

**Detailed note on Special Valuation Branch (“SVB”) proceedings as per new Circulars issued by the Central Board of Excise & Customs in case of import from related party.****A. BACKGROUND**

- A.1 The Special Valuation Branch (hereinafter referred to as “**SVB**”) investigates the transactions involving between the importer and the related foreign supplier. In other words, when the parties are related as per Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (**Valuation Rules**), then the valuation of goods as imported from such related foreign suppliers is investigated and/or examined by the SVB.
- A.2 In this regard, detailed instructions were issued vide Circular Nos. 01/98-Customs dated 01.01.1998 and 11/2011-Customs dated 23.02.2001 which prescribed the procedure for referring the cases to SVB and the timelines involved therein.
- A.3 The SVB was taking humungous time in finalizing the SVB investigations. Due to such delay in finalization of SVB matters, the importers had to suffer by way of paying Extra Duty Deposit (**EDD**) while filing of provisional Bills of Entry with the Customs Department.
- A.4 The Trade and Industry represented such delays before the concerned authority. After considering the same, the Central Board of Excise & Customs (“**CBEC**”) decided to streamline the procedure relating to investigations by SVBs.

**B. NEW CIRCULARS ISSUED BY CBEC**

- B.1 CBEC has comprehensively revised the instructions for the examination of related party transactions. In this regard, the following circulars have been issued by CBEC:
- (i) Circular No. 04/2016-Customs dated 09.02.2016 providing procedure for renewal of SVB orders and ongoing SVB inquiries under Circular No. 11/2001- Cus dated 23.02.2001
  - (ii) Circular No. 05/2016-Customs dated 09.02.2016 providing procedure for investigation of related party import cases and other cases by SVBs
- B.2 It is relevant to mention here that Circular No. 04/2016 is relevant only for such cases which are pending for renewal and ongoing SVB inquiries under Circular No. 11/2001- Cus.
- B.3 However, Circular No. 05/2016 provides comprehensive procedure for afresh cases where imports are made from the related foreign suppliers. The SVB procedure to be followed is laid down as under:

**C. STEP BY STEP PROCEDURE FOR SVB PROCEEDINGS**

### **Step-1- Filing of Annexure-A with the Customs Authority**

An importer, who is related with the suppliers in terms of Rule 2(2) of the Valuation Rules, shall file Annexure-A alongwith the supporting documents with the Customs Authorities before getting the goods cleared from the Customs Port.

**Note:** *It is also advisable that the importer may file a bill of entry in advance, preferably 15 days prior to the import. Such advance intimation is expected to provide sufficient time to the Department for taking a decision on whether the transaction needs to be referred to SVB or not.*

### **Step-2- Reference to SVB**

#### **Role of Proper officer**

Upon filing of the Bill of Entry and receipt of information furnished by the importer (under Annexure-A), the proper officer shall carefully examine the “circumstances surrounding the sale” and for this purpose, some parameters have been specified in order to evaluate a particular case and determine the need of reference to SVB. The following parameters would be considered by the proper officer:

- ✓ Has the importer declared the price of the goods imported is a “transfer price”?
- ✓ What is the basis on which the price has been settled between the importer & foreign seller?
- ✓ Has the price been settled in a manner consistent with the way the seller settles prices for sales to importer who are not related to the seller?
- ✓ Does the nature of relationship between the importer and seller appear to influence the price?
- ✓ Is the information provided by the importer in terms of rule 3 (3) (b) able to demonstrate that the transaction is at arm’s length?
- ✓ Are there any payments, such as royalty, license fee etc., actually made or to be made, as a condition of sale of the imported goods, by the importer to the seller, or by the importer to a third party to satisfy an obligation cast by the seller? Are such payments included in the price actually paid or payable?
- ✓ Whether any part of the proceeds of subsequent re-sale, disposal or use of the imported goods accrues, directly or indirectly, to the seller?
- ✓ What is the nature of other payments, if any, made or to be made by the importer as a condition of sale of the imported goods?
- ✓ Has the importer entered into an Advance Pricing Agreement with the Income Tax Authorities or obtained an Advance Ruling?
- ✓ Will the prices paid or payable by the importer be settled with the seller at the end of a defined period by means of a debit note / credit note?

CBEC has also decided that only cases with significant revenue implications are taken up for SVB investigations. The following cases shall not be taken up for inquiries by SVBs<sup>1</sup>:

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<sup>1</sup> In case where after examination of the transaction, it is decided by the Commissioner that a reference to SVB

- ✓ Import of samples and prototypes from related sellers;
- ✓ Import of goods from related sellers that enjoy unconditional custom duty exemption (exemption for BCD, CVD as well as SAD);
- ✓ Imports from related supplier which have low value i.e. each individual transaction has value less than 1 lacs, and cumulatively all transactions in a financial year are for value less than 25 lacs.

Submission of findings to the Commissioner by the proper officer

The proper office at the Customs Station of import shall submit the findings to the Commissioner for a decision on whether the case is fit for being referred to the SVB for investigations.

Commissioner's view on the findings of the proper officer

The Commissioner shall after due consideration of the preliminary findings, take a considered view whether-

- ✓ The matter be referred to the SVB for further investigations and the goods be provisionally assessed to duty in terms of Section 18 of the Customs Act, 1962 or
- ✓ The transaction does not merit investigations by SVB and that assessment be finalized on the basis of enquiries to be conducted by the proper officer in terms of Rules 4 to 9 of the Valuation Rules; or
- ✓ The transaction be assessed in terms of Rule 3 of Valuation Rules.

**Step-3- Procedure for reference to SVB**

- 3.1 In case, the Commissioner directs for investigation by the SVB, the goods will be promptly cleared by carrying out provisional assessment in terms of Section 18 of the Customs Act, 1962.
- 3.2 The proper officer shall alongside of provisionally assessing the bill of entry, issue a questionnaire to be filed by the importer in the prescribed format (Annexure-B). It is the responsibility of the proper officer to transfer the related documents to the jurisdictional SVB (it should be transferred within 3 working days).

*Note: CBEC has now decided that while reference to SVB requires the assessments to be provisional as per Section 18 of the Customs Act, 1962, for the sake of reducing transaction and bringing uniformity across Customs House, no security in the form of EDD shall be collected from the importers.*

*However, in case importer fails to provide the documents and information required for SVB inquiries within 60 days of requisition of the same, security deposit at a rate of 5% of the declared assessable value shall be*

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is not necessary, the Customs House shall issue a reference number to the importer and the Risk Management Division to indicate that the transaction has been examined from the point of view of need for SVB inquiries and it has been decided not to refer the same for SVB investigations.

*imposed by the Commissioner for a period not exceeding the next 3 months, without any exception. The importer is free to choose manner of furnishing the Security Deposit for the purpose of provisional assessment viz., Cash Deposit or Bank Guarantee. The importer will be required to furnish additional information as per the questionnaire provided in Annexure B.*

**Step-4 - SVB Investigation**

- 4.1 The Importer will file the response in Annexure-B with the SVB Department<sup>2</sup>.
- 4.2 The documents received from the importer shall be duly acknowledged by the SVB Department.
- 4.3 Intimation shall be forwarded to Risk Management Division (**RMD**) and the referring appraising group regarding submissions of the documents.
- 4.5 The SVB Department will go through the documents and information received and may seek additional details/documents, if required. The importer shall also be given suitable opportunity to submit evidence in support of the declared value.
- 4.6 SVB shall, as far as possible, complete the investigations and issue its finding in two months<sup>3</sup> from the date of receipt of initial information and documents.
- 4.7 The SVB will quantify the extent of influence on the transaction value due to the relationship or payments towards royalty or licence fee or other payments actually made or to be made as a condition of sale of the imported goods and submit its findings to the Principal Commissioner / Commissioner.
- 4.8 Upon approval by the concerned Principal Commissioner / Commissioner, an Investigation Report (“**IR**”) with recommendations will be submitted to the referring customs station and to any other customs station where the goods were cleared on provisional basis as well as to the Directorate General of Valuation. The report will broadly consist of the following:
  - ✓ Relevant facts, submissions made by the importer;
  - ✓ The findings;
  - ✓ The grounds for acceptance or rejection of declared value;
  - ✓ Extent of influence on the declared transaction value.

**Step-5- Finalization of Assessments**

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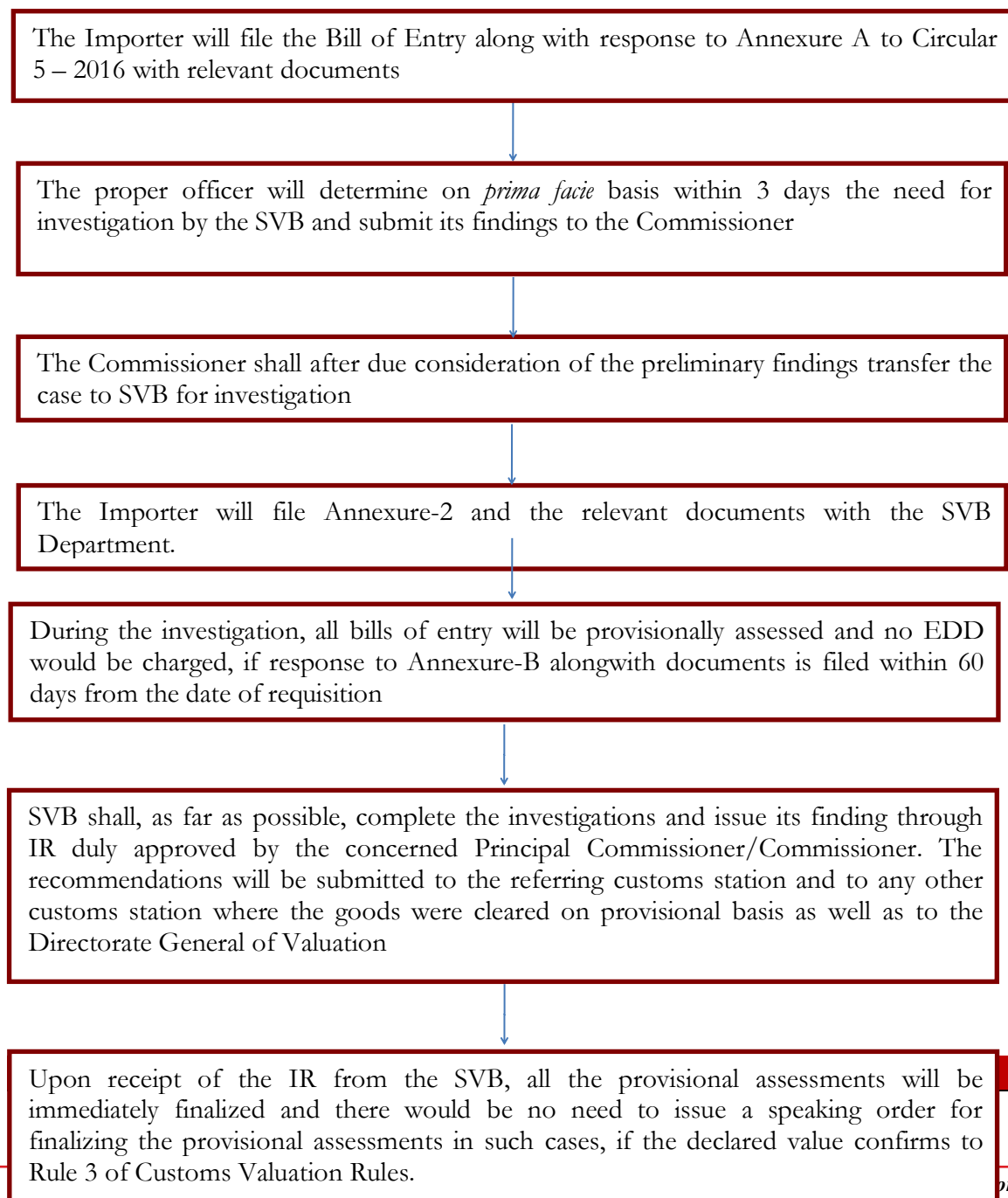
<sup>2</sup> In case where the import takes place through Customs Houses of Mumbai, Delhi, Chennai, Kolkata, Bangalore, the importer will be free to select the SVB of the Customs House of import or the Customs House most proximate to the corporate office, as convenient to him.

<sup>3</sup> In case where investigations are not completed within two months, the SVB shall seek the approval of the jurisdictional Commissioner for such extended time period as is deemed necessary to complete investigation.

- 5.1 Upon receipt of the Investigation Report from the SVB, all the provisional assessments will be immediately finalized and there would be no need to issue a speaking order for finalizing the provisional assessments in such cases, if the declared value confirms to Rule 3 of Valuation Rules.
- 5.2 In case the investigation report finds that the declared value has been influenced by the circumstances surrounding the sale, then the Customs Officer will issue a Show Cause Notice to the importer within 15 days.
- 5.3 Thereafter, the Adjudicating Authority will pass an order quantifying the extent of influence on the declared value and the assessment will be finalized.

#### **D. FLOW CHART**

The above process can be summarised as under:



- ✓ Earlier every SVB Order had a sunset clause of three years from the date of issuance and the importer was supposed to get the same renewed though there is no change in the '**circumstances surrounding the sale**'. Now, system of renewal of SVB orders has been discontinued from the date of issuance of Circular No. 05/2016-Customs<sup>4</sup>;
- ✓ No Security in the form of EDD during the provisional assessments provided the documents alongwith response to Annexure-B are filed within 60 days of requisition by the Department;
- ✓ The process has been simplified as compare to the earlier practice;
- ✓ In case where the circumstance of sale or terms and conditions of the agreement between the importer and related party change, or any other payments of the kind referred under Rule 10(1) (c), (d) & (e) of Customs Valuation Rules, 2007 become payable, the importer shall be required to declare the same at the place of import in the prescribed format (as per Annexure-C). Such cases shall be examined as per the procedure discussed above.
- ✓ Earlier, the Commissioner used to review the SVB Orders and directs the Deputy/Assistant Commissioner to file an appeal against the Commissioner (Appeals). Now, the Circular provides that the Appellate provisions under Section XV of the Customs Act would apply for filing appeals against the order passed by the adjudicating authority. In other words, the IR issued by SVB and observed that declared value is found confirming to Rule 3 of the Customs Valuation Rules, 2007, would not be challenged by the Department.

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<sup>4</sup> Renewal is applicable for the cases pending with SVB for renewal (separate circular i.e. Circular No. 04/2016 has been issued for renewal matters)