



21 February 2019

(19-1023)

Page: 1/5

Committee on Customs Valuation

Original: English

**INFORMATION ON IMPLEMENTATION AND ADMINISTRATION
OF THE AGREEMENT ON CUSTOMS VALUATION**

CHECKLIST OF ISSUES

INDIA

The following submission, dated 14 February 2019, is being circulated at the request of the delegation of India.

1. Questions concerning Article 1:

(a) Sales between related person:

(i) Are sales between related persons subject to special provisions?

Sales between related persons are subject to the provisions under Rule 3 (3) of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, which correspond to Article 1.2 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

(ii) Is the fact of intercompany prices prima facie considered as grounds for regarding the respective prices as being influenced?

Transactions between two companies are treated as related in case the nature of transaction comes within the scope of related persons defined under Rule 2 (2) of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, which is based on Article 15 (4) of the Agreement on Implementation of Article VII.

(iii) What is the provision for giving the communication of the afore-mentioned grounds in writing if the importer so requests? (Article 1.2(a))

Under the administrative law in India, assessing officers have to follow the principles of natural justice while rendering quasi-judicial decisions, which includes rejecting the value declared by any importer. The officer is required to give a written notice to the importer and grant him an opportunity to be heard in person before passing a written order rejecting the transaction value which should explain the reasons for doing so. This is also covered in Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

(iv) How has Article 1.2(b) been implemented?

Article 1.2 (b) has been given effect to by enacting Rule 3 (3) (b) of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

(b) Price of lost or damaged goods:

There are two provisions in the Customs Act, 1962 which provide for abatement/remission of duty on damaged or deteriorated goods or goods that have been lost, destroyed or abandoned. The relevant extracts of provisions are reproduced below:

"Section 22. Abatement of duty on damaged or deteriorated goods:

- (1) Where it is shown to the satisfaction of the Assistant Commissioner of customs or Deputy Commissioner of Customs -
 - a. that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
 - b. that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
 - c. that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).
- (2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.
- (3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner: -
 - a. the value of such goods may be ascertained by the proper officer, or
 - b. such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods."

"Section 23. Remission of duty on lost, destroyed or abandoned goods-

- (1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs) shall remit the duty on such goods.
- (2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon:

Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

2. How has the provisions of Article 4 to allow the importer an option to reverse the order of application of Article 5 and 6 been implemented?

Rule 6 of Customs Valuation (Determination of Price of Imported Goods) Rules 2007 as amended, provides that the order of application of the deductive value method and computed

value method can be reversed at the request of the importer. This procedure can be applied after taking the approval of the Customs Officer.

In this regard, India had filed a reservation as provided under Annex III.3 to Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994. In keeping with the reservation, Article 4 has been adopted with a minor modification to the extent that an importer has to seek approval of the Customs officer before the methods in Articles 5 and 6 are applied in the reverse order.

3. How has Articles 5.2 been implemented?

Rule 7 (3) of Customs Valuation (Determination of Price of Imported Goods) Rules 2007 as amended, incorporates the provisions of Article 5.2 of Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994. However, following India's reservation filed under the provisions Annex III.4 of the said Agreement, the method prescribed in the said Rule 7 (3) can be adopted without obtaining the consent of the importer.

4. How has Article 6.2 been implemented?

Note to Rule 8 of the Interpretative Notes contained in the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, clarified that the use of the computed value method will be limited to those cases where the producer is prepared to supply the necessary costing.

5. Questions concerning Article 7?

(a) What provisions have been made for making value determinations pursuant to Article 7?

Rule 9 of Customs Valuation (Determination of Price of Imported Goods) Rules 2007 as amended, incorporates the provisions of Article 7 of the Agreement.

(b) What is the provision for informing the importer of the customs value determined under Article 7?

As explained above in 1 (a) (iii).

(c) Are the prohibitions found in Article 7.2 delineated?

Yes, in terms of Rule 9 (2) of Customs Valuation (Determination of Price of Imported Goods) Rules 2007 as amended.

6. How have the options found in Article 8.2 been handled? In the case of f.o.b. application, are ex-factory prices also accepted?

As provided under Article 8(2) of the Agreement, Rule 10 of Customs Valuation (Determination of Price of Imported Goods) Rules 2007 as amended, states that the value of the goods shall include the elements of freight of the imported goods to the place of importation, insurance, and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

7. Where is the rate of exchange published, as required by Article 9.1?

Rate of exchange is published by the Central Board of Indirect Taxes & Customs (CBIC), which is the competent authority, from time to time as provided under Customs Act, 1962 on the official website of CBIC.

8. What steps have been taken to ensure confidentiality, as required by Article 10?

The Customs Act, 1962 contains adequate provisions for ensuring confidentiality. Extract of Section 136 (3) is given below:

"If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both".

9. Questions concerning Article 11?

(a) What rights of appeal are open to the importer or any other person?

Under the Customs Act, 1962 the importer and his agent can appeal against a decision on valuation to the Commissioner (Appeal) in the first instance. A second appeal also lies to the Customs Excise and Service Tax Appellate Tribunal (CESTAT). An appeal against the Tribunal's order can only be made to the Supreme Court of India, which is the highest court of the land.

(b) How is he to be informed of his right to further appeal?

The importers are invariably informed of their right of appeal by the adjudicating and appellate authorities in writing in the body of their orders.

10. Provide information on the publication, as required by Article 12, of:

(a) (i) The relevant national laws;

Customs Act, 1962 containing the relevant customs Laws on Valuation.

(ii) The regulations concerning the application of the Agreement;

Customs Valuation Rules (Determination of price of imported goods) Rules 2007 is the relevant regulation concerning application of Agreement on Customs Valuation in India.

(iii) The judicial decision and administrative rulings of general application to the Agreement;

The national laws relating to valuation of imported goods are contained in the Customs Act, 1962 and Customs Valuation (Determination of Price of Imported Goods) Rules 2007 as amended issued under the Customs Act. The Act and rules are published in the Official Gazette and on the website of Central Board of Indirect Taxes and Customs (CBIC). Judicial decisions and rulings of the Tribunal are published in reputed law journals. CBIC has put up a special web-site for valuation issues and important decisions of the Supreme Court of India are displayed on the web-site.

(iv) general or specific laws being referred to in the rules of implementation or application:

Section 156 (2) (a) of the Customs Act, 1962 empowers the Central Government to make rules providing for the manner of determining the transaction value of the imported goods under Section 14 of Customs Act, 1962.

(b) Is the publication of further rules anticipated? Which topics would they cover?

No.

11. Questions concerning Article 13:

(a) How is the obligation of Article 13 (last sentence) being dealt with in the respective legislation?

Section 18 of the Customs Act, 1962 read with Customs (Provisional Duty Assessment) Regulations, 2011 and Customs (Finalisation of Provisional Assessment) Regulations, 2018

allow an importer to release his goods from customs pending final determination of value by giving a guarantee in the form of surety, security deposit or bank guarantee.

(b) Have additional explanations been laid down?

Administrative instructions in the form of Circular No. 38/2016 dated 22 August 2016 for uniform application of these regulations have been issued.

12. Questions concerning Article 16:

(a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

Rule 12 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007 provides that, at the request of the importer, the proper officer shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared of the imported goods. Thereafter, a reasonable opportunity of being heard is to be given to the importer before taking a final decision in the matter.

(b) Are there any further regulations concerning above-mentioned requests?

No.

13. How have the Interpretative Notes of the Agreement been included?

The interpretative notes to the Agreement have been included in the body of the Customs Valuation (Determination of Price of Imported Goods) Rules 2007 as amended, as a schedule to the rules.

14. How have the provisions of the Decision of 26 April 1984 on the Treatment of Interest Charges in the Customs Value of Imported goods (VAL/6.Rev.1) been implemented?

The Decision on the Treatment of Interest Charges has been implemented under administrative instructions.

15. For those countries applying paragraph 2 of the Decision 24 September 1984 on the Valuation of Carrier Media Bearing Software for Data Processing Equipment (VAL/8), how have the provisions of this paragraph been implemented?

The Government of India notified the provisions of this paragraph by publishing it in its official gazette. For such goods, the transaction value is equal to the aggregate of the cost of carrier medium and the freight and insurance charges incurred in respect of the carrier medium. The value of motion pictures, music, gaming software for use on gaming consoles printed or recorded on media falling under chapter headings 3706 or 8523 is not to be included in the transaction value. However, this is not applicable in case of motion pictures, music or gaming software in a pre-packaged form for retail sale.
