F. No. RC/AC-SBN-304/2007 � R.Cell

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������ DATE: 06.09.2007

STANDING ORDER NO. 35 / 2007

����������������������**Subject: Rejection and determination of transaction value � reg.**

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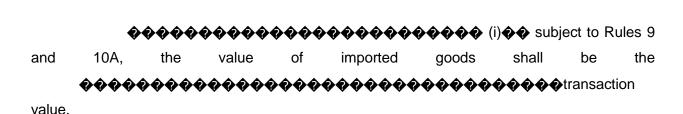
����������Scrutiny of assessment / adjudication orders, rejecting the declared values and redetermining the same, passed by the officers of this Commissionerate reveals that the Customs Valuation Rules (CVRs) and Board�s instructions on the subject are not being followed scrupulously.� Such orders are being regularly set aside by the appellate authorities on the ground that without following procedure under Rule 10A of Customs Valuation Rules, declared value cannot be rejected and loaded.

2.�������Attention in this connection is drawn to Board�s Circular Nos. 16/2003-Cus. dated 17.03.2003 and 91/2003-Cus. dated 14.10.2003.� Both circulars emphasize the necessity to follow the procedure laid down under Rule 10A of the CVRs for rejection of the declared value in cases where undervaluation is suspected.� It must be kept in

mind that Rule 3 of the CVRs prescribes two methods of determination of the value of imported goods. The said Rule is reproduced below:

Rule 3 Determination of the method of valuation- for the purpose of these

Rules-

(i) subject to Rules 9 and 10A, the value of imported goods shall be the transaction value.

(ii) if the value can't be determined under the provisions of clause (i), the value shall be determined by proceeding sequentially through Rules 5 to 8 of these Rules.

It is only when the transaction value can't be determined under Rule 3(i), that it is liable to be rejected under Rule 10A. In such a situation, a resort to Rule 3(ii) sequence becomes inevitable.

3. Rule 10A prescribes the procedure for rejection of the declared value where undervaluation is prima facie suspected. The said rule is reproduced below:

Rule 10A: Rejection of declared value-

(i) When the proper Officer **has reason to doubt the truth or accuracy of the value declared** in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other

*evidence and if, after ◆◆◆◆receiving such further information, or in the absence of a response of such importer, ◆◆◆◆◆◆◆◆◆◆the proper Officer **still has reasonable doubt about the truth or accuracy of the** ◆◆◆◆◆◆◆◆◆◆value so declared, it shall be deemed that the value of such imported goods can ◆◆◆◆◆◆◆◆◆◆not be determined under the provisions of sub-rule (1) of rule 4.*

(ii) ◆◆◆◆◆◆◆*At the request of an importer, the proper officer shall intimate the importer in writing ◆◆◆◆◆◆◆◆◆the **grounds for doubting the truth or accuracy of the value declared** in relation ◆◆◆◆◆◆◆◆◆◆to goods imported by such importer and **provide a reasonable opportunity of** ◆◆◆◆◆◆◆being heard, before taking a final decision under sub-rule (1).*

4. ◆◆◆◆◆◆◆◆The sequence of actions prescribed under Rule 10A, to be followed before rejection of declared value is thus as follows :

(i) ◆◆◆◆◆◆◆◆There must be a reason to doubt the truth or accuracy of the declared value.◆ The ◆◆◆◆◆◆◆◆◆◆◆reason may include, or the doubt may arise from, prices as indicated by :

◆◆◆◆◆◆◆◆◆◆◆(a) ◆◆◆◆◆◆◆the NIDB made available to all officers on the desktop;

◆◆◆◆◆◆◆◆◆◆◆(b) ◆◆◆◆◆◆International commodity price bulletins such as PLATT, Public Ledger, Metal
◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆Bulletin, Tecnon Orbichem, etc.

◆◆◆◆◆◆◆◆◆◆◆The doubt may arise from recovery of actual invoice, where the importer produces a ◆◆◆◆◆◆fake invoice to Customs.

(ii) ◆◆◆◆◆◆◆Once reason to doubt the truth or accuracy of declared value exists, the proper ◆◆◆officer must call upon the importer to produce requisite information in support of the ◆◆declared price, such as manufacturer◆s invoice (producer◆s invoice in case of

unmanufactured goods, like Poppy seeds, Cloves, etc.), sale contract, test report, etc.

(iii) If the importer fails to furnish the desired information/documents, or the information / document furnished are such that the proper officer still has *reasonable doubt* about the truth or accuracy of the declared value, the proper officer can reject the declared value.

5. It must also be kept in mind that under Rule 10A(2), the importer concerned has the right to ask for and the proper officer the duty to disclose *in writing* the grounds for doubting the truth of accuracy of the declared value. If the importer does ask for, the proper officer must furnish the said grounds and *hear* the importer before rejecting the declaring value under Rule 10A.

6. As stated in Circular No. 91/2003, it may not be necessary to issue the speaking order in all such cases where enhancement of value has been restored to with the consent of the importer. However, care should be taken to obtain the consent of the importers in writing, so that subsequently they may not allege arbitrary enhancement.

7. Having been rejected under Rule 10A, the value is required to be determined, as provided in Rule 3(ii), by proceeding sequentially through Rules 5 to 8 of CVR. It must be ensured that the valuation is determined under the rule appropriate to the facts of the case.

8.   It is possible that the value (for instance of identical/similar goods) which gave rise to the reason for doubting the truth or accuracy of the declared value, becomes the basis for redetermination of the transaction value as well. There is nothing wrong in that. What has, however, been observed is that assessing officers straight away redetermine the transaction value by reference to contemporaneous prices without first rejecting the declared value under Rule 10A. This is incorrect method of redetermination of transaction value and must be avoided at all cost.

9.   All assessing officers/adjudicating authorities should follow the correct procedure while deciding the case before them.

Sd/-

06.09.2007

(K. K. Sharma)

Commissioner of Customs (Import),

JNCH, Nhava Sheva.

Copy to :

i)   The Chief Commissioner of Customs, Mumbai Zone-II.

ii)   The Chief Commissioner of Customs, Mumbai Zone-I & III.

iii)   The Commissioner of Customs (Export), JNCH.

iv)   The Commissioner of Customs (General), NCH.

v)   All Addl./Jont and Dy./Asstt. Commissioners, JNCH.

vi)   Office Copy.