

## Related Party Imports in India: Customs Procedure

### Introduction

Customs import duty is imposed on imported goods to regulate international trade, protect domestic industries, and contribute significantly to the Indian economy. However, some importers undermine these purposes by misdeclaring goods or misusing exemption notifications to evade or pay reduced customs duty. It is observed that when importers procure goods from related foreign entities, the declared value often falls below the actual market price. This discrepancy suggests an influence on the invoice price due to the relationship, with an intent to evade applicable customs duties.

To curb such practices, Customs Law mandates stringent filing, declaration, assessment, and investigation procedures for related party imports. Additionally, the establishment of the Special Valuation Branch (SVB) serves to investigate and report on valuation matters concerning imports between related parties. SVB offices, currently operational in Mumbai, Delhi, Kolkata, Chennai, and Bengaluru, play a pivotal role in ensuring compliance.

In such scenarios, importers are required to adhere to both regular customs procedures and those outlined by SVB. This article aims to offer a concise overview of the procedures and investigation processes involved in related party imports.

### Filing the Bill of Entry: Initial Declaration and Questionnaire

As per the customs procedure, if the Importer and Supplier of goods are related parties/persons, then at the time of filing the Bill of Entry (which is advisable to be filed 15 days prior to the arrival of goods<sup>1</sup>), the Importer must make a declaration stating that the importer and supplier are related<sup>2</sup>. Additionally, at the same time, such importer must also fill and file a questionnaire attached as ANNEXURE A to the Board Circular no. 5/2016 dated 9-02-2016, which prescribes the procedure for investigation of related party import cases and other

<sup>1</sup> Section 46(3) of the Customs Act, 1962.

<sup>2</sup> Rule 2(2) of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007- persons deemed to be "related" if: (i) they are officers or directors of one another's businesses; (ii) they are legally recognised 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.



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cases by SVB, thereby disclosing all the relevant information pertaining to the parties and the transaction including the basis for arriving at price/value/copy of price list, etc (as listed in the said questionnaire).

### **Customs Valuation Rules and Influences on Transaction Value**

Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR) states that where the buyer and seller are related, transaction value must be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price. If the influence is established, the value will be determined by proceeding sequentially through rules 4 to 6 of CVR. Thus, while evaluating the influence of the aforesaid relationship on price/value of imported goods, Customs authorities will be justified (under the SVB Circular) in demanding documents showing whether the imported goods were procured at the declared rates to know the basis of arriving at such rates. It is advisable that during the assessment process, the Importers must produce evidence and convince the assessing authority/officer about the genuineness of the transaction and the agreed price/ value. In support, contemporaneous imports (at or about the same time) may be relied upon by the importer to show that similar/identical goods (having identical physical specifications) have been imported by unrelated Indian importers from the same supplier at the same price (arm's length basis)<sup>3</sup>.

When it comes to proving the allegations of undervaluation, the settled legal position is that the transaction value can be rejected by the assessing/adjudicating officer if the invoice price is not found to be correct, but the burden of proof is on the department to prove that the invoice price is incorrect<sup>4</sup>.

### **Special Valuation Branch (SVB) Investigation Process**

After a thorough document review, the Customs Officer or Officers present their findings to the Commissioner, who decides whether the case merits referral to the Special Valuation Branch (SVB) for investigation. Typically, such cases are indeed referred to the SVB, prompting importers to complete and submit another questionnaire, Annexure B, as specified in the SVB Board Circular.

Following the referral, the Importer is summoned for the recording of statements and the submission of necessary documents. Subsequently, the SVB delves into the circumstances surrounding the sale of the imported goods and forwards its investigation report, along with findings, to Customs Authorities or the relevant custom officer. Based on this report, the Customs Authorities will either accept the declared value if found accurate and uninfluenced by the importer-supplier relationship, or reject it, necessitating a reassessment or redetermination of the value under the Customs Valuation Rules (CVR) provisions.

The importer is officially notified of the latter through the issuance of a Show Cause Notice (SCN), alleging undervaluation, i.e., payment of reduced customs duty. The SCN demands the importer to show

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<sup>3</sup> Rule 3(b) of CVR 2007: In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;  
(ii) the deductive value for identical goods or similar goods;  
(iii) the computed value for identical goods or similar goods:

**Provided** that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

<sup>4</sup> **Rabindra Chandra Paul v. Commissioner of Customs** [(2007) 3 SCC 93]; **Commissioner of Customs, Calcutta v. South India Television (P) Ltd.** [(2007) 6 SCC 373]; **Commissioner of Customs (Imports), Mumbai v. M/S Ganpati Overseas & Anr.** [Civil Appeal Nos. 4735-4736 of 2009 (Supreme Court)].

cause as to why the differential duty (on the enhanced or reassessed value), fines in lieu of confiscation of goods, and penalties should not be payable. In response, the importer has the option to request non-issuance of the SCN and make the required payments, pay after the SCN is issued, or contest the case outlined in the SCN. If the importer opts for the latter, they must follow the adjudication and appellate procedures outlined in the Customs Act, 1962.

In instances where the importer challenges the SCN, they are granted the opportunity for a hearing at every stage of the proceedings. The importer may also appoint a legal representative to appear and present arguments on their behalf during this process.

### **Rights and Remedies: Provisional Release and Cooperation**

Even though the related party import procedures require strict adherence for prevention of imposition of heavy penalties and enhanced duties, importers do not have to bear losses due to delay in release of goods as during the period of reference of matter to SVB and its investigation, the Importer may request for provisional release of goods under section 110A of the Customs Act, 1962. While issuing provisional release order, the concerned officer may also prescribe terms and conditions in addition to requirement of bond or bank guarantee or both, which must be deposited by the importer within the specified time period. On making the said deposits, the goods will be released but the investigations will continue. However, bank guarantee will not be encashed until final order (including appellate stage order) on the matter. Thus, importers are entitled to some rights and remedies under the customs law and SVB procedures and it is advisable that importers must understand the rules pertaining to their rights and duties/liabilities, make full and true declarations and cooperate with the investigating branch.

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