

# ***CBEC revamps the Customs Special Valuation Branch mechanism***

February 15, 2016

## ***In brief***

The Central Board of Excise and Customs has issued circulars nos. 4/2016-Customs and 5/2016-Customs, both dated 9 February, 2016 revamping the way of conducting Customs Special Valuation Branch (SVB) proceedings, which were previously prescribed under circular no. 11/2001-Customs dated 23 February, 2001.

## ***In detail***

The new process is as under:

- For the ongoing SVB proceedings as on date:
  - For cases pending renewal of the SVB order, where there are no changes in the facts and no post-import price adjustments with the supplier, the importer can make a declaration by 31 May, 2016 in the specified format. On receipt of such declaration, the SVB would consider the process of renewal complete. Furthermore, the SVB would order the relevant customs houses to discontinue the levy of extra duty deposit (EDD) and finalise the related provisional assessments.
  - For cases pending renewal of the SVB order, where there are changes in the facts, the importer would be required to submit a declaration accordingly. On receipt of such declaration, the Customs Authorities would continue the SVB proceedings as if it were a new case. The collection of EDD in such cases would be reassessed in terms of the procedures.
- For ongoing proceedings not involving renewal of any past SVB order, collection of EDD would be reassessed in terms of the procedures described hereafter:
  - Collection of EDD would be discontinued if the importer has already submitted the required documents.
  - In case the EDD is already being collected at a higher rate of 5% due to non-submission of the documents, the Commissioner can take recourse under other provisions of law to obtain the relevant documents.
- All existing cases commenced up to 31 December, 2015 are to be disposed of by 31 October, 2016.
- For new cases, where SVB proceedings are to commence:
  - The terms of reference of the SVB are now amended to provide that no SVB proceedings would be carried out in the following cases:
    - Import of samples and prototypes from related sellers
    - Imports from related sellers, where the entire customs duty is unconditionally exempted or has a 'nil' rate
    - Transactions involving imported goods having value less than INR 0.1 million, and where, cumulatively, these transactions do not exceed INR 2.5 million in any financial year

- Previously, the jurisdiction of the Customs authorities for SVB proceedings was determined on the basis of the location of the importer’s corporate office. Now if the imports are taking place through the Customs Houses at Mumbai/ Delhi/ Chennai/ Kolkata/ Bangalore, the importer can select the SVB of the Customs House at the location of import or on the basis of proximity to its corporate office.
- Process for reference to SVB:
  - In cases where the import transaction can be the subject matter of SVB investigation, the importer may file a bill of entry in advance and give the specified details, at the time of importing the first shipment. Within 3 days of filing such bill of entry, the proper officer has to assess whether the case needs to be referred to the SVB, and submit the findings to the Commissioner of Customs.
  - The Commissioner of Customs has to determine whether to (a) refer the case to the SVB and provisionally assess the goods; (b) make addition in terms of Customs Valuation Rules; or (c) accept the transaction value.
  - Once the case is referred to the SVB, the importer would need to provide further information as per the specified questionnaire within 60 days.
- Process during the SVB investigation:
  - During the investigation, no EDD will be recovered. If the importer does not submit the required information and documents for SVB proceedings within 60 days of its requisition, security deposit @ 5% of the declared assessable value of the shipment has to be imposed, for a period not exceeding the next three months. The security deposit can be given by way of a cash deposit or a bank guarantee.
  - If the importer has not provided the required documents within 60 days of its requisition, he would be given an additional period of 60 days; if even after this additional period, the documents are not submitted, the Commissioner can take recourse under other provisions of law to obtain the relevant documents.
  - The SVB proceedings have to be completed within a period of 2 months from the submission by the importer of information asked for when making the reference to the SVB. The jurisdictional Commissioner can grant an extension of a further 2 months for completion of proceedings. Thereafter, the matter has to be referred to the jurisdictional Chief Commissioner, who can extend the time as he deems fit.
  - On completion of proceedings, the SVB, would submit its findings to the Principal Commissioner/ Commissioner. After his approval, the SVB would prepare an investigation report and communicate it to all locations where the imports are provisionally assessed.
  - If the investigation report accepts the transaction value, the provisional assessments would be finalised accordingly. However, if the investigation findings indicate that the price is influenced by the relationship, then a show-cause notice would be issued within 15 days of receipt of investigation report. In cases of imports from multiple customs locations, multiple notices would be issued, and a common adjudicator would be appointed.
  - The adjudicating authority would issue an order after following the principles of natural justice. This order would be appealable.
- In case of any change in circumstances of sale, terms and conditions of sale, etc., the importer has to declare the same to the customs authorities, who would examine the transactions. The jurisdictional Commissioner may refer the matter to the SVB where required. Accordingly, the system of renewal of the SVB orders has been discontinued.

### **The takeaways**

Long-drawn SVB proceedings and delays in getting refunds of EDD paid in course of the SVB proceedings had been a significant area of concern for importers. The above changes are welcome changes, and would significantly reduce time taken

and procedural compliances for SVB proceedings. The option to pay security deposit by way of bank guarantee instead of cash, would also help in reducing blockage of funds for importers. These amendments are true steps towards 'ease of doing business',

and it is hoped that the amended procedure would be implemented in true spirit.

***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

***Tax & Regulatory Services – Indirect Taxes***

Gautam Mehra, Mumbai  
+91-22 6689 1154  
[gautam.mehra@in.pwc.com](mailto:gautam.mehra@in.pwc.com)

Vivek Mishra, Gurgaon  
+91-124 330 6518  
[vivek.mishra@in.pwc.com](mailto:vivek.mishra@in.pwc.com)

## Our Offices

### Ahmedabad

President Plaza  
1st Floor Plot No 36  
Opp Muktidham Derasar  
Thaltej Cross Road, SG Highway  
Ahmedabad, Gujarat 380054  
+91-79 3091 7000

### Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th  
Floor, Road No. 10, Banjara Hills,  
Hyderabad – 500034,  
Andhra Pradesh  
Phone +91-40 44246000

### Gurgaon

Building No. 10, Tower - C  
17th & 18th Floor,  
DLF Cyber City, Gurgaon  
Haryana -122002  
+91-124 330 6000

### Bangalore

6th Floor  
Millenia Tower 'D'  
1 & 2, Murphy Road, Ulsoor,  
Bangalore 560 008  
Phone +91-80 4079 7000

### Kolkata

56 & 57, Block DN.  
Ground Floor, A- Wing  
Sector - V, Salt Lake  
Kolkata - 700 091, West Bengal  
+91-033 2357 9101/  
4400 1111

### Pune

7th Floor, Tower A - Wing 1,  
Business Bay, Airport Road,  
Yerwada, Pune – 411 006  
+91-20 4100 4444

### Chennai

8th Floor  
Prestige Palladium Bayan  
129-140 Greams Road  
Chennai 600 006  
+91 44 4228 5000

### Mumbai

PwC House  
Plot No. 18A,  
Guru Nanak Road (Station Road),  
Bandra (West), Mumbai - 400 050  
+91-22 6689 1000

### For more information

Contact us at  
[pwctr.knowledgemanagement@in.pwc.com](mailto:pwctr.knowledgemanagement@in.pwc.com)

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