

GROUPIII

Challenges in applying the Customs Valuation Law- Policy suggestions and tools for better enforcement

1. Synopsys

Customs Valuation is one of the grey areas which has come in the way of better trade facilitation and is inhibiting the ease of doing business in India. There is a need for systemic improvements and procedural clarity for reducing disputes pertaining to Customs Valuation. The need of the country to protect domestic industry by justly valuing the imported goods is to be dovetailed with the sovereign obligations of the country to adhere to the WTO guidelines. This paper examines the origin of the Customs Valuation Rules as also the challenges being faced by the department and the industry in adhering to the Customs Valuation Guidelines as prescribed by the Statute and the Sovereign obligations. The paper goes on to suggest some of the options that could be explored by the department to improve the system of Customs Valuation in concert with the various external stakeholders.

2. Introduction

For many decades now, international trade has been an engine of economic growth in many countries. The speed at which the goods move across the borders is critical to the country's competitiveness in international trade. India is now the second largest growing economy after China. Both its imports and exports have grown and will grow rapidly in coming years. It is therefore imperative that institutions such as Custom which are at the cutting edge of international trade, imbibe the best international practises, not only in letter but also in spirit. This in effect also means that the efficiency and effectiveness of the Customs, being an agency dealing with the goods crossing the borders of a country, can make a significant difference to the growth of its international trade. Customs at the border discharge numerous functions, such as collection of revenue, promoting security and enforcing other laws of the land

Customs have a vital role to play in facilitating this ever increasing trade between the countries. The effectiveness and efficiency of the Customs can significantly impact the transaction cost of doing the business and hence the competitiveness of the country. Customs Valuation is one of the important aspects of overall Customs procedures as it affects the Customs revenue, which is likely to remain an important component of the overall

Government finances for a country like ours. Outside of outright smuggling and duty evasion, Valuation is a major cause of departmental intervention and is also a cause of a huge amount of litigation which is already a grave area of concern clogging the legal channels and also bring down the ease of doing business for the country.

According to a study done by a sample set of importers, amongst the various roadblocks in the domain of trade facilitation valuation related issues account for 19% of the grievances. Valuation disputes have been attributed to be the most significant points of dispute between Imports and the Customs Authorities in India, the others being inspection and release of goods (18%); tariff classification (16%); and submission of documents for clearance (14%) etc.

Within the ambit of Valuation disputes it was found that rejection of transaction value was a key constraint (35%) followed by frequent reference of cases to special valuation branch (20%); lack of Experience of Field Staff (15%); lack of transparency (12%); imposition of Demurrage Charges and Container retention charges (10%); and Classification (8%).

However, the other side of the picture is of equal concern. The department must balance in the role of being a trade facilitator and at the same time it also must ensure that there are no unwarranted revenue leakages. Ambiguous and non- uniform Custom Valuation system has caused substantial litigation in the various judicial fora. It has been ascertained from the office of the JS review that there are around 2900 cases pertaining to valuation pending in the Hon'ble Supreme Court. As regarding financial implications of the said litigation it is said the net loss of Revenue on account of false valuation declaration is to the tune of Rs. 100,000 Million.

Therefore Customs Valuation, though one of the many Customs processes, yet it is significant enough to merit a special attention as it can impede international trade as well as pose serious challenges to the economic security of the nation in the form of capital flight, sustaining parallel economy, damaging the domestic industry, etc.

(II) EVOLUTION OF CUSTOMS VALUATION RULES

Article VII of GATT, 1947 :

Because Customs Valuation systems have a potential to affect international trade, efforts to harmonise and standardise valuation systems have been made since the beginning of 20th

century. The first concrete step in this direction was the trade negotiations that led to General Agreement on Tariffs and Trade (GATT). Article VII of the GATT laid down the general principles for the purpose of Customs Valuation. It stated that the value of the goods for Customs purposes should be based on actual value of imported goods or of like goods and should not be based on the value of indigenous goods or on arbitrary or fictitious values. The actual value should be derived from a sale or offer for sale under fully competitive conditions. The principles have guided further developments to standardise Customs Valuation systems since then.

Brussels Definition of Value (BDV):

The BDV introduced by World Customs Organisation (WCO) in 1950 was based on the concept of “normal value” – the price of goods in the open market between unrelated buyer and seller, under specified conditions of time and place. In practice as the bulk of imports take place under the conditions stated therefore as per BDV; the invoice price can be taken as basis for valuation. In case certain conditions are not met as in the case of related party transactions, or where declared price is apparently low, or in case of imports by agents, Customs can use some suitable basis to construe normal price using information available and taking in to account actual conditions of sale. This system of valuation gained prominence and by 1970s about 1006 countries had adopted BDV (many on de facto basis). However, USA and few other developed countries did not adopt it and continued to have their own valuation systems based on the positive concept of value. Further BDV application was not uniform and Customs rejected the invoice prices arbitrarily and uplifted the values on opaque criteria leading to lack of transparency and consistency in Customs Valuation. The notional ‘value’ also could not keep track of new products and price fluctuations. Moreover, few countries relied on minimum prices/reference prices to facilitate clearance of goods without enhancing their revenues. These problems with BDV led to inclusion of Customs Valuation systems in the agenda of Tokyo round of trade negotiations (1973-1979).

Customs Valuation Code at Tokyo round a precursor to Agreement on Customs Valuation:

Tokyo round was launched to expand the world trade by removing the obstacles to trade. Difficult negotiations between developed and developing countries on the matter of Customs

Valuation led to an agreement on implementation of Article VII of GATT in the form of a Customs Valuation Code. The Customs Valuation Code agreed upon was to give effect to the basic principles of Customs Valuation laid down in the Article VII of the GATT. The code is based on the positive concept of valuation, which implies that, but for few exceptions, the value of imported goods should be determined on the basis of price actually paid or payable. In the absence of non availability or non application of the price actually paid or payable that is the transaction value, five alternate methods are to be followed in a hierarchy to determine the value of the goods for Customs purposes. As the new proposal divested Customs authorities' right to reject invoice values even when the prices appear to be out of line with prices of like goods, developing countries strongly opposed this system. They stated that such a system of valuation will adversely affect their Customs revenues as under valuation will go unchecked. Moreover they stated that their Customs administrations did not have the resources and infrastructure to implement the provisions of the code. As a stop gap arrangement developing and least developed countries were given more time to accept the valuation system.

Agreement on Customs Valuation (ACV) at Uruguay round:

The Customs Valuation Code agreed upon at the Tokyo round was given a formal shape at Uruguay round of trade negotiations and came to know as Agreement on Customs Valuation (ACV) with some minor changes. The most important change was regarding Shifting the Burden of Proof (SBP) at the behest of developing countries was also known as Decision on SBP. SBP implied that in case where Customs have a reasonable doubt about the values declared by the importer, the burden of proof that the values declared are true is with the importer. If after the submissions of the importer, Customs on the basis of price information and other available data still have doubts about the declared values, the transaction value can be rejected and Customs can proceed sequentially to determine the value. All developed countries acceded to the ACV and the Uruguay round made it application mandatory for all the members of World Trade Organisation (WTO).

(III) Background of Customs Valuation in India:

Multilateral trade negotiations in 1947 led to GATT and Article VII therein laid down the principles for Customs Valuation. Keeping in view the provisions of GATT and demand of the importers, in 1962 a new Customs Act was brought in to replace the Sea

Customs Act, 1878. Section 14 of the Customs Act, 1962 provided for the valuation of goods for the purposes of assessment. It stated that the value shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, where buyer and seller are not related and price is the sole consideration for the sale. Section 14(2) provided for the fixation of “tariff values “or the assessment values for certain goods. Further Section 2(41) of the Customs Act 1962 defined in detail value for the purpose of assessment of goods. Customs Valuation Rules, 1963 were also notified to determine Customs value of goods under various conditions where the value could not be ascertained in normal circumstances.

In 1980, India signed ACV, however it availed an extension of five years under Article 20 of ACV and further 2 years to implement the changes in its Customs Valuation system. Finally India implemented the ACV in 1988. Section 14 of the Custom Act, 1962 was amended to include a new sub section 14(1A) that provided for determination of the price of imported goods in accordance with the Rules. Accordingly the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 were notified. The Valuation Rules, 1988, though not the exact copy of the ACV, contained all the substantive provisions of the ACV. Till 2007, India continued to have a deeming provision in the Customs Act, 1962 as well as the transaction value provision in the Valuation Rules, 1988. As a result Customs Valuation was being done primarily on deemed concept basis as that provision was provided in Section 14 of the Customs Act and Supreme Court of India in one of the cases on Customs Valuation held rightly so that that provision of the Act will prevail over that provided in the Rules.

It is apparent that the main reason for not incorporating transaction value concept in the Customs Act till 2007 was the apprehension that it may lead to wide spread undervaluation of imports and therefore adversely affect the revenue. The rejection of transaction value became quite widespread in 2001 when India amended its Customs Valuation Rules to implement Decision 6.1 regarding Shifting the Burden of Proof (SBP). The amendment provided that if Customs had reasonable doubt about the declared/transaction value of the consignment, it could be rejected and the burden of proof shifted to the importer. Due to frequent rejection of transaction value, some of the importers legally contested it. In *Eicher Motor Vs Commissioner of Customs*¹³, Mumbai, one of the

important cases, where transaction value was rejected by Customs, Supreme Court of India held that “unless the price actually paid for a particular transaction falls within the exceptions laid down, Customs are bound to charge duty on the transaction value”.

By 2007, the Customs revenue as percentage of gross revenue fell to 18 percent from highs of 32 percent in 1996. Moreover with transaction value already in the Rules since 1988, Customs officials developed an expertise with the support of NIDB to deal with transaction value. Accordingly a full-fledged move towards transaction value was made by amendment of Section 14 of the Act in 2007. A new set of Customs Valuation rules were notified known as Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However Government can still notify “values” for certain class of goods for Customs Valuation purposes.

As per Article 17 of the ACV, Customs have right to satisfy themselves about the truth and accuracy of the values declared. For this purposes Customs Administration can set up a database of values of imported goods and use it for the purpose of verifying the declared prices of imports and as a risk assessment tool. India set up a Directorate of Valuation in 1997 with a mandate to build a comprehensive valuation database. Soon, thereafter National Import Database (NIDB) that captures Customs values of most of imports into India was put in place. It analyzes the data with the help of software developed for this purpose. The analyzed data contains values of imported products /commodities, the declared prices of which are out of line with the average values. This information is then used by Customs formation over the country to ascertain the truth and accuracy of the declared values of various imported goods.

(IV) CHALLENGES TO CUSTOMS VALUATION :

(a)Existence of a large informal economy

Like many Asian countries, India have a large informal sector consisting of traders whose record keeping is poor. Some of them have no fixed business locations or the addresses are changed frequently, mostly without intimation to authorities. Further, a major part of the imports especially consumer goods are made by them. Under this circumstances,the Post Clearance Audit is hardly applicable. Further experience suggests that invoices produced

before Customs by such importers can be easily forged. Some of such fraudulent invoices displays a high degree of sophistication and not easy to detect like third country invoicing, double invoicing, adjusted invoicing, under-invoicing by mis-declaring grades of materials. Over reliance on invoices is often seen as complicating efforts to address the under-invoicing issues. Unless the under-invoicing is detected, the government revenue is lost and the importer receives an unfair advantage compared to its competitors. More so, Over valuation of merchandise is now a days increasingly used as the modus operandi for capital flight. Thus trade mis-pricing pose a serious challenges to the economic security of the nation in the form of revenue leakage, capital flight, sustaining parallel economy, damaging the domestic industry, etc.

(b) Lack of formal arrangement at international level for sharing information related to Valuation

On India's initiative a proposal was submitted at Doha Ministerial Conference in 1981 for a formal arrangement within ACV framework, whereby Customs administration of importing countries could get price and related information from exporting countries on request in cases of doubtful nature. Though at the ministerial conference it was agreed to share the information, yet subsequent experience at WTO committee on Customs Valuation and at WCO policy commission indicates a major problems with implementing exchange of information among Customs administration. Major resistance in this regard has come from the developed countries due to various reasons. WCO, in 2002 prepared a draft guide to the exchange of valuation information, which contains an exhaustive list of actions on the part of importing countries before seeking information from the exporting countries. Despite efforts by WCO, a multilateral framework for sharing information by exporting countries in the context of implementation of ACV looks bleak. Bilateral agreements on mutual assistance seem to be more practical solution to sharing of information. The hesitancy on the part of exporting countries to share information about valuation is one of the important impediments to check mis-valuation issues.

(c) Administrative constraints

India's imports and exports have grown manifold in last two decades. The diverse nature of products imported and rapidly changing prices and different sale conditions for various transactions poses enormous challenge for valuation of the imported goods for the

Customs administration. The urgency to clear goods adds another dimension to valuation of goods, where by any action has to be taken expeditiously as once goods are out of Customs control; it is not easy for Customs to track the goods/ importer. Though bringing major Customs Houses on Electronic Data Interchange (EDI), Risk Management Systems (RMS) has eased the burden on Customs, however much of the information needed to value a transaction is not readily available because it remains with the foreign supplier. Applying the alternate methods of valuation in case of reasonable doubts on the transaction value, in strict order as per the valuation rules is burdensome as it requires updated information on values of similar or identical goods. To apply the computed value would require investigation in the exporting country which is ordinarily not feasible. Inadequate value data and poor means of information gathering results in Customs having little access to price information to verify declared values. Thus, many a times fall back method of valuation is resorted to by the Customs authorities without proper base thus losing substantial cases in legal forum. Further the legal requirement of proving the burden of remittances over and above the invoices suspected to be undervalued rests with the dept which is almost impossible in the scenario of rampant hawala networks operating into and out of the country.

(d)Tardy Judicial process

South Asian Countries have slow judicial processes. Indian Judicial system for example is plagued with abnormal delays. The average time for case disposal is as high as 15 years.²² Judicial delays cause cynicism among people about the institutions. Once adjudication proceedings are initiated it may take some times more than a decade before the case reaches the Supreme Court the highest court. Traders and importer being aware of these delays do not confront with the Customs even if they may have genuine grounds. They accept the Customs Values from NIDB or other sources as against the transaction values, as they are aware that the delays in clearance of goods will be more costly than accepting the higher price. The delays in judiciary also affect the interest of Customs adversely as some unscrupulous importers aware of this lacuna in the judicial system deliberately undervalue the goods and then keep on contesting it at various judicial forums and by the time case reaches the finality they disappear by transferring their assets and properties in other firms.

(e)SVB PRACTICES

There is an increasing focus on the “make in India”. The focus of the Government now is to

invite investors to set up manufacturing facilities in India. However most transnational or multinational countries have bases in multiple overseas locations as per cost benefits differentials across locations. There is likely movement of goods across locations of these multinational corporations for decreasing the costs of manufacture from locations of lower manufacturing cost countries to higher manufacturing cost countries. The movement of these goods ordinarily entail Customs levies. The Customs formations in such scenarios are likely to “load up” the values of these imported commodities some of which are used as inputs for final goods. The other branch of revenue collection i.e. the direct tax formations work through the transfer pricing mechanism and tend to decrease the value of inputs against those declared by the importing multinational corporations. This is so because it is deemed that the multinational corporations would seek to inflate the value of inputs so as to account the same as costs and thereby trying to bring down the taxable income. Therefore the SVB formation under the CBEC and the Transfer Pricing Formations under CBDT can be working at cross purposes. The SVBs under CBEC specialize in investigation of transaction involving special relationships and certain special features having bearing on the value of imported goods. They deal with cases mainly involving related party transactions and such issues as payment of royalties, license fees, supplies by importers. Article 1.2 of the ACV enjoins on the Customs not to reject transaction value merely on the grounds that parties are related; it must be proved that the relationship has influenced the price for transaction value to be rejected. Where such doubt exists the case is referred to the SVB. Experience, however, suggests that once a case is transferred to the SVB, it lingers on and the importer has to pay extra duty till the case is settled leading to blockage of his funds. Though the instructions provide for completing the investigations and finalisation of assessment case within four months, but the time limit is hardly adhered leading to huge pendency.

VALUATION PRACTICES IN SOUTH KOREA

Customs and excise duties Customs duties are levied on imported goods, generally at a rate of 8%. The dutiable value is the actual price paid to exporters, plus freight and insurance (CIF price). Korea Customs uses the Harmonized System (HS) of tariff nomenclature as a basis for the collection of customs duties. Importers should declare the name of the item, specification, quantity, applicable HS code, duty rate, duty amount and applicable rules of duty exemption and abatement with the customs house. The customs value of imported goods is determined in accordance with the Customs Act. The primary method for customs valuation (which is the transaction value method based on the price actually paid or payable

for the goods when sold to Korea for export) is stipulated in the Customs Act, and where this method is not available, the customs valuation should be determined by sequential application of the other valuation methods under the Act. 14 Korea Taxation and Investment 2013 Various excise taxes target “luxury” and big-ticket items. “Individual consumption” tax rates range from 5% to 20%. Petrol and other petroleum products are heavily taxed, and they represent a substantial part of the total national tax revenue. The individual consumption tax also is levied on petrol and diesel fuel. The government can make temporary adjustments to these individual excise tax rates to boost or discourage consumption of certain products.

Customs Procedures

Import Procedures

The Korea Custom Service (KCS) has been operating a web-based clearance system 'UNI-PASS' since October/2005. Import procedure is listed on the website of KCS.

Customs Duties and Taxes on Imports

Customs threshold (from which tariffs are required) KRW 150,000 Average Customs Duty (Excluding Agricultural Products) Korea applies a Customs tariff which is among the lowest in the world. It is 8% on average.

Products Having a Higher Customs Tariff

Agricultural products, Seafood, Beverage (Wine, Spirit, etc), Tobacco, Textile and Clothing.

Preferential Rates

They are granted to imports from the countries with which Korea has signed free trade agreements (Singapore, USA, Chile). Korea signed in October, 2009 a **Free Trade Agreement with the EU**. A Free trade agreement is under process with Canada. Customs Classification Korea uses **the harmonized system by the World Customs Organization**, is used as a basis for Customs tariffs and for the collection of international trade statistics. Over 98% of the merchandise in international trade is classified in terms of the HS. Method of Calculation of Duties Ad Valorem on the CIF value of the imports. Method of Payment of Customs Duties Cash including check at either bank, post office or through online banking. "UNI-PASS" is the 100% e-clearance portal system of the Korea Customs service which provides one-stop service including payment of customs duties.

3. Tools for better enforcement and compliance with ACV

As already stated, Customs revenues are and will remain an important component of total revenues for developing countries including India. With most duty rates being ad valorem, Customs Valuation will continue to pose challenges for Customs. Apart from revenue considerations, proper Customs Valuation system is essential for predictability and transparency to provide a fair and enabling business environment with minimum interference with trade flow. Some of the recommendations/suggestions in Indian context with regard to strengthen Customs valuation are as follows:

A. Data Mining and Development of Investigative Tool:

(I) ***Integration of ICES with FETERS:*** Reserve Bank of India introduced an electronic reporting system for foreign exchange transactions (Foreign Exchange Transactions-Electronic Reporting System) as an obligation under General Agreement on Trade in Services (GATS) under World Trade Organisation (WTO), to disseminate the data on international trade in services and for compilation Balance of Payments. Whereas, all the authorised dealers and banks dealing with foreign exchange are required to file the purpose and country details of sale and purchase transactions with RBI which has niceties of Import Export Code, Bill of Entry/Shipping Bill, Invoice number, value etc. Thus legal access of this data to CBEC by automatic integration would be a leap forward in checking mis- valuation.

(II) ***Setting up of Database Similar to DARTTS:*** US government has set up a data base called DARTT (Data Analysis and Research for Trade Transparency) which collects and analyze the data on the movement of goods and services around the globe. This data is capable of identifying international trade anomalies and financial irregularities indicative of TBML (Trade Based Money Laundering), customs fraud, contraband smuggling, and other crimes based on risk patterns of illicit activity within global trade. This has set as a great example of how technology has been able to compress and analyze volumes of data in a cost-effective way and produce critical intelligence for trade or law enforcement interventions. CBEC should take immediate steps to build a database in the lines of DARRTS to provide as an investigative tool for identifying suspicious material and financial transactions.

(III) ***Linking of ACES with ICES:*** as most of the importers are either

manufacturers or first and second stage dealers, linking of ACES and ICES would enable in 360 degree comprehensive data analysis which can be used in developing intelligence regarding mis-valuation pattern.

(IV) Make NIDB comprehensive and update it regularly:

The importance of having a database containing updated price information of various imported goods in context of Customs Valuation is well accepted. WCO has issued guidelines as to how to use the database as a risk management tool. A database with the Customs that is continuously updated serves as a deterrent to importer to undervalue. NIDB has thus provided a salutary effect on declarations by importers, who being aware of the database with Customs do not undervalue rampantly. However, the database is far from perfect. There are issues with respect to quality of the data, which DGOV has been taking up with the field formations. Further the data captured is not comprehensive; most non-EDI locations imports and even sometime the imports from EDI stations are not captured due to software problems. This situations needs to be rectified with urgency for the database to serve as a risk management tool as well as act as a deterrent to undervalue.

NIDB basically provides a range of possible values at which a commodity are assessed across field formations. Thus it is used as a guide to judge normalcy on otherwise of the declared value. However the above data set is susceptible to certain weaknesses unless the value declared is validated. Therefore DGOV require to continuously validate the price declared with International Price lists, Catalogues, Trade publications, market research in exporting country and domestic market and update the NIDB to enable field formations to take informed decisions. In recent years, a number of Information technology companies have specialized in developing data warehouse on world prices and systems to label and track internationally traded goods. Thus CBEC should take steps to avail such service to compute such data to integrate with NIDB and RMS to strengthen our valuation database.

Further, in many field formations, the assessing officer do not have access to NIDB data. The local Commissionerate should mandatorily ensure that each assessing officers should be provided access and training to utilise NIDB and also be insured through an appropriate MIS tool that such officers are utilising it

regularly.

(V) Fine tune the Risk Management System periodically

In 2005, India introduced Risk Management System (RMS) for imported goods, the primary objective of RMS is “to strike an optimal balance between facilitation and enforcement and to promote culture of compliance. It is intended to improve the management of resources of the department to enhance the efficiency and effectiveness in meeting stakeholders’ expectations and to bring the Customs processes at par with the best international practices.”²⁷ The RMS has picked up well and provides facilitation to imports which are perceived to be low in risk. One of the important components of the risk is the value of the imported product/commodity. From the database that DGOV has developed, it provides valuation band for various sensitive products and commodities to the Risk Management Systems, so that where the declared values are lower than that indicated in the band, those products are not facilitated and are subject to further examination. With fast changing technology, this requires two things first the database should be updated to contain information about the changes in prices as well as changes in product description and second the specified products and commodities for which the price information is supplied is updated based on the risk perception.

(vi) Introduction of the tariff values for some more commodities

International prices are regularly available for commodities like steel(LME) and plastic(PLATT). In order to check undervaluation tariff values may be fixed rationally based on the international prices prevailing during the relevant period for steel and plastic. Steel and plastic raw material has basically has very few parameters(variables) to influence the price. Since less number of variables are there for those products, fixing tariff value find acceptance for trade since it minimizes the litigations and minimizes the clearance time.

(vii) Give Post Clearance Audit the importance it needs:

The purpose of such audits is to verify the accuracy and authenticity of declarations and covers the control of trader’s commercial data, business systems, records, books”. PCA is a part of overall risk management in Customs operations and used properly it can expedite Customs clearances. Effective implementation of

PCA is necessary to secure Customs revenue and other taxes while facilitating Customs clearance. Once the goods are cleared from the Customs control, some of the importers especially traders normally do not attend to queries by the audit easily. In view of this, it is suggested that dual PCA one for importers/traders having no record of previous imports with Customs or those who have been indicted in Customs frauds(which should be defined for this purpose) and other for established importers with impeccable track record with Customs. Transaction based control for the former and company based/importer based controls for the latter should be instituted. The transaction based control should be time bound and may be insisted for providing financial security for clearance of goods before finalisation of audit. Company based audit should be made as on-site exercise controls based on broad based financial statement analysis and business assessment rather than the present narrow focus on individual Bill of Entry wise transactions.

(viii) The data quality of import data base need to be improved:

- 1) In the present system allows the importer &traders to use UNIT quantity as SET or PACK. The traders use this vague unit for quantity to evade capture of data by NIDB. After the clearance of goods it is virtually impossible to know what a SET OR PACK mean! Whether it contains 1 or 3 or 10!. There is urgent need to plug the loophole .based on the nature of commodity; the system software should throw a drop down menu to allow only the desired parameters. Eg(i) steel products-----

MT, KG (II) LIQUIDS ----LITRES, KILOLITRES, GALLONS ETC.

- 2) There is concept of LOCAL RISK MANAGER (LRM) & RMS. The RMS division based on the data analysis introduces targets at national level. Where as the local risk manager who is at the level of Addl. Commissioner/Joint Commissioner in charge of SIIB for each Commissionerate. The main role of LRM is to gather intelligence from the groups, analyses the risk parameters specific to the Commissionerate . But LRM is not in operational in most of the Commissionerates.

The RMS division has to review the existing risk parameters, analyses

the data and introduce new risk parameters at frequent intervals. But the same is not periodically convened. As the result the quality of RMS suffers.

Further experienced officers are required to analyses the data and finding new risk parameters. But the quality of officers are not posted in RMS division.

For any informed decision making with respect to evaluation the most critical element is access to reliable information. From the perspective of a Customs Officer enforcing Customs tax laws and safeguarding the economic frontiers, information asymmetry is just not an option. NIDB has gone a long way in reducing the ambiguity in the valuation of commodities and goods. However like all system interventions NIDB can only be as good as the inputs fed in the system. The NIDB data thus becomes susceptible to the problem of GIGO also termed as “Garbage-in-garbage-out”. A particular problem with respect to NIDB has been with respect to the UQC or unit quantity codes.

The Customs Tariff Act, 1975 prescribes only a single Unit Quantity Code (UQC) against each Tariff Items, and it is mandatory that the same is properly declared by Importers/Exporters/Customs Brokers in the Bills of Entry/Shipping Bills. However this may not be comprehensively enforced by the various Customs Houses. All Officers and staff should ordinarily ensure that only the correct and prescribed Standard UQC as per the Customs Tariff Act, 1975 is mentioned in Bills of Entry/Shipping Bills.

At the same time it also must be remembered that the trade practices may at variance with the UQC as mentioned in the tariff. A process of getting the same approved by the group AC/DC and finally vetted by the Jurisdictional Commissioner as is the practice in certain Custom Houses like Mumbai must be initiated.

This practice however leaves a scope for varied interpretation, the Board may need to explore the possibility of codifying and changes in the Customs Tariff Act if there is found to be a higher statistical occurrence of new UQCs across locations or even the possibility of multiple UQCs for the same commodity.

Similarly the data quality with respects to wrong or non declaration of brands,

grades etc need to be properly monitored. While misdeclaration with respect to goods leads to statutory action under the Customs Act, the Customs Brokers must be made to ensure that the complete and proper description of the goods is correctly fed into the system with comprehensive description of brands, varieties, along with its codes etc. In addition all that the other possible details must be entered.

At one level this shall have to be done by means of adequately training the CHAs and at the other level a strict system of enforcement and possible penalties needs to be put in place in case of non compliance.

(IX) *System changes*

At the current juncture the systems of appraisal under ICEGATE and NIDB operate under different ecosystems. There is normally a heavy load on the appraising officers with a massive number of Bills of Entry for appraisal. The appraising officer is to logon to the NIDB system and need to look for each consignment separately to examine the band of pricing against locations. There is a need to make a system of popup of maximum and minimum value of the said goods across the locations. These costings would be indicative.

A typical pop up could include the following values

- Maximum value of the good at the location of appraisal in the last 1 month:
- Maximum value of the good at the location of appraisal in the last 3 month:
- Minimum value of the good at the location of appraisal in the last 1 month:
- Minimum value of the good at the location of appraisal in the last 3 month:
- Maximum value of the good across locations in the last 1 month:
- Maximum value of the good across locations in the last 3 month:
- Minimum value of the good across locations in the last 1 month:
- Minimum value of the good across locations in the last 3 month:

(X) *Setting up of Research units for valuation:*

CBEC should establish research units which specialize in the valuation of specific commodities in every major Customs location based on the

predominant commodities handled therein. Such research should cover studies based on data from various sources such as market surveys in local as well as international markets, trends in international benchmarks, transposition of macro level data to the local market levels such that they could provide useful guidance on valuation for individual transactions. The inferences of such studies should continuously flow back to DGOV and RMS to strengthen the valuation database.

(XI) Formal consultation with the private sector regarding Customs Valuation issues

One of the important features of modern Customs administration is partnership with the private sector. It is the private sector which is affected most by the Customs procedures. Way back in 2002 Satapathy in his book in the context of implementation of ACV stated that ‘there should be better cooperation and consultation between the importers and Customs’. He concluded that ‘both (Customs and importers) must necessarily contribute to the decision-making process and share the responsibility to arrive at correct valuation’. In India, though there are trade facilitation committees where Customs and other stake holders meet periodically, but these are mostly driven by Customs with no real private sector participation. There is no formal consultation with importers on Customs Valuation procedures. It is therefore imperative that a formal partnership is forged between Customs and importers /traders. Workshops and seminars should be held whereby provisions of ACV and Customs Valuation procedures should be widely disseminated by Customs officers and Experts. The expectation from the importers, their rights and responsibilities under the Customs Act and ACV should be highlighted in such workshops. With more and more importers opting for online filing of import documents, the awareness on the part of importers/agents about the importance of furnishing accurate description of goods and other related parameters will not only expedite clearance of the goods, but also make the database more reliable.

(XII) Make Special Valuation Branches (SVBs) effective

The SVBs specialize in investigation of transaction involving special

relationships and certain special features having bearing on the value of imported goods. These are located in the four major Customs Houses. They deal with cases mainly involving related party transactions and such issues as payment of royalties, license fees, supplies by importers. Article 1.2 of the ACV enjoins on the Customs not to reject transaction value merely on the grounds that parties are related; it must be proved that the relationship has influenced the price for transaction value to be rejected. Where such doubt exists the case is referred to the SVB. Experience, however, suggests that once a case is transferred to the SVB, it lingers on and the importer has to pay extra duty till the case is settled leading to blockage of his funds. Though the instructions³³ provide for completing the investigations and finalisation of assessment case within four months, but the time limit is hardly adhered to due to various reasons. One of the reasons it appears is that, the SVBs are not adequately manned. Further as per the data maintained by the DGOV, in majority of the cases referred to the SVBs, the declared values are accepted and in cases where the imported values are contested by the SVBs at the higher judicial forums only one percent sustains. It thus appears that the investigative skills of the officers in the SVBs need to be enhanced to make them truly effective.

Alternatively, SVB mechanism has not been able to effective in view of non-statutory timelines for finalization of the SVB cases, which are rarely adhered to. In context of the quest for ease of doing business and the make in India initiative launched by the Government, there is a need to revamp the process of assessing the import between related parties. This is all the more relevant in the case of multinational corporations, which would want the process to be extremely expeditious. In such a scenario the entire working of the SVB needs to be reviewed. There could be a case of replacing the SVB with Post Clearance Audit mechanism. The safeguarding of revenue is not in question, it is mostly only multinational corporations are involved in related party transactions and such corporations have long term investment

Conclusion :

Challenges in valuation should be identified and understood in the broader canvas of trade mispricing which could pose serious challenges to the economic security of the nation in the form of capital flight, sustaining parallel economy, damaging the domestic industry, etc. A more effective valuation procedure would go a long way to improve the image of India as a preferred destination for the foreign investor.