



Customs Valuation of Goods by Special Valuation Branch for related Party transaction

Contents

1. Background of Special Valuation Branch (SVB)
2. Provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
3. Procedure for Investigation
4. Implications of SVB order
5. Challenges in obtaining SVB order
6. Scope of Services
7. Our Approach

Background of Special Valuation Branch

- Special Valuation Branch (SVB) is a branch of Customs Commissionerate specializing in investigation of valuation between related party cross boarder transactions to examine influence of relationship on product pricing
- Customs Legislation has prescribed different methods which are to be applied sequentially to arrive at valuation for the purpose of customs in case of transaction with related party
- Transaction value between importer and seller can be accepted as value for Customs purpose if the circumstances of the transaction indicate that the relationship has not influenced pricing
- SVB has been set up to investigate whether import pricing between related party is at arm's length. Importer has to follow procedure prescribed under Circular No. 5/2016 and 4/2016 dated 9 February 2016

Provisions of Customs Valuation Rules, 2007

- Related Party as per Rule 2 (2) of Customs Valuation Rules, 2007(CVR):
 - Directors or officers of one other business
 - legally recognized partners in business
 - 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

Rule 3 (a) & (b) of CVR for related Parties

- Rule 3 (a) of CVR - Where the buyer and seller are related, the invoice value of related –Supplier can be accepted if the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.
- Rule 3 (b) of CVR-- In a sale between related persons, the invoice value shall be accepted, whenever the importer demonstrates that the declared value of the goods closely approximates to one of the following values ascertained at or about the same time.
 - i. the transaction value of identical goods (Identical goods method),
 - ii. the transaction value of similar goods, in sales to unrelated buyers in India (Similar goods method),
 - iii. the deductive value for identical goods or similar goods (Deductive method),
 - iv. the computed value for identical goods or similar goods (Computed goods method).
- The valuation methods should be followed sequentially, except for (iii) & (iv) which can be interchanged with Customs officer's approval.

Customs method of Valuation

Identical value method

Price of the identical goods sold to unrelated buyer in India by the Supplier is compared with the price of imported goods, being valued. In actual practice it is used if such data is available.

Similar value method

Price of the similar goods sold to unrelated buyer in India by the Supplier is compared with the price of imported goods, being valued. In actual practice rarely used, as such data is not readily available.

Residual method

If none of the above methods are available, then residual method is used, on the basis of available data and using reasonable means consistent with the principles and general provisions of these rules

Computed value method

computed value of goods is arrived as follows: Cost of raw material or value of goods

Plus General expenses, which includes direct and indirect cost of processing and selling of goods for export to India by parent/associate company

Plus Profit of Parent/associate company

= Value of goods imported in India.

In this method the data of the Supplier is required, which is rarely available, hence this method is not much in use.

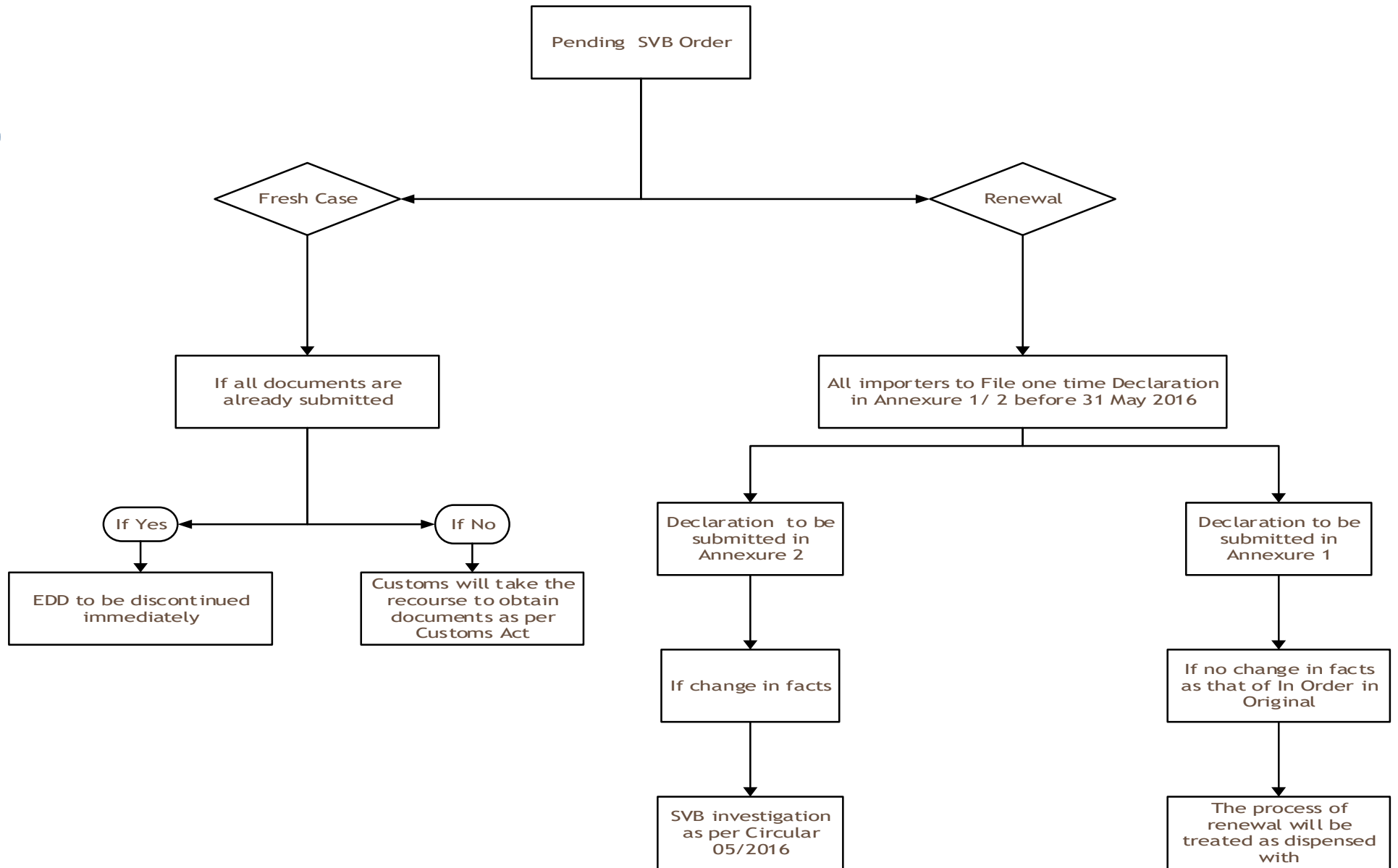
Deductive value method

Value of imported goods is arrived by reverse method as follows:

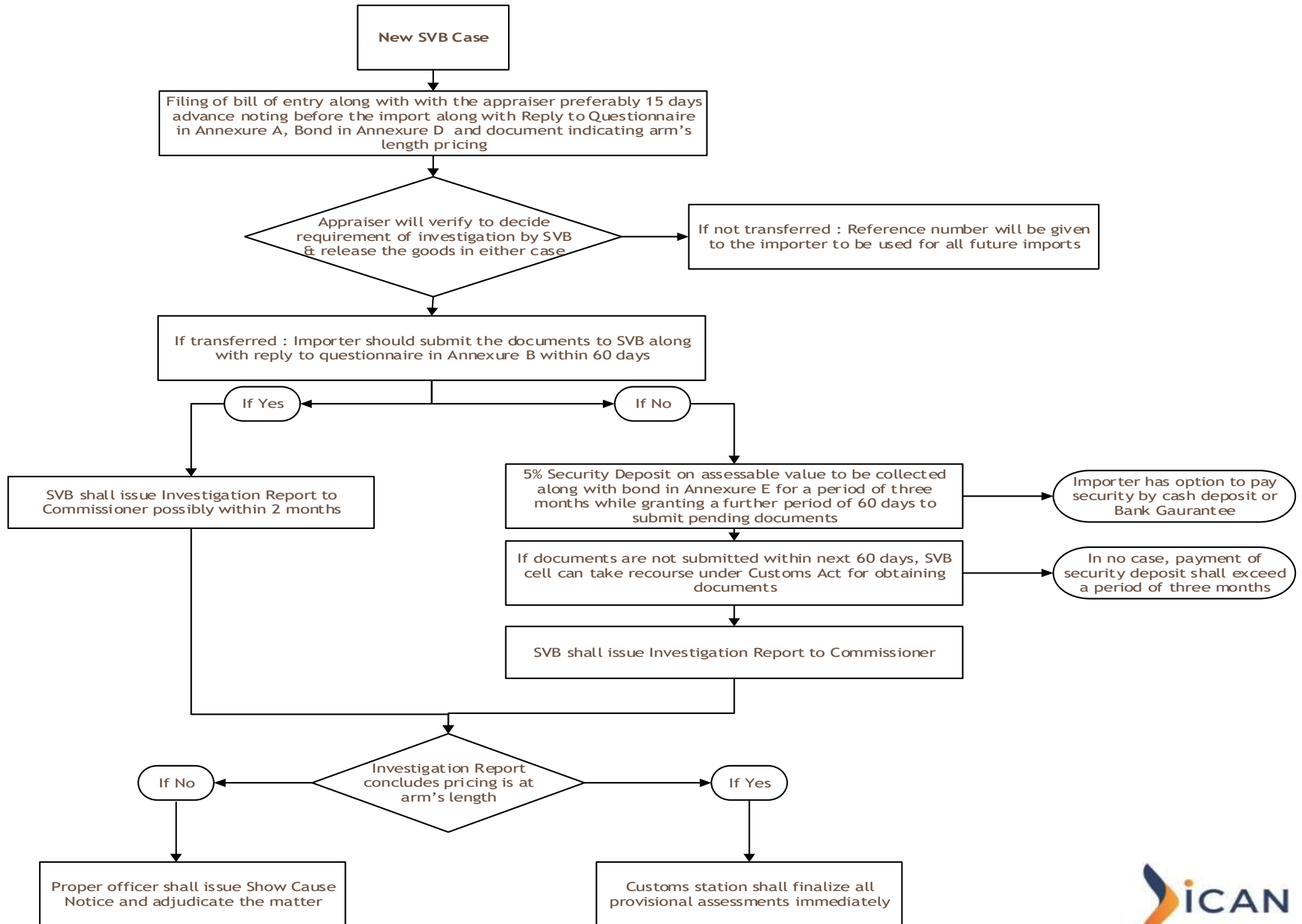
Price of goods sold in India **Minus** General expenses in connection (including all direct and indirect costs) with sales in India **Minus** Profits

= Landed Cost of Goods for comparison

Procedure for SVB Investigation - Pending Renewal Case



Procedure for SVB Investigation – Fresh Case



Implications of Passing of SVB order

- If the SVB Order is favorable or no loading is done in the value of the imported goods, then the Importer can apply for refund of the Deposit known as 'RDD' paid during SVB process.
- If the SVB Order is unfavorable or loading is done in the value of the imported goods, then the importer could file an Appeal against the SVB order with the Commissioner of Customs (Appeals). The subsequent imports would be allowed by Customs only after adding the loading to value of imports. Also, on the imports from the first consignment, Customs will demand duty to the extent of value loaded in the SVB order.
- The SVB order is in force for three years and would have to be renewed before expiry of three years unless the imports have been stopped from the related party by the importer.
- Any agreement or change affecting the value and marketing pattern will have to be intimated to the Customs within one month of such change.

Challenges in obtaining SVB order

- Getting SVB order has challenges for both the Importer-Trader as well as Importer-Manufacturer.
- Especially Rule 12 of CVR allows the Customs officer to reject the imported goods price.
- The challenges are different for Importer-Trader and Importer Manufacturer. The facts of each case, the agreement/contracts entered with the related-Supplier and business models determines the complexities of each case, which needs to be analysed.
- Similarly, the Royalties paid, the technological or joint ventures fees paid adds more dimensions and complexities to the SVB cases.
- Even the Service Agreements in which remittances are made from the importer to the Associate/ related Companies outside India are scrutinized in detail by the Customs officer to verify that, there is no flow back of money pertaining to the imported goods.

Challenges in obtaining SVB order

- The Customs officer also examines the Audited financials of the importer for the last three years and tries to find out if there is any flow back from the importer to the Associate/related Companies outside India.
- As the Companies involved in SVB process are necessarily related companies, there is bound to be several transactions between amongst such entities. Hence each transactions between them needs to be not only analyzed properly, but also presented to the Customs officer in a convincing way.
- In the CVR 2007, a 'new explanation' has been added, which was not there in the earlier Customs Valuation Rules. The implication of the 'explanation' is that royalty, license fees or processes fees can be added to the price of the imported goods, notwithstanding the fact that it is incurred after the import has taken place. Hence it has to be presented to the Customs officer keeping in view the relevant case law and CVR, in a way that he has no basis for adding such value in the price of the imported goods.

Scope of Services – Fresh SVB Case

Phase I

- Understanding business model and import pricing method
- Review of agreements with related parties
- Analysing impact of transfer price study
- Review of Financial Statements, Form 3CEB and other related data

Phase II

- Based on review of documents determining most appropriate method of Customs valuation
- Evaluating impact of the same on transfer price under Income Tax
- Compiling reply to Questionnaire as per prescribed format
- Drafting detailed written submission based demonstrating that import price is at arm's length

Phase III

- After filing detailed written submission following up with department for date of hearing
- Representation before relevant authorities during personal hearing
- Following up with authorities for issuance of Investigation Report
- After receipt of report, assistance in finalisation of provisional assessment
- Assistance in obtaining refund of revenue deposit paid on earlier imports

Scope of Services – Pending Renewal SVB Case

Phase I	Phase II	Phase III
<ul style="list-style-type: none">➤ Understanding business model and import pricing method➤ Review of agreements with related parties➤ Review of original SVB order and method of valuation adopted➤ Understanding the change in import pattern since earlier order➤ Analysing impact of transfer price study➤ Review of Financial Statements, Form 3CEB and other related data	<ul style="list-style-type: none">➤ Based on review of documents determining applicability of Annexure 1 and Annexure 2 as per Customs Circular➤ Compiling the annexure as applicable➤ Compiling reply to Questionnaire as per prescribed format➤ Drafting detailed written submission based demonstrating that import price is at arm's length in case of Annexure 2.	<ul style="list-style-type: none">➤ After filing detailed written submission following up with department for hearing➤ Representation before relevant authorities during personal hearing➤ Following up with authorities for issuance of Investigation Report➤ After receipt of report, assistance in finalisation of provisional assessment➤ Assistance in obtaining refund of revenue deposit paid on earlier imports

Our Approach

Understanding

- Gathering details of import transaction and SVB Status

Planning and Strategy

- Strategizing the most appropriate method of Valuation of Customs

Liasoning Support

- End to end support since application and obtaining SVB Order

THANK YOU

ARNK AND ASSOCIATES LLP and SHAH KHANDELWAL JAIN & ASSOCIATES are network members of ICAN & AFFILIATES, a network registered with the Institute of Chartered Accountants of India, New Delhi



SKJ

SHAH KHANDELWAL JAIN & ASSOCIATES

Level 3, Riverside Business Bay,
Wellesley Road,
Near RTO,
Pune 411001

Tel: +91 20 26225500

E-Mail: enquiry@skj.ican.in
www.khandelwaljain.com

ARNK

ARNK AND ASSOCIATES LLP

Block No. B-6, Level One,
ABC Complex, Opp. District
Court, Adalat Road,
Aurangabad 431001

Office: 91 240 2970297

E-Mail: info@arnk.ican.in
www.arnindia.in