

SPECIAL VALUATION BRANCH



OPTIMETZ ADVISORY

56, Yamunabai Road, Madhav Nagar, Bangalore
560 001

Contact us @ 080 41160978, mail id:
cfo@optimetz.com

17 - Nov - 15

SPECIAL VALUATION BRANCH

OPTIMETZ ADVISORY

What is Special Valuation Branch?

Special Valuation Branch is a Branch of the Custom House, specializing in investigating the transactions involving relationship between the supplier and the importer and certain other special features like Technical Collaboration between the parties, etc. Special Valuation Branch examines the influence of relationship on the invoice value of the imported goods in respect of transactions between related parties. In respect of Technical Collaboration Agreements and Joint Venture Agreements, the terms and conditions of these agreements are examined to arrive at the conclusion, whether the existence of such agreement has influenced the invoice value of the imports.

Who should register with SVB

Importers who are related to the supplier in terms of Rule 2(2) of the Customs Valuation Rules, 1988 are required to register with SVB. Rule 2(2) of the Customs Valuation Rules, 1988 is as follows:-

Rule 2(2): For the purpose of these rules, persons shall be deemed to be "related" only if:-

- 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 5 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;
- they are members of the same family.

Explanation I - The term "person" also includes legal persons

Explanation II- Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Apart from the above, those who are having Collaboration Agreement, Technical Assistance Agreement or any other agreement / contract with the foreign supplier are also required to register with SVB.

When the cases refer to SVB?

Under these two circumstances cases can be refer to SVB

1) Suo Moto declaration by Importer at the time filing BOE - Importer should himself files a declaration prescribed under customs valuation rules, 1988 with Appraising group at the time of filing Bill of Entry that the suppliers are fall under the definition of related parties as per Rule 2(2) of the valuation rules. On examination of available documents, transaction value of the identical or similar goods in respect of the unrelated buyers, the appraising group may make a reference to the Special Valuation Branch.

Circumstances where reference to the SVB branch is not require

A) If the Importer able to produce evidence that identical or similar goods transaction value in respect to unrelated buyers in

SPECIAL VALUATION BRANCH

OPTIMETZ ADVISORY

India at the same price.

B) If the Importer can substantiate with the documentary evidence at the time of filing BOE that his invoice value is not influenced because of the relationship.

2) On the department Intelligence Input/Enquiry- When such related parties relationship not disclosed by Importer and comes into the notice of department through any intelligence or during any enquiring into transactions of any importer with the particular supplier than the Commissioner concerned can refer such cases to SVB for further investigations.

Levy of EDD (Extra Duty Deposit)

Till the pending SVB proceedings all imports are provisionally assessed and 1% extra duty should have to be deposited with the department. However if the importer fails to furnish reply to the questionnaire within 30 days of the receipt ,the percentage of extra duty deposit will increase to 5%.

Refund of EDD (Extra Duty Deposit)

After the case is decided the provisional assessment pending at the appraising groups will be finalized and the extra duty deposit paid at the time of provisional assessment will be adjusted or refunded as per the SVB order.

Procedure for Registration with SVB

All those importers who are having relationship with the suppliers as mentioned above or those who are having Technical Collaboration, etc., shall furnish a declaration about the relationship in the GATT declaration form at the time of filing of Bill of Entry in the Appraising Group.

On examination of the circumstances of sale and keeping in view the invoice value of identical or similar goods, the group will make a reference to Special Valuation Branch for further investigation of influence of relationship on assessable value.

If the importer is able to furnish evidence of the transaction value of identical or similar goods in respect of sales to unrelated buyers in India at the same price, then there is no need for any reference to Special Valuation Branch and the Bill of Entry will be assessed finally based on those contemporaneous import values. If there are no contemporaneous imports, and there is no way to compare the values at the time of assessment of the Bill of Entry, then a reference is made to Special Valuation Branch. This reference is to be done with the prior approval of the Commissioner of Customs. If the importer can substantiate with documentary evidence that his invoice price is not influenced because of the relationship, there is no need for any reference to Special Valuation Branch.

The Special Valuation Branch of that major Custom House, (Bangalore, Chennai, Calcutta, Delhi and Bombay) which is located proximate to the Head or Corporate Office of the importer (having special relationships etc. with the suppliers), would handle the investigation into valuation of such importer.

No application or representation to the Special Valuation Branch directly by the importers will be considered. All references shall be made through the Appraising Groups at the time of filing of the Bill of Entry.

On receipt of the reference from Appraising Groups, the case is registered in Special Valuation Branch and a PD Circular for provisional assessment is issued. Copies of the same are issued to the importer and to the Appraising Groups as well. The importer shall indicate the PD Circular No. at the time of provisional assessment of all their

SPECIAL VALUATION BRANCH

OPTIMETZ ADVISORY

imports in the Appraising Group and execute PD Bond with 1% Extra Duty Deposit on the assessable value of the goods. Along with the PD Circular a questionnaire is also issued to be filled up by the importer along with the list of all documents required to be submitted. The amount of extra duty deposit presently kept at 1% will be continued.

Board has however decided that if the importer does not furnish complete reply to the questionnaire within 30 days of receipt of the 'Questionnaire' by the importer, the extra duty deposit will be increased to 5% till the date of receipt of reply by the Department.

The importers falling under the related category may keep ready all the documents along with the replies to the questionnaire, etc., at the time of first import itself, so that the case can be finalised as early as possible in the Special Valuation Branch.

Documents required to be submitted to SVB

The importer is required to submit replies to the questionnaire to the CBEC Circular No.11/2001-Cus dated 23.02.2001 (issued as PN 68/2001 dated 02.04.2001) and furnish all the documents listed in Annexures thereto.

Replies can be furnished to the same without waiting for the receipt of questionnaire from the department. All the columns in the questionnaire shall be filled up without fail. Wherever, the reply is 'nil' or where the question is not applicable to the importer, the same shall be specifically stated instead of leaving the column blank. The importer shall also furnish all the documents mentioned in the annexure. If the documents listed in the annexure are not existing or not applicable to the importer, the same shall be specifically stated. All the pages of the questionnaire shall be signed by the importer or his authorised signatory with name and designation of the person signing them.

The Annexure A should be issued by the assessing group, dealing with particular imports, to the importer soon after it is decided to refer the case to a SVB. Any importer to whom the questionnaire is issued should be instructed to furnish the reply to the referring Custom House as well as to the SVB of the concerned major Custom House within 30 days of receipt of the questionnaire. The questionnaire should be issued by the Custom House referring the case to the SVB. Traders who are importing the goods and selling the same in the same condition as they are imported shall furnish the invoice value, landed price, and their selling price in the Indian market. The difference between the selling price and landed cost shall be properly explained.

Finalisation of SVB cases

On receipt of replies to questionnaire and other documents, the SVB will examine the same and call for any other additional information that is required. Upon receipt of reply to the questionnaire within the prescribed time limit, the SVB will decide within 7 days whether the importer has replied to the questionnaire substantively. Otherwise, immediate further information not furnished will be sought before taking step for finalisation of investigation. After furnishing of all the informations, the importer may, if they so desire, appear for personal hearing and explain their case with regard to the acceptance of transaction value or otherwise.

Thereafter, an Order - In- Original will be issued by the D.C.(SVB) and the same will be intimated to the importer by registered post and copies will be endorsed to all the Appraising Groups. Where provisional assessment is being resorted to the investigation and finalisation of the assessment must be completed within four months from the date of

SPECIAL VALUATION BRANCH

OPTIMETZ ADVISORY

reply. If no decision is taken within 4 months, the extra duty deposit should be discontinued and the concerned DC/AC will be held responsible for inexplicable delay in finalisation. Once the case is finalised by the Special Valuation Branch, the provisional assessments pending in the Appraising Groups will be finalised and the extra duty deposit paid at the time of provisional assessment will be adjusted in accordance with the SVB order. In all cases of loading, it is mandatory for the importer to quote Order in Original No. of SVB and indicate the percentage of loading at the time of filing of each Bill of Entry by them. If they do not quote the Order No. and the loading factor, it will be construed as misdeclaration on the part of importer and dealt with in accordance with the provisions of Customs Act.

Procedure for Renewal

Normally, the order issued by the SVB is in operation for a period of 3 years.

The order by SVB is passed based on the replies / documents furnished by the importer. If there is any suppression of fact or misdeclaration on the part of importer, necessary penal action will be taken separately in accordance with the provisions of law.

If the importer is having continuous imports over a period of time extending beyond 3 years, he has to file replies and documents at least 3 months before the completion of 3 years, so as to take up the renewal of the case. If there is no change in the terms and conditions of the agreement, or pattern of invoicing, the same shall be specifically stated by the importer in the form of an affidavit. On examining these documents, the SVB order issued in the past will be renewed for a further period of 3 years. If there are no imports from the related supplier beyond a period of 3 years, there is no need for renewal of the circular and the file will be closed in SVB.

It is advised that the reader consults an expert for Special Valuation Branch.

Contact us @ 080 41160978, mail id: cfo@optimetz.com

The views expressed and the information provided above are of general nature and is not intended to address the circumstances of any particular individual or entity. Further the above content should neither be regarded as comprehensive nor sufficient for making decisions. Although we endeavor to provide accurate and timely information, there is no assurance or guarantee in this regard. No one should act on the information or views provided in this publication without appropriate professional advise. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this publication.