

F. No. 467/35/2007-Cus-V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi

Circular No. 38/2007-Customs

Dated 9th October, 2007

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 – Instructions – reg.

Your attention is invited to Section 95 of the Finance Act, 2007 which substitutes the existing Section 14 of the Customs Act, 1962. The new Section 14 of the Customs Act, 1962 shall come into force with effect from 10-10-2007 in terms of Notification No. 93/2007-Customs (NT) dated 13th September, 2007. The new Import Valuation Rules, i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 made under the provisions of Section 14 of the Customs Act, 1962, have been notified vide Notification No 94/2007-Customs (NT) dated 13-9-2007 and the same shall also come into force on 10-10-2007.

2. The clarifications with regard to the major changes in the new Valuation Rules for imported goods are given below for proper application of the Valuation Rules, i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 :-

- (i) Transaction Value has been defined to mean the value referred to in Sub-Section (1) of Section 14 of the Customs Act, 1962.
- (ii) A 'proviso' has been added to Rules 4(1)(a) and 5(1) concerning identical goods and similar goods respectively, to the effect that the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.
- (iii) In the residual method of Valuation, which has been renumbered as Rule 9 (erstwhile Rule 8), a proviso has been added with a view to keeping Rule 9 in line with Article 7 of the WTO Valuation Agreement which corresponds to the said Rules and refers to the provisions of Article VII of the GATT.
- (iv) An 'Explanation' has been added to Rule 10(1) (erstwhile Rule 9(1)) to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise includible in terms of Clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process after their importation. At times, royalty, license fee or any other payment for a process to be paid by the importer, may be linked to post-importation activity like running of the machine/ plant, when the process is put to use. This Explanation has been added in the context of the Supreme Court judgement in the case of J. K. Corporation Ltd. Versus Commissioner of Customs (Port) Kolkata [2007 (208) ELT 485 (SC)] so as to clarify that such royalty, license fee, etc., if otherwise includible in terms of clauses (c) or (e) of Rule 10, will be includible in the value of the goods irrespective of the fact that such royalty, licence fee, etc., relates to a process which is made operational during the running of the machines, i.e., after importation of the goods.
- (v) An 'Explanation' has been added to Rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "Place of Importation" mentioned in Rule 10(2)(a). The 'place of importation', as observed by the Supreme Court in the case of Garden Silk Mills Ltd Versus Union of India [1993 (113) E.L.T.358(S.C)] means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching

the landmass at the docks or at the place of consumption, these charges would be includible in the cost of transportation. Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation.

- (vi) An 'Explanation' has been added to Rule 12 (erstwhile Rule 10A), which relates to rejection of declared value, to bring more clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.
3. The contents of this Circular may be brought to the notice of the field formations and the Trade under your jurisdictions.
4. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

Sd/-
(M. K. SINGH)
Director (ICD)