



Revised procedure for valuation of imports from a related party by a Special Valuation Branch (SVB) of Customs

Background

As a trade facilitation measure, the Central Board of Excise and Customs (CBEC) has notified revised guidelines on valuation of related party imports by an SVB by issuing Circular No 5/2016-Cus dated 9 February 2016 replacing the earlier Circulars. Further, in order to reduce the pendency, the CBEC has issued a separate guideline in terms of Circular No 4/2016-Cus dated 9 February 2016 to deal with the pending cases.

Key highlights of the new circulars

- Functional control of SVB has been transferred from the Directorate General of Valuation (DGOV) to the Jurisdictional Chief or Principal Commissioner, Customs.
- The requirement to pay Extra Duty Deposit (EDD) dispensed with. However, goods will continue to be provisionally assessed till the conclusion of the proceeding.
- The requirement to furnish a security deposit in the form of cash deposit or bank guarantee for a period of three months in case documents/information are not submitted within sixty days. A security deposit will be limited to five per cent of the declared assessable value.

In genuine cases, an importer will be granted a further period of sixty days to furnish the required information and documents. In the case of a further delay, the SVB or the Customs authorities may take suitable action under the Customs Act, 1962 (the Customs Act).

- The SVB instead of an order will now issue an investigation report to the concerned customs authorities.

Reference to SVB

- SVB reference will be made in the following cases:
 - Related party transactions requiring examination of circumstances of sale and influence on price
 - Transactions involving possible additions for royalty payment, receipt of sale proceeds to the seller, etc.
- In all other cases, the matter will be dealt with by the concerned appraising group at the port.

- SVB will not undertake inquiries in the following cases of related party transactions:
 - Imports of samples and prototypes
 - Import of goods is subject to nil customs duty or unconditionally exempt
 - Transactions where the value of imported goods is less than INR1 lakh and the cumulative value does not exceed INR25 Lakh in a financial year
- For determining the need of reference to the SVB, an importer as far as possible will be advised to file a Bill of Entry fifteen days prior to import and furnish the required details for preliminary determination.
- The Customs Officer will undertake the preliminary analysis of the information and documents and submit his/her findings to the Commissioner, Customs, who will conclude the requirement for reference to the SVB.
- In the event a reference is made to SVB, the Customs Officer will commence provisional assessment of the goods and will seek further information and documents as prescribed and transfer the matter to the SVB.
- In case a reference to the SVB is not needed, suitable communication will be issued in this regard by the Commissioner, Customs.

SVB procedure

- On receipt of documents, the SVB will make a suitable communication to help ensure provisional assessment at all the ports. Further, it will go through the documents and information received and seek additional details if required.
- SVB shall, as far as possible, complete the investigations and issue its finding in two months from the date of receipt of initial information and documents. Further, an extension will require the approval of the Commissioner, Customs and Chief Commissioner, Customs as the case may be.

- SVB will submit its findings to the Commissioner/Principal Commissioner, Customs. Upon approval, an investigation report with recommendations will be sent to the Customs Authorities at the ports as well as to the DGOV.
- In cases where the investigation report accepts the declared value, the assessment will be finalised immediately without the requirement to issue a speaking order.
- In other cases, the Customs Officer will issue a Show Cause Notice (SCN). In the case of imports at multiple ports, a common adjudicating authority will be appointed for passage of an order and finalisation of assessment.
- The principle of natural justice and appellate provision of the Customs Act will be applicable to these cases as well.

Miscellaneous

- The system of renewal of the SVB order is to be discontinued, and the importer will be required to report changes in circumstances of sale and other material facts in the prescribed format to the Customs Authorities at the port.
- Basis the disclosure, the Customs Officer, will determine the requirement of reference to SVB.
- Further, to facilitate quick disposal of the currently pending SVB order for renewal, a system of one-time declaration is required to be submitted in the prescribed format by 31 May 2016 for suitable action in terms of revised guidelines.
- After scrutiny, in cases where there is no change, the process of renewal will be dispensed with and suitable communication will be made to all the stakeholders by 30 June 2016.
- In other pending SVB cases, the requirement to levy EDD will be reviewed in terms of the new guidelines by 31 May 2016.

Our comments

Measures like dispensing with EDD, a mandatory SVB reference, seeking an SVB order and renewing it and furnishing a security deposit or bank guarantee in lieu of EDD, etc. should come as a major procedural and compliance relief to trade, which was facing challenges vis-à-vis the SVB process.

Further, it is also expected to help in bringing down the pendency at the SVB as well.

However, the test is likely to be effective implementation. It is hoped that disposal of the matter shall take place in a time bound manner at the ground level, and strict monitoring of the status by the respective Commissioners and the CBEC is also expected.

Overall, it is a positive step of the government towards their stated objective of trade facilitation and improving the ease of doing business in India.



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