UNDERSTANDING RELATED PARTY IMPORTS: KEY VALUATION ASPECTS & COMPLIANCE

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Introduction: India's thriving economic landscape has led to a surge in imports from foreign companies, especially those related to Indian importers. This rise in related party imports has brought the issue of valuation and compliance under the spotlight. With potential implications on customs duty liabilities and potential penalties, understanding the framework for such transactions becomes paramount.

1. While making any imports into India, the importers are mostly concerned about the customs tariff classification, customs duty liability and importability of the product to be imported into India. Seldom are the importers taking into account important valuation aspects which has the potential to increase their customs duty liability in India or invite unintended penalty consequences. In this article I seek to highlight one such valuation aspect i.e., making import into India from a related foreign supplier i.e., when the foreign supplier and the importer are 'related' to each other.

When do transacting parties qualify as 'related' parties

2. Before we dwell into the compliances to be made in case of related party imports into India, it is crucial to understand the parameters which makes the transacting parties 'related' to each other. Rule 2(2) of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 ("Customs Valuation Rules") provides the following parameters, any of which if fulfilled, the transactions parties will be deemed to be 'related' to each other:

> *"(i) they are officers or directors of one another's businesses;*
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> *(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."*

3. If the transacting parties (i.e., importer and the foreign supplier) fall within anyone of the above clauses, they will be deemed to be ‘related’ to each other in terms of the provisions of the Customs law.

Assessable value in case of import from ‘related’ foreign supplier

4. Section 14 of the Customs Act is the mother provision governing the valuation of the imported goods for arriving at the assessable value on which customs duty will be calculated and payable. It stipulates that the transaction value (or sale / supply value, in normal parlance) agreed between the foreign supplier and the importer will be considered as the assessable value, unless the import transaction is between ‘related’ parties in which case the assessable value will be determined as per the Customs Valuation Rules.

5. Given the above, while filing the bill of entry, a declaration is required to be made by the importer as to whether the importer and the foreign supplier are ‘related’ to each other. Any incorrect declaration in this regard in the bill of entry will be viewed as mis-declaration by the customs authorities and may invite unintended penalties under the Customs Act. Thus, while making imports from related foreign supplier, it should be ensured that a declaration to this effect is correctly made in the bill of entry.

6. The Customs Valuation Rules inter alia provide the manner in which the import value between ‘related’ parties will be arrived at. Rule 3 of the said Rules provide that the transaction value / import value, between related parties, will be accepted as assessable value only if the customs authorities after examination reach a conclusion that the import price is genuine and the relationship has not influenced the said import price. The idea behind this investigation is to see that whether on account of relationship, to reduce customs duty liability at the time of import into India, the transacting parties have reduced the import price resulting in customs duty evasion in India.

7. In case, after examination, the customs authorities reach a conclusion that the import price is not genuine, they will not accept the said import price as the assessable value and the assessable value will be determined using the following methods (to be adopted sequentially):

a. Value of Identical / Similar Goods (Rule 4 & 5);

b. Deductive Value Method (Rule 7);

c. Computed Value Method (Rule 8); and

d. Best Judgement Method (Rule 9) – residuary method.

Special Valuation Branch (SVB) investigation

8. For investigating and determining whether the import price between the related parties is to be accepted as assessable value, a special branch has been created in the customs, known as the Special Valuation Branch (SVB). This branch exclusively deals with and investigates all valuation matters arising from imports between related parties. They undertake investigation and give their report, to the assessing group (customs authorities at the customs port), either accepting the import price or determining the assessable value to be adopted for such related party imports (determined using the above methods), this report is called the ‘Investigation Report’ (IR).

9. The procedure which will be followed by the said SVB has been provided under CBIC Circular No. 05/2016-Cus dated 09.02.2016. Importer while making import for the first time from any related foreign supplier(s) is required to participate in the investigation by the SVB and submit all necessary information and documents. This is a one-time exercise i.e., when imports are made for the first time from related foreign supplier, this

investigation is undertaken by the SVB and IR is issued post investigation. This IR continues to be applicable in respect of all future imports and no renewal is required thereof.

10. Also, it is noteworthy that the IR will continue to remain applicable in respect all future imports unless there is a change in the circumstances / terms and conditions of sale between the related parties, change in agreement between the transacting parties, change in the relationship, change in name of the foreign supplier or in case of import from new related foreign suppliers. In case of any of these events, the SVB will undertake fresh investigation and issue a fresh IR.

11. A number of foreign companies are now increasingly setting up their operations in India and are heavily importing raw materials / capital goods into India from their group / related foreign companies. It should be ensured that they fully comply with all the above customs compliances required to be fulfilled in case of related party imports. Any non-compliance in this regard will be viewed adversely by the customs authorities and may result in increased customs duty liability (for past as well as future imports) and heavy penalties under the custom laws.

Conclusion: Foreign companies with operations in India and local importers must ensure strict compliance with customs regulations for related party imports. A clear understanding of the valuation rules and processes can prevent inadvertent breaches, potentially saving businesses from heavy penalties and increased customs duty liabilities. It’s recommended to proactively participate in SVB investigations and ensure accurate declarations in all dealings.