now analyze the meaning of the related party as referred to in Customs law.

### Meaning of Related Parties:

The relationship needs to be examined with respect to definition of related party under Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which is supplied here –

“(2) For the purpose of these rules, persons shall be deemed to be "related" only 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 five per cent 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; or
- 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, howsoever 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.”

### Investigations that can be undertaken by Special Valuation Branch:

Every importer while importing goods need to make a declaration as to whether the supplier and buyer in India are related party or not. If the answer to the above is affirmative, then it would be very important to see whether this relationship has influenced the price or not. Particularly in these cases, SVB investigation would be required, and the transaction needs to be sent for review and enquiry.

Further, the trigger point for the investigation to be initiated by SVB is the first consignment coming from the foreign country during the import of the goods by the importer from the related party which he needs to submit the declaration along with the bill of entry and questionnaire in Annexure A. The investigation under SVB can also be initiated under unrelated party transactions where in following is nature of transaction –

- **Royalties and license fees:** Royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable. **[Rule 10(1)(c) of CVR, 2007]**

- **Subsequent resale or disposal:** The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller. **[Rule 10(1)(d) of CVR, 2007]**
- **Other connected payments:** All other payments 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 of the seller to the extent that such payments are not included in the price actually paid or payable. **[Rule 10(1)(e) of CVR, 2007]**

### **Exceptions where investigations under SVB not required:**

Due to long durational process involved in the investigation of the related party transaction, SVB investigations in the following cases should not be initiated looking at the revenue implications –

- a. Imports involving samples and prototypes from related suppliers,
- b. Imports from foreign suppliers where duty chargeable (including additional duty of Customs etc.) is unconditionally fully exempted or nil,
- c. Any import transaction wherein the value of the imported goods is less than Rs. 1 Lakh but cumulatively these transactions do not exceed Rs. 25 Lakhs in a financial year.
- d. Any additions that are sought under Rule 10(1)(a) or Rule 10(1)(b) of CVR, 2007 as that should be taken care by normal appraising groups. \

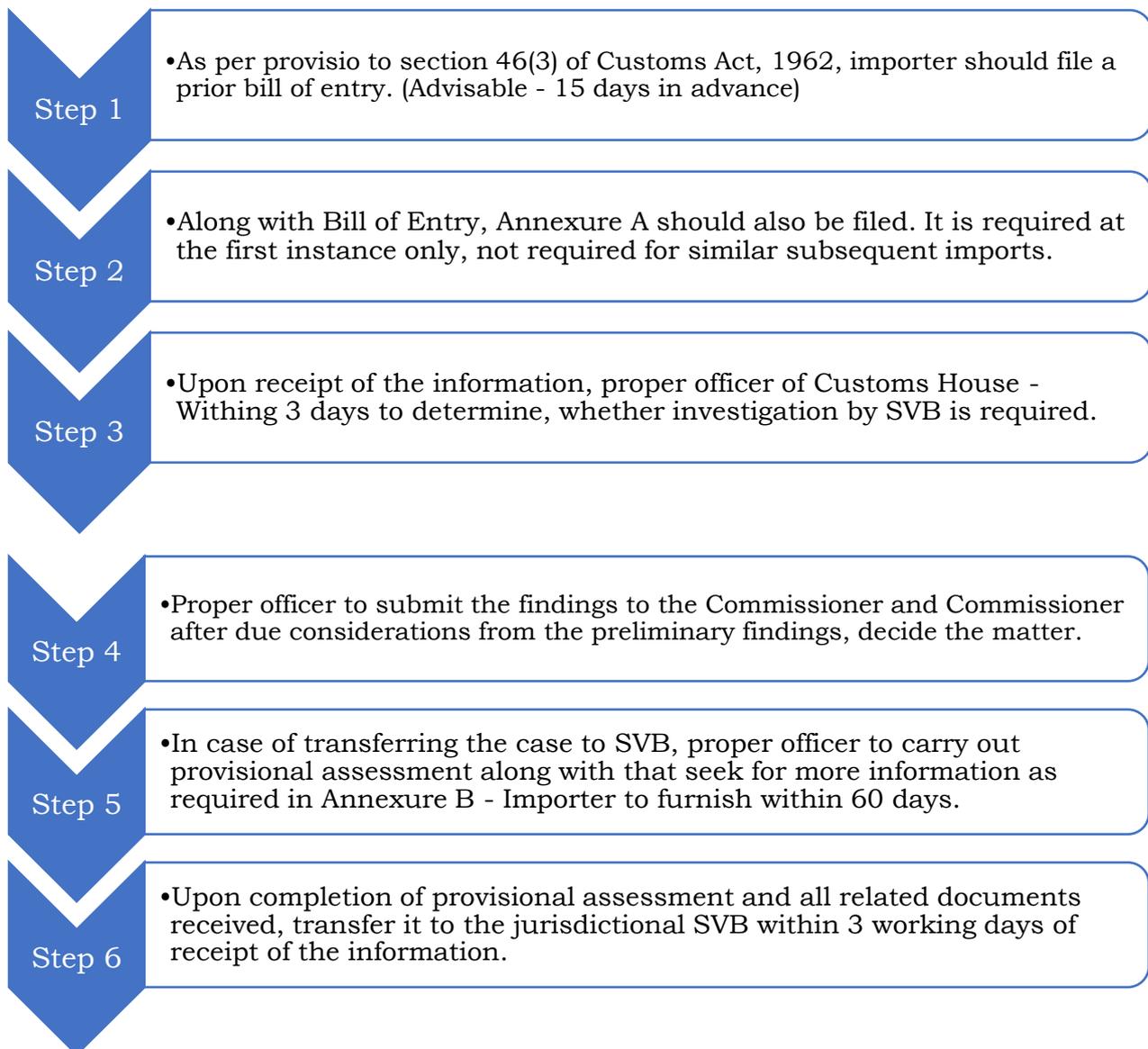
Wherever the investigation by SVBs are not required, Customs house shall issue a reference number to the importer and the risk management division to indicate that the transaction has been analyzed from the viewpoint of SVB enquiries and it has been decided not to refer the same for the investigation.

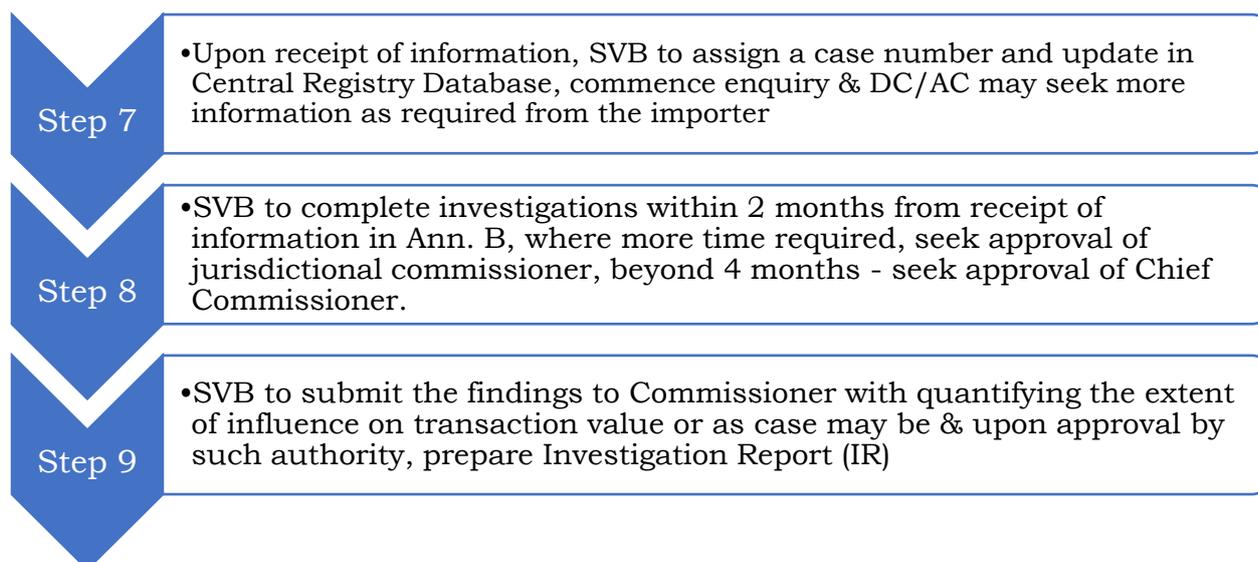
### **Locations and Jurisdiction of SVB Units:**

The Special Valuation Branches are currently functional at following Customs location houses i.e., Bengaluru, Chennai, Kolkata, Delhi, Mumbai. Further, the jurisdiction of SVB would entirely be dependent on the corporate or registered office of the importer, whichever is nearby and convenient to the importer.

The importer is given free hand to choose which SVB he wants to approach for the cases which require investigation by the SVB. Once a particular import transaction has triggered investigation at one SVB, then the same needs to be communicated by the customs houses to other SVBs as well for the better compliance of the process involved.

## Procedure for investigation under SVB:





### Finalization of Assessment:

Upon receipt of Investigation report from the Special Valuation branch, there could be two scenarios which could affect the assessment –

- a. **Declared Value is found confirming to Rule 3:** Where the declared value as per Bill of Entry has been found confirming to the relevant rule of the CVR,2007 – the provisional assessment done by the customs houses shall be considered the final assessment and accordingly it must be finalized.
- b. **Declared Value is found not confirming to Rule 3:** Where the declared value as per Bill of Entry is found to be influenced by the relationship or such case as may be applicable, the proper office of the customs house shall issue a show cause notice to the importer within 15 days of the receipt of the Investigation Report (IR) from the Special Valuation Branch (SVB).

Wherever the imports have been cleared through multiple locations, jurisdictional commissioner shall after consulting with other locations, make a proposal for appointment of common adjudicating authority for the matter and after providing enough opportunity to the importer, pass a combined order quantifying the extent of influence on the declared transaction value.

### Concept of Extra Duty Deposit / Revenue Deposit:

As per Circular No. 01/98 dated 01.01.1988, there was a duty called extra duty deposit which was applicable in cases where the documents sought for are not provided to the relevant authorities failing for which the higher extra duty deposit shall be leviable. However, in the circular issued in 2016, board has reviewed the levy and has clarified that no security in form of extra duty deposit shall be obtained from the importers, but if the importer fails to provide the information within 60 days of such requisition, security deposit at a higher rate of 5% shall be imposed by the commissioner which shall be valid for the period of 3 months.

Also, where the documents are not provided by the importer for an additional 60 days, then commissioner in charge of such investigation may adopt to use such provisions of the customs act for obtaining such documents/information. But in no case, the imposition of such deposit shall exceed 3 months as discussed above.

Importers are free to choose if such a deposit is to be made through cash deposit or through bank guarantee.

### **Key judicial precedents on valuation of related parties:**

- ***Mere relationship is not sufficient for denial of transaction value, it must be established that the relationship has influenced the price***

The transaction price between the two parties must be influenced by their relationship in order to question the valuation of such a transaction. The rejection of transaction value can only be done after due verification and undertaking the exercise as to what influenced the price and cogent reasons to be recorded for such price not being the sole consideration. **[CCE V. Sanjivani Non-Ferrous Trading (P) Ltd., [2019 (365) E.L.T. 3 (S.C.)]**

- ***Burden of proof for proving the value in question is not appropriate is in the hands of department***

The burden of proof for proving the value in question is not appropriate is in the hands of departments and if departments fail in that, the benefit of doubt goes to importer. For proving the transaction value being influenced by relationship, relevant comparable proof needs to be taken which incorporates adjustments as to the price with respect to declaration made by supplier in his exporting country, but not relying on the fact that how such declaration was procured with.

Non reliance of document submitted by the appellant for value of similar supplier for same goods is not acceptable. The department had relied on some declaration made by a foreign supplier without seeing the fact that supplier had enhanced the value in that foreign country to get more incentive benefit offered by that country. Fact to be considered by the authority and hence strict rules of evidence do not apply to adjudication proceedings though adjudicating officer has to examine the probative value of documents on which reliance is placed. **[Commissioner of Customs, Calcutta V/S South India Television (P) Ltd. [2007 (214) E.L.T. 3 (SC)]]**

- ***Commodity price fluctuation in the international market must be taken into consideration***

The transaction value agreed by both the parties cannot be questioned merely on the basis that there is increase in prices in the international market between the time of contract and actual shipment of the product as there was no collusion between the parties, as well the payment was received within the same terms under which the contract was entered into and there was actual no misstatement or undervaluation and the case was also not falling under any of the criteria as mentioned under Rule 4(2) of the Customs Valuation Rules, 1988. Department as well cannot rely on or take base the prices, which are almost a month after the actual date of contract, as the product dealt with is highly fluctuating in the international market. **[Commissioner of Customs, Vishakhapatnam V/S Aggarwal Industries Ltd. [2011 (272) E.L.T. 641 (S.C.)]**

- ***Arbitrary addition of value cannot be made especially when importer provides complete cost & margin details***

Department enhanced the value of imports on the ground that the sale price of the goods in India were exorbitantly higher than the declared value. The value was enhanced subject to a 20% allowance for profit margin. The importer contested such enhancement and submitted that the selling price in India was inclusive of the costs of transport, insurance, storage, and taxes. Enhancement was set aside as the Tribunal opined that the department had failed to accurately ascertain the cost of the goods at the hands of the importer namely post-importation expenditure and the price at which the imported goods were sold. It was held that post-importation expenses supported by documentary evidence must necessarily be considered to arrive at the cost price and the department's method of fixing 20% as the importer's profit margin based on the sale price of the goods was held to be improper. **[IMCD GROUP B.V. INDIA Versus COMMISSIONER OF CUS. (IMPORT), MUMBAI 2014 (301) E.L.T. 259 (Tri. - Mumbai)]**

- **Agreement with the related parties must considered as a whole including addendums entered therein**

Price of the transaction when such price is actually paid and duly payable by such procurer of product or item, such price should be accepted as transaction value. When addendum to memorandum of agreement was entered into by the parties for reduction in the value of such product, such addendum needs to be accepted and cannot be questioned on the ground that memorandum of agreement do not contain such provision for price variation. **[Chaudhary Ship Breakers V/S Commissioner of Customs, Ahmedabad [2010 (259) E.L.T. 161 (S.C.)]**

- **Extraordinary circumstances must be taken into consideration while arriving at a value**

The price list given by a foreign supplier or manufacturer cannot be taken as proof of evidence for transaction being influenced by the relationship as it excludes the extraordinary circumstances wherein the heavy discounts might be provided by the supplier for stock clearance or products which are not getting sold. Even Sec. 14(1) of the Customs Act, 1961 merely covers the “ordinary” situation and it excludes “extraordinary or special” circumstances where in the value as per transaction value needs to get accepted by the officer basis the original facts of each assessee. **[Eicher Tractors Ltd. V/S Commissioner of Customs, Mumbai [2000 (122) E.L.T. 321 (S.C.)]**

### **Conclusion:**

Overall, the impact of the investigation by the special valuation branch will be defined by how the agreement or contract between the parties involved in the transactions is concerned and the complexity & time consumption would be dependent on that fact. Additionally with relation to the interpretation of the term royalties & license fees, it would be important to see how these impacts the transactions and whether the same can connected with the respective transactions and not treating it as separate transaction.

**Views expressed are strictly personal and cannot be considered as a legal opinion in case of any query. For feedback or queries email us at [yash@hiregange.com](mailto:yash@hiregange.com) or [ravikumar@hiregange.com](mailto:ravikumar@hiregange.com)**