Special Valuation Branch [SVB]

1. 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.

2. Organizational Structure

Special Valuation Branch is headed by a Deputy Commissioner of Customs and assisted by one Appraising Officer and necessary Ministerial Staff.

3. 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:-
   i) they are officers or directors of one another's businesses
   ii) they are legally recognized partners in business;
   iii) they are employer and employee;
   iv) 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;
   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;
   viii) 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.

4. Procedure for Registration with SVB

The procedure for registration/finalization is given in CBEC Circular No.11/2001-Cus dated 23.02.2001,. All those importers who are having relationship with the suppliers as mentioned in para 3 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, (out of the four - 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 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.

5. 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 Annexure thereto.

ANNEXURE – A

Questionnaire to be filled by importers who are related to the foreign suppliers.

1. Name of the importer with full address of the Head or Corporate office, registered office administrative office / factory and PAN No.
2. Whether the importer is a proprietorship/partnership/private limited company/public limited company/branch office of company incorporated outside India.
3. (a) Name of the foreign supplier from who the goods are imported (b) nature of the business relationship of the importer with the supplier (eg., subsidiary company/branch office/distributor/agent/indenter or any other) (c) nature of the transaction - eg., sale to the importer, consignment sales, branch transfer or any other.
4 Whether any officer or director in the company/firm of the importer holds any office in any company incorporated outside India; if so, whether such a company is related to / associated in any way with the supplier of the imported goods. Also give details of converse situation, if applicable?

5 Whether the importer and the supplier of the goods are partners in business?

6 Whether there is an employer-employee relationship between the importer and the supplier of the imported goods and vice versa?

7 Whether the foreign supplier or any of their associated companies jointly or severally, directly or indirectly own, control or hold equity shares worth % or more of the total paid up capital of your company or any of your associated companies?

8 Whether any other third person, jointly or severally, directly or indirectly owns controls or holds equity shares worth 5% or more of the foreign supplier and of your company including the associated companies?

9 (a) Whether the supplier of the goods is in a position, directly or indirectly, to exercise restraint over you, legally or operationally, in any manner? (b) Specify the role if any, of the supplier or any of its associate business entities, in your corporate policy, design specification, quality control, marketing, sub-licensing of patent, franchise, etc? (c) Whether any legal liabilities created by contracts or agreements entered into by the supplier devolve on the importer?

10 Whether the importer is in a position, directly or indirectly, to exercise restraint over the supplier, legally or operationally, in any manner? Details as per (b) and (c) above for this converse position?

11 Whether a third party is in a position, directly or indirectly, to exercise restraint over both the importer and the supplier of imported goods, legally or operationally, in any manner? Details as per (b) and (c) of (9) above for this converse position?

12 Whether the importer and the supplier of the imported goods, together, are in a position, directly or indirectly, to exercise restraint over you, legally or operationally, in any manner? Details as per (b) and (c) of (9) above for this converse position?

13 Whether the importer and the supplier of the imported goods are members of the same family?

14 (a) Whether the importer is a sole agent, distributor or indentor appointed by the foreign suppliers. (b) Give the full particulars of all the suppliers of goods from outside India for whom the importer acts as agents/distributors/indentors?

15 Whether the importer is a branch or subsidiary of the supplier of the importer goods? (The word subsidiary has the same meaning as in section 4 of the Companies Act)

16 (a) whether the importer is engaged in the local manufacture of any products of the suppliers of the imported goods? (b) If yes, whether the imported items are used in such manufacture? (c) If yes, whether the imported items are manufactured or exclusively supplied by the suppliers? (d) Whether the product manufactured by the importer using the imported goods is sold under a trade mark, design or patent owned or controlled by the supplier of the goods or any person related to them?

17 (a) Whether the imported goods are component parts in the SKD/CKD condition for local assembly into finished goods? If yes, furnish a complete list of items imported in CKD/SKD condition.

18 In the case of (16 and (17) above, are the same components imported by any person to India as spares for stock and sale? If so, please furnish the prices at which such imports are made.

19 Whether the importer has imported any capital goods, plants, machinery, equipment etc., from the foreign supplier of the imported goods or its related or associated concerns or persons? Please furnish details.

20 Is any amount paid or payable, directly or indirectly, to or on behalf of the supplier of the imported goods for engineering, development, art work, design work and plans and sketches
undertaken elsewhere than in India and connected with the production of imported goods? Are any services rendered by or on behalf of the importer relatable to this?

21 Is the import of the goods covered under an agreement? Are there other agreements between the importer and the supplier? If yes, list them.

22 What is the basis of arriving at the price in the invoice? Is it (a) Price list with discount (b) net discounted price (c) quotation (d) Transfer price or (e) other (please specify)?

23 Do the suppliers of the imported goods supply the same directly to any other person in India? If so, please furnish the prices at which these imports are made, with supporting documents.

24 What is the form of payment by the importer for the imported goods? Furnish the heads of accounts under which other payments, if any, made to the supplier of the imported goods, and details of the payments/transfer of funds in any form

25 Furnish the total quantity and FOB value of imports made by the importer from the same supplier during the last three years.

26 Amount of royalty/technical knowhow fee/licence fee any other fee paid or payable by the importer to the supplier of the imported goods.

27 Furnish the full details of amounts, if any, received by the importer in the form of agency commission, overriding commission or any other remuneration received either from other importers in India or from the supplier of the imported goods.

28 Expenses incurred by the importer on behalf of, by understanding or agreement with, or under instructions from the supplier of the imported goods, eg., advertising, propaganda expenses or any other expenses for the promotion of the imported goods.

29 Whether the supplier of the goods supplies identical, similar or connected items to buyers/branches/collaborators in other countries? If yes, prices at which such transaction have taken place, for the last one year.

List of Documents required to be submitted in case of Sole Agents/Sole Distribution/Sole Concessionaire

1. Agency agreements of the importer with any person.
2. Specimen copies of the import invoices and Bills of Entry
3. Specimen copy of invoices for import of identical, similar or connected goods by this part through the present importer.
4. Specimen copy of invoices for import of identical, similar or connected goods by a company associated with the importer.
5. Commission note and credit notes in case of amounts received from outside India.
6. Annual report of the importer's business concern for last three years.
7. Pricelists for import and sale of the imported goods.
8. Statement regarding percentage of shareholding of/in any Indian company alongwith common directors.
10. Indent/invoices wise statement of commission received in last three years.
11. Details of remittances alongwith method, mode and deferred payment details, if any.
12. Statement of expenses as required under question number 28 of the questionnaire

List of Documents required to be submitted in case of subsidiaries, holding companies, and those who have collaboration agreement or similar agreements

1. Collaboration agreement, Joint Venture Agreement and other agreements with the supplier of the imported goods or with any other person acting for the supplier.
2. Approval of Government of India/RBI to the agreement, if any.
3. Statements for last three years duly certified by the Chartered Accountant, containing the following information:-
   (i) CIF value and landed cost of imports from suppliers of the imported goods, the collaborator or associated companies.
   (ii) CIF value and landed cost of import from other suppliers.
   (iii) Value of standard bought out components procured in India.
   (iv) Ex-factory value of the goods.
   (v) Royalty, net and gross Paid or payable.
4. Representative sample invoices of own imports for the last 3 years and photocopies of the relevant Bills of Entry.
5. Annual reports of importing Company for the last 3 years.
6. Statement regarding equity participation in/of foreign company for the last 3 years.
7. Statement regarding shareholding of/in any Indian company alongwith particulars of common Directors.
8. Current price list of product imported from the supplier of the goods including spares and warranty parts imported by any other person.
9. Representative specimen invoices of procurement of goods procured from some other person by the supplier and supplied importer.
10. Representative specimen invoices of procurement of identical, similar or connected goods made by companies associated with importer.
11. Representative specimen invoices of imports of identical of similar goods by any other person.
12. Representative specimen of invoices and bills of entry of imports of identical, similar items as spares and warranty parts by the importer or any other person.
13. Details of remittances along with method and mode and deferred payments details, if any.
14. Details regarding any other payment made to or on behalf or under the instructions of the supplier.

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 authorized 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.

6. Finalization 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 finalization of investigation. After furnishing of all the information, 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 finalization of the assessment must be completed within four months from the date of 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 finalization. Once the case is finalized by the Special Valuation Branch, the provisional assessments pending in the Appraising Groups will be finalized 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.

7. 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.

8. Appeal on the orders of SVB

In all cases where the importer is aggrieved by the order passed by SVB, he may file an appeal to Commissioner of Customs (Appeals), 5th Floor, Custom House, Chennai, against that order. This right of appeal is also indicated in the preamble attached in the order in original.