

Customs Update - New guidelines and procedure for Special Valuation Branch (SVB)

18 February 2016



Background

The 'Special Valuation Branch' (SVB) is as an institution set-up for the investigation and determination of assessable value of transactions involving related parties imports or in any other special circumstances which may influence the assessable value of imports undertaken by parties.

The CBEC taking cognizance of representations made by trade and WCO's Guide to Customs Valuation and Transfer Pricing (June 2015) has issued Circular No.05/2016-Customs dated 09.02.2016 which provides detailed guidelines for investigation of related party imports and other cases by SVB.

The circular supersedes Circular no. 1/98-Cus dated 01.01.1998 and 11/2001-Cus dated 23.02.2001.

Key Highlights

- SVB shall function under jurisdictional Chief Commissioner / Principal Commissioner / Commissioner
- In case of imports at Mumbai / Delhi / Chennai / Kolkata / Bangalore, the importer shall have an option to select SVB of Customs House of import or Customs House most proximate to the corporate office. In other cases jurisdiction continues to be governed by location of corporate office
- Requirement of 'Extra Duty Deposit' (EDD) has been done away with except in cases where the importer fails to furnish the requisite information / documents within 60 days of requisition, in which case a security deposit at 5% shall be imposed strictly only for a period not exceeding three months. The importer can choose to provide the security deposit either in cash or a Bank Guarantee.
- SVB shall convey its findings by way of an investigation report instead of an appealable order

- Imports of prototypes, exempt goods or goods valuing less than 1 lakhs [cumulatively not exceeding 25 lakhs in any financial year] cannot be taken up for investigation.
- Renewal of SVB orders has been discontinued. In case of change in circumstances or terms and conditions of the agreement, the importer shall declare the same at the place of import.

Detailed Procedure

1. Procedure for considering reference to SVB

- 1.1. Importer shall file a bill of entry (BoE) along with Annexure A prescribed in the circular. In case of related party importers or transactions involving special circumstances the importers are advised to file an advance bill of entry under Second Proviso to Section 46(3) of the Customs Act 1962.
- 1.2. The proper officer (PO) shall within 3 days of filing of BoE complete examination and submit the report to the Commissioner.
- 1.3. The Commissioner shall after considering the preliminary findings either refer the matter to SVB for further investigation and provisionally assess the goods, or allow final assessment of the goods.

2. Procedure for reference to SVB

- 2.1. The PO shall carry out provisional assessment and release the goods. The PO shall alongside the provisional assessment call for further information in the format prescribed under Annexure B. The importer would be required to furnish the documents and information within 60 days.
- 2.2. Upon completion of provisional assessment the records shall be transferred to the jurisdictional SVB within a maximum of 3 working days of the release of goods.
- 2.3. The documents received shall be duly acknowledged by the SVB and an intimation shall be forwarded to Risk Management Division (RMD) and the referring appraising

group so that provisional assessment continue without security deposit or bank guarantee.

3. Procedure in Special Valuation Branch

- 3.1. The SVB shall assign a case number, update the Central Registry Database (CRD) and also inform the RMD of various details for inserting suitable instructions at all Customs Houses to ensure provisional assessment during the continuation of the SVB investigation.
- 3.2. The SVB may call for further information of documents required and where the importer fails to provide documents and information within 60 days of such requisition, security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months.
- 3.3. The SVBs shall complete the investigations and issue its findings within 2 months from the date of receipt of information. An extension of upto 2 months can be granted, however, where investigations are not completed within 4 months, the matter shall be put up before the Chief Commissioner for extension of period as is deemed fit.
- 3.4. Upon completion of investigation, the SVB shall submit its findings before the Principal Commissioner / Commissioner quantifying the extent of influence on the transaction value. Upon approval by the Principal Commissioner / Commissioner, an investigation report (IR) shall be prepared and communicated to all referring customs where imports have been provisionally assessed.

4. Finalization of assessment

- 4.1. Upon receipt of IR where the declared value is found confirming to Rule 3 of Customs Valuation Rules 2007, the customs stations shall immediately finalize the provisional assessments. No speaking order shall be

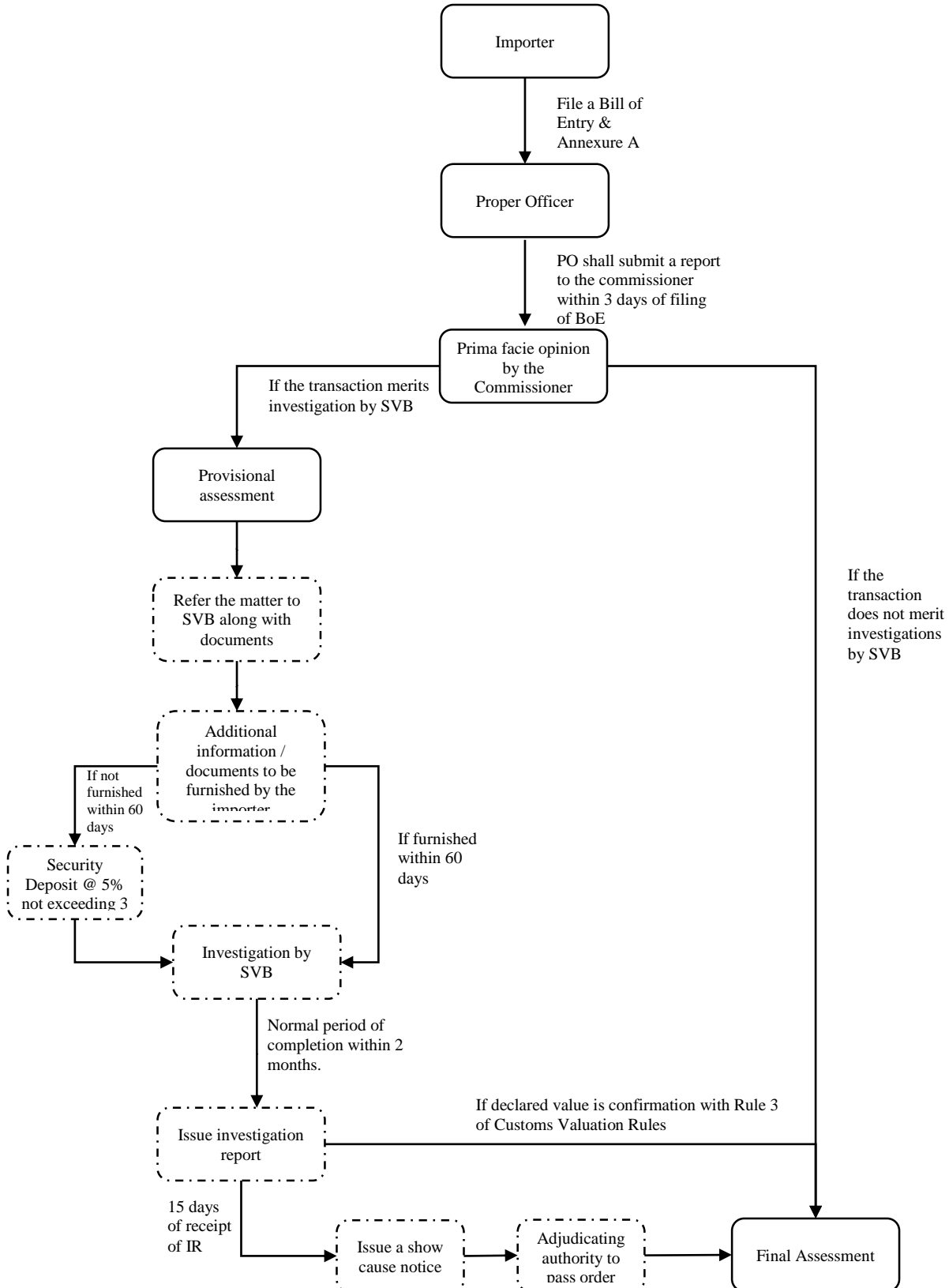
-
- issued for finalization of provisional assessment in such cases.
- 4.2. In case the IR gives a finding that the declared value has been influenced, the PO shall issue a show cause notice within 15 days of receipt of IR. In case of imports through multiple customs locations, the jurisdictional commissioner of SVB, shall after issue of notice by POs, make a proposal to the Commissioner (Customs), CBEC recommending appointment of a common adjudicating authority by the Board for passing order for finalization of the provisional assessment.
- 4.3. The adjudicating authority shall, after following principles of natural justice, pass an order quantify the extent of influence on declared transaction value and endorse the same to the RMD for updating the CRD.
- 4.4. The importer may file an appeal against the said order as per the statutory provisions.
5. **Change in circumstance surrounding the sale**
- 5.1. In case of change in circumstances of sale or terms and conditions of the agreement between the buyer and related seller, the importer is required to declare the same at the place of import in the format prescribed [Annexure C].
- 5.2. Renewal of SVB orders has been discontinued.
6. **Disposal of pending cases**
- 6.1. For disposal of pending renewals the CBEC has issued Circular no. 04/2016-Customs dated 09.02.2016 which provides for dispensation of renewal process in case there is no change in circumstance surrounding the sale on the filing of the prescribed declaration by the importer. In case there is a change in circumstances surrounding the sale the procedure as detailed herein above shall be followed.
- 6.2. In such cases where the importer has furnished the requisite documents and information the EDD shall be discontinued. The exercise of withdrawing EDD shall be completed by 31.05.2016. All renewal applications filed by 31.12.2015 are should be disposed of latest by 31.10.2016.
- 6.3. Instructions to follow the above prescribed procedure for all pending SVB investigations and bring down the pendency to 10% in each month to close all existing cases by 31.10.2016.

Our Comments

The new procedure provided in the circular has been introduced with the intent to simplify and streamline the entire framework for SVB investigation. The communication of findings of the SVB through an Investigation Report instead of an appealable order, doing away with renewal and provision for appointment of common adjudicating authority would minimize multiplicity of litigation. Withdrawal of requirement to renew SVB orders would help ease the departmental resources which could be channelized for other pendencies. Removal of levy of EDD is very progressive measure and would help in reducing working capital requirement for the importers. Other initiatives such as option to choose the jurisdictional SVB and option given to the importer to make security deposit either by way of cash deposit or bank guarantee are a welcome move. The new procedure for SVB valuation shows the Government's commitment in fulfilling its promise of 'Ease of doing business' in India.

However, in instances where the importer chooses to appeal against the order of the PO, whether the facility of provisional assessment would continue, is a critical question. The clarifications, does not answer the question and in all likelihood a negative order would swiftly be followed by finalization of assessment, thereby leading to the usual rigmarole of filing appeals against all finalized bills of entry and claim for refunds. **[Circular No. 04/2016 and 05/2016 – Customs dated 09th February 2016]**

Process Flow



Key Contacts

Ritesh Kanodia, Partner
ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri, Associate Partner
niraj.bagri@dhruvaadvisors.com

Srinath S, Associate Partner
srinath.s@dhruvaadvisors.com

Our offices

Mumbai

12th Floor
Discovery of India Building (Nehru Centre)
Dr. Annie Besant Road
Worli, Mumbai 400 018
Tel: +91-22-6108 1000
Fax: +91-22-6108 1001

Bengaluru

Prestige Terraces
5/1, Union Street
Infantry Road
Bangalore 560001
Tel: +91-80-4660 2500
Fax: +91-80-4660 2501

Ahmedabad

B3, 3rd Floor, Safal Profitaire, Near Auda
Garden, Corporate Road, Prahladnagar,
Ahmedabad 380 015.
Tel: +91-79-6134 3434
Fax: +91-79-6134 3477

Delhi

101-102 1st Floor, Tower-4B
DLF Corporate Park
M G Road, Gurgaon, Haryana – 122002
Tel: + 91-124 6687000
Fax: + 91-124 6687001

About Dhruva Advisors LLP

Dhruva Advisors offers a wide range of services in the tax and regulatory space to clients in India and around the world

We are a cohesive team of tax professionals who are focused on providing our clients with high quality tax and related services. With strong research and technical skills coupled with extensive experience, we provide well-thought out and strategic solutions to complex problems

Our professionals have advised on some of the largest transactions in the world and have handled several of the largest tax controversies in India. Our professionals also have a strong track record of designing and implementing pioneering solutions in several areas of domestic and international tax

This information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and opinion. Before acting on any matters contained herein, reference should be made to subject matter experts and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication.