## **►IMPORTS**

### Valuation of Imported Goods Under Customs Act

Value: Can either be Tariff Value or Transaction Value

#### Tariff Value:

- For any class of imported goods or export goods, 'Tariff Value' can be fixed by CBI&C (Board)
- Tariff Value under GATT (General Agreement on trade and tariff
- Can Transaction value be adopted if tariff value has been notified?

#### Transaction Value

- Section 14(1) of Customs Act states that 'value' of imported goods will be 'transaction value' of such goods i.e.
- the price actually paid or payable for the goods
- when sold for export to India for delivery at the time and place of importation,
- 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.

- Price should be at the time and place of importation.
- Place of importation Place of importation means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse – rule 2(da) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2017 as amended on 26-9-2017.
- Price should be for delivery at the place of importation Value at the place of importation does not mean that only expenses till goods enter Indian Customs water should be included.
- Price must be the sole consideration

Price should be sole consideration for sale. If there is other consideration, it should be added to the transaction value.

#### Addition to transaction value:

- First proviso to section 14(1) states that transaction value in the case of imported goods shall include,
- in addition to the price as aforesaid
- any amount that the buyer is liable to pay 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 manners specified in the Rules.

# Vareli Weaves Pvt.Ltd. & Anr vs Union Of India & Ors on 27 February, 1996

- The appellants imported partially oriented yarn (POY). They claimed for the purposes of countervailing duty (additional duty) the benefit of an exemption notification dated 28th February, 1982, issued under Rule at 8(1) of the Central Excise Rules whereby man-made fibres and yarns were exempted from excise duty as therein stated
- The controversy was whether the POY imported by the appellants should be taken to fall within item (iv) under the head Polyestor Yarn relating to POY of 75 deniers and above but below 100 deniers or within item (iii) relating to POY of 100 deniers and above but not above 750 deniers. it was the case of the appellants that the POY imported by them was entitled to exemption upon the basis that it was of 100 deniers and above but not above 750 deniers.

- The authorities treated the POY imported by the appellants as falling within the slot of 75 deniers and above but below 100 deniers and they did so upon the basis of a circular dated 24th September, 1980, issued by the Central Board of Excise & Customs which stated that POY was assessable to countervailing duty and excise duty at the final denierage stage, that is to say, after the POY had been texturised.
- Learned counselfor the appellants submitted that there was no warrant for levying countervailing duty upon imported goods at a stage they would reach subsequent to their import after undergoing a process. They had to be subjected to duty in the state in which they were when imported.
- Countervailing duty must be levied on goods in the state in which they are when they are imported. <u>Section 3</u> of the Customs Tariff Act so mandates.
- It was, therefore, liable to that rate of countervailing duty as was provided for in the said clause
- The Writ Petition filed by the appellants before the Delhi High Court is allowed

# CESTAT, in M.S. Shoes East Ltd. -Respondent Final Order No. 158/2006-Cus.

- The dispute raised in this appeal of the Revenue is about the assessable value of a 1993 model Rollo Royce car imported by the Respondent.
- The car arrived in India in 1996 and the Bill of entry was filed on 03/08/1996.
- Dispute arose about the validity of import license produced by the Appellant. That and
  other disputes delayed the clearance of the car till 28th March, 2005.
- The car was purchased by the Appellant at a price of £ 75,000, from a German party, namely M/s. Shone Fab Collection, Germany.
- The Deputy Commissioner rejected the sale price as basis for value on the ground that "the supplier does not appear to be dealing in second-hand car".
- Therefore, value was determined going by the catalogue price after granting a depreciation of 38% from the catalogue prices.

- Revenue's contention is that second-hand cars are not normally sold in international trade and therefore transaction value is not to be accepted.
  - It has also been pointed out that the practice in the Custom Department, based on Circulars of the Board, is to carry out valuation based on catalogue price after allowing proper depreciation.
- But their main grievance is about the depreciation allowed. It is being pointed out that the order of the Commissioner is illegal in as much as Section 14 of the Customs Act stipulates that value shall be with reference to "price at the time of importation."
- The Learned SDR has emphasized that any depreciation after the importation of goods, for whateverreason, would be wholly illegal and cannot be allowed.
- When the commercial nature of the price is borne out by the fact that the purchase price is within a close range of the depreciated value, there is no legal justification to reject the transaction value.

- There is nothing in the Customs valuation law forbidding the acceptance of purchase price of second-hand car for the purpose of valuation for custom duty. In these circumstances, we are not able to find any merit in the appeal of the Revenue on this ground.
- Time of import and place of import are invariably the basis for tariff value, rate of duty and exchange rate. Therefore, the finding on depreciation is contrary to the basic statutory provisions in regard to a vide range of matters.
- The Revenue is, therefore, right in its contention that Commissioner is legally in error in holding that a higher depreciation be granted, taking into account to the long period of delay in Customs clearance.
- Certainly delay in clearance has affected the value of the car. But, the law does not provide for post import depreciation.

## Rate of Foreign Exchange

- In case of Goods Cleared for Home Consumption
- Third proviso to section 14(1) states that such price 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 as the case may be, is presented under section 50.

#### In Case of Warehoused Goods

Exchange rate prevailing on the date on which Bill of Entry is presented u/s 46 of Customs Act is to be considered and not when Bill of Entry is presented u/s 68 for clearance from customs warehouse.

#### If Transaction Value not determinable

- If conditions applicable to adoption of transaction value is not satisfied i.e.
- Value to be determined as per Valuation Rules
- Article VII of GATT Code Valuation laid down that primary method of determination of value of imported goods is the transaction value.

# Determination of the method of valuation – Rule 3

- Rule 3(1)
- Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;
- Rule 3(2)
- Value of imported goods under sub-rule (1) shall be accepted:
- Provided that -
- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
- (i) are imposed or required by law or by the public authorities in India; or
- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

## Rule 3(2)

- (b) the sale or price is not subject to some condition or consideration for which a
  value cannot be determined in respect of the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
- (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

## Rule 3(3)

- (a) Where the buyer and seller are related, the transaction value shall 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.
- (b) 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:

### Rule 3(3)

 (c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

#### Rule 4 - Transaction value of identical goods.

- **(**1)
- (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;
- (b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods
- -/(2)
- Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods
- **(**3)
- if more than one transaction value of identical goods is found,

## Rule 5 - Transaction value of similar goods

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued

#### Rule 6 - Where value can not be determined

- If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5,
- the value shall be determined under the provisions of rule 7 or,
- when the value cannot be determined under that rule, under rule 8.
- Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

#### Rule 7 - Deductive value

- Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India,
- in the condition as imported
- at or about the time at which the declaration for determination of value is presented,
- the value of imported goods shall be based on
- the unit price at which the imported goods or identical or similar imported goods
- are sold in the greatest aggregate quantity to persons
- who are not related to the sellers in India, subject to the following deductions:

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.
- If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued,

## Rule 7(3)

- (3) (a) If neither the imported goods
- nor identical
- nor similar imported goods
- are sold in India in the condition as imported ---

## Rule 8 - Computed value

- Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value,
- which shall consist of the sum of:-
- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales
  of goods of the same class or kind as the goods being valued which are made by
  producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10

#### Rule 9 – Residual Method

- (1) Subject to the provisions of rule 3,
- where the value of imported goods cannot be determined under the provisions of any of the preceding rules,
- the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and
- on the basis of data available in India;

### Rule 10(1) - Cost and Services

- **(1)**
- In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -
- (a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-
- (i) commissions and brokerage, except buying commissions;
- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iii) the cost of packing whether for labour or materials;

- (b) The value, of the goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost in connection with the production and sale for export of imported goods,:-
- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds and similar items used in the production of the Imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

- (c) royalties and licence fees related to the imported goods that the buyer is required to pay,
- (d) 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;
- (e) 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 (2)

- For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –
- (a) the cost of transport of the imported goods to the place of importation;
- (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
- (c) the cost of insurance:

# SVB AND RELATED PARTY TRANSACTION

## SVB – Special Valuation Branch

- The Special Valuation Branch (SVB) is a special unit within the Indian Customs department, which specializes in investigating the valuation of transactions between 'related persons', as defined under Rule 2 (2) of Customs Valuation (Rules, 2007.
- SVBs are located only at five Custom Houses, i.e., Chennai, Kolkata, Delhi, Bangalore and Mumbai and any decision taken in respect of a particular case in any of these Custom Houses is followed by all other Custom Houses/formations.
- The Special Valuation Branch of that Custom House, which is located proximate to the Head or Corporate Office of the importer (having special relationships etc. with the suppliers), handles the investigation into valuation of such importer.

- Wherever in the declaration prescribed under the Customs Valuation Rules, 2007,
   the importer has himself made an averment that the transactions are between related persons
- and there is a, prima facie, justification for further enquiry, the concerned case of import is referred to the SVB of the concerned Custom House,
- where a separate case file is opened and
- a registration number is assigned to the case.
- Similar reference to SVB to look into valuation on account of special relationship can be ordered by Commissioner concerned where such relationship comes to light on any intelligence or while enquiring into transactions of any importer with a particular supplier.

## Related Party for SVB

- they are officers or directors of one another's businesses.
- they are legally recognized partners in business.
- they are employer and employee.
- 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.
- one of them directly or indirectly controls the other.
- both of them are directly or indirectly controlled by a third person.
- together they directly or indirectly control a third person; or
- they are members of the same family.

## Investigation under SVB for unrelated party transactions

- 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.
- 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.
- 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.

# Exception where investigations under SVB not required

- 1. Imports involving samples and prototypes from related suppliers,
- 2. Imports from foreign suppliers where duty chargeable is unconditionally fully exempted or nil,
- 3. Any import transaction wherein the value of the imported goods is less than Rs. 1 Lakh and cumulatively less than Rs. 25 Lakhs in a financial year.

#### Some Case Laws on SVB

- [Eicher Tractors Ltd. V/S Commissioner of Customs, Mumbai [2000 (122) E.L.T. 321 (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.

# [Commissioner of Customs, Vishakhapatnam V/S Aggarwal Industries Ltd. (S.C.)

- 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.

# Validity of Investigation Report issued by SVB at all ports in India?

- Customs does not restrict the importer to import from multiple ports during the pendency or after finalization of the SVB proceedings.
- Further, suitable reference is also required to be made in its submissions before the SVB authorities of such imports through other ports.