

Notice calling for suggestions, views, comments, feedback etc. from stakeholders on draft rules pertaining to Customs Valuation of imported goods in terms of recent amendment in Section 14 of the Customs Act, 1962 vide Section 89 of the Finance Act, 2022

Attention is invited to the recent amendment made in Section 14 of the Customs Act, 1962 vide Section 89 of the Finance Act, 2022. The following text has been inserted below the second proviso in sub-section (1) of the said Section 14:

“(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.”

2. The explanatory memorandum with the Finance Bill, 2022 explains-

“Section 14 is being amended to include provisions for rules enabling the Board to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. This amendment is a measure to address the issue of undervaluation in imports.”

3. The Draft Rules for making the above provision operational are enclosed (page 2-10). It is requested to kindly provide suggestions, comments, inputs, feedback on the Draft Rules latest by 14th October 2022 at the email id diricd-cbec@nic.in with copy to uscus5-cbec@gov.in.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART-II, SECTION-3,
SUB-SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

Notification No. ___/2022-Customs (N.T.)

New Delhi, _____, 2022

G.S.R.(E).-In exercise of the powers conferred by section 156 read with clause (iv) of second proviso to sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Government, hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2022.

(2) They shall come into force on, 2022.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "Board" means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(c) "class of imported goods" shall have the same meaning as assigned to "*goods of the same class or kind*" in the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(d) "Evaluation Committee" means the Committee constituted under rule 4;

(e) "identified goods" means any class of imported goods, or subset thereof, which have been notified by the Board under rule 5;

(f) "Screening Committee" means the Committee constituted under rule 3;

(2) The words and expressions used herein and not defined in these rules but defined in the Act or in the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, shall have the same meanings as assigned therein to them.

(3) For the purpose of these rules, -

(a) the term "Chief Commissioner" shall include "Principal Chief Commissioner" and the term "Director General" shall include "Principal Director General".

(b) the term “Commissioner” shall include “Principal Commissioner” and the term “Additional Director General” shall include “Principal Additional Director General”.

3. Constitution of the Screening Committee.- (1) The Screening Committee is constituted as follows –

(a) Directorate General of Valuation, represented by its Director General who shall also be the Convenor of the Committee.

(b) Directorate General of Revenue Intelligence, represented by its Director General.

(c) Directorate General of Analytics and Risk Management, represented by its Director General.

(d) National Assessment Centre constituted by the Board, pertaining to the class of goods under consideration, represented by its Convenors.

(2) The Secretariat to the Screening Committee shall be the Directorate General of Valuation.

(3) The Screening Committee shall convene its meetings regularly and as and when necessary for efficient conduct and timely discharge of its functions under these rules.

4. Constitution of the Evaluation Committee.- (1) The Evaluation Committee is constituted as follows –

(a) Directorate General of Valuation, represented by its Additional Director General who shall also be the Convenor of the Committee.

(b) Directorate General of Revenue Intelligence, represented by its Additional Director General (Headquarters).

(c) Directorate General of Analytics and Risk Management, represented by its Additional Director General (National Customs Targeting Centre – Cargo).

(d) National Assessment Centre constituted by the Board, pertaining to the class of goods under consideration, represented by the members of its Working Group on Valuation and related issues.

(2) The Secretariat to the Evaluation Committee shall be the Directorate General of Valuation.

(3) The Evaluation Committee shall convene its meetings regularly and as and when necessary for efficient conduct and timely discharge of its functions under these rules.

5. Notification of identified goods.- Where in respect of any class of imported goods, or subset thereof, the Board, having regard to the trend of declared value of such goods or any other relevant criteria, has reason to believe that such goods may not be declared at their truthful or accurate value but below it, the Board may notify such goods as identified goods in accordance with rule 10.

6. Sources for examining the case for identified goods.- (1) For the purpose of rule 5, the Board shall rely upon a written reference made to it electronically by any person having reason to believe that the value of any class of imported goods or subset thereof may not be declared truthfully or accurately:

Provided that the reference may also be made by an officer of Customs, namely a Commissioner or Additional Director General, or a person representing any other Government department.

(2) The written reference shall be accompanied with -

(a) disclosure of name, full address, mobile number, email and other contact details of the person, along with proof of identity and proof of address:

Provided that the proof of identity and proof of address shall not be required where the person making the reference represents a Government department;

(b) complete description and the 8-digit HS Code of the particular imported goods, including, where appropriate, aspects such as technical literature, specifications, composition, quality, brand and model, along with the country of origin or ports of despatch;

(c) manner in which or method by which value for such goods is declared below their truthful or accurate value by importers;

(d) information with attached documentary evidence, data and analysis bringing out the basis put forth in support of claim made in the written reference; and

(e) an approximate quantification of extent of undervaluation.

(3) The reference as above shall be forwarded electronically by the Board for examination to the Screening Committee.

7. Preliminary examination by Screening Committee.- (1) The Screening Committee shall make preliminary examination of the reference forwarded by the Board in order to decide whether it, or part thereof, is a case to be taken up for detailed examination.

(2) For the purposes of preliminary examination, the contents and accompanying information with the written reference shall be scrutinized and material aspects taken into account along with relevant trend of declared values or any other relevant criteria.

(3) The preliminary examination and recording of preliminary findings, signed by each member of the Screening Committee, shall be completed preferably within 15 days, but no later than 21 days from the date of forwarding of reference by the Board.

(4) If on the basis of preliminary findings, the reference has been found suitable for detailed examination, the reference, or part thereof, as the case may be, shall be deemed to have been taken up for detailed examination on the date the preliminary findings were recorded.

(5) If on the basis of preliminary findings recorded by the Screening Committee the reference is not found suitable for detailed examination, the Screening Committee shall simultaneously record closure of the reference.

8. Detailed examination by Evaluation Committee.- (1) The reference, or part thereof, found suitable for detailed examination in terms of sub-rule (4) of rule 7 shall be comprehensively examined by the Evaluation Committee to assess the likelihood, based on pre-ponderance of probabilities, whether the value of the relevant class of goods or subset thereof may not be declared truthfully or accurately.

(2) For this purpose, the Evaluation Committee may undertake data analysis and take into account additional information such as –

(a) trend in international prices from relevant sources keeping in view quality and nature of goods;

(b) information received through stakeholder consultation or disclosures;

(c) reports or certificates of experts, academic papers, research papers, published reports; open-source intelligence; reports originating from source country or despatch ports, including reports of overseas enquiry or verification;

(d) disclosures made under various provisions of the Customs Act, rules and regulations or under any other law that may have relevance;

(e) costing in relation to manufacture or assembly of the goods;

(f) additional information from the person who made the reference; and

(g) reliable information from any other source.

(3) The reasoned report of the Evaluation Committee shall be recorded, with each member of the Evaluation Committee signing the report, in not more than 30 days of being taken up for detailed examination.

Provided that, having regard to the circumstances under which the Evaluation Committee may have been prevented from finalizing its report in the said period, the Convenor of

the Screening Committee may, by recording such circumstances, extend the said period by not more than 30 days.

(4) Where the reasoned and detailed examination report of the Evaluation Committee concludes otherwise than as indicated in sub-rule (5) below, the report shall also recommend the closure of the reference.

(5) Where the reasoned and detailed examination report of the Evaluation Committee concludes the likelihood that the value of the relevant class of goods or subset thereof may not be declared truthfully or accurately, the report shall also specify –

(a) complete description of the class of imported goods, or subset thereof, with 8-digit HS Code;

(b) the brands, if any, which have been noticed in connection with the said likelihood;

(c) the precautionary unit value expressed in terms of (d) and (e) below which may be used by Customs Automated System to require the fulfilling of additional obligations by the importer and the checks to be exercised, where the declared value is less than the said precautionary unit value;

(d) the particular Unique Quantity Code which shall be necessarily used by the importer to declare the value in the bill of entry;

(e) the technical or other specifications related to value of the goods necessary to be declared in the bill of entry such as make, model, brand, grade, size, quality, composition (per centage of ingredients) and quantity declared in prescribed Unique Quantity Code;

(f) other additional obligations of the importer for demonstrating the truthfulness and accuracy of the declared value;

Explanation: For the purpose of clause (f), the Evaluation Committee, after examining the facts and circumstances of the matter, shall specify in its report other additional obligations of importer which may include *inter alia* furnishing manufacturer's invoice, manufacturer's test report, expert certification issued in the country of origin, manufacturing process from the manufacturer, costing in relation to manufacture or assembly of goods, purchase order or contract.

(g) the checks to be exercised with respect to the imported goods, including the circumstances and manner of exercising them;

(h) the duration, not below 1 year and not exceeding 2 years in the first instance, for which the said additional obligations and the additional checks shall be applied.

(6) The report referred at sub-rule (5) shall include the nature of imports to which these rules may be considered for not being applied in term of sub-rule (k) of rule 13.

(7) The aspects in the report referred at sub-rule (5) shall be such as are amenable to implementation using the Customs Automated System.

9. Consideration of report of the Evaluation Committee and recommendation to the Board.- (1) Upon its making, the detailed report of the Evaluation Committee, referred in sub-rule (4) or sub-rule (5) of rule 8, shall stand transferred to the Screening Committee which may, within 7 days of the said report, send it back to the Evaluation Committee for rectification of deficiencies, if any, and the Evaluation Committee shall, within 7 days, correct the deficiencies and return it to the Screening Committee.

(2) Upon consideration of the report referred in sub-rule (4) or sub-rule (5) of rule 8, or the rectified report referred in sub-rule (1), as the case may be, -

(a) where the Screening Committee concludes otherwise than as indicated in clause (b) below, it shall, within 15 days of the said report, also record the closure of the reference.

(b) where the Screening Committee concludes the likelihood that the value of the relevant class of goods or subset thereof may not be declared truthfully or accurately, it shall, within 15 days of the said report, forward its detailed recommendations in respect of such goods to the Board covering the aspects described in sub-rule (5) of rule 8.

(3) The detailed recommendations referred in clause (b) of sub-rule (2) shall specify the nature of goods or imports to which these rules are recommended to be not applied in term of sub-rule (k) of rule 13.

(4) The aspects in the detailed recommendations referred in clause (b) of sub-rule (2) shall be such as are amenable to implementation using the Customs Automated System.

10. Board to consider recommendations of Screening Committee.- (1) The Board shall consider the recommendations made by the Screening Committee under clause (b) of sub-rule (2) of rule 9, and if satisfied that the recommendation should be accepted, it may issue notification under rule 5 specifying the identified goods.

(2) The said notification shall also specify -

(a) complete description of the class of imported goods, or subset thereof, with 8-digit HS Code;

(b) the particular Unique Quantity Code which shall be necessarily used by the importer to declare the value in the bill of entry;

(c) the technical or other specifications necessary to be declared in the bill of entry;

(d) other obligations of the importer, if any;

(e) the checks to be exercised with respect to the imported goods, including the circumstances and manner of exercising them; and

(f) the duration, not below 1 year and not exceeding 2 years in the first instance, for which the said notification shall be valid.

(3) The Board shall also consider the review report made by the Screening Committee under sub-rule (3) of rule 12, and if satisfied of the reasons and recommendations made, shall make the appropriate changes by issuing notification under rule 5 with respect to the previously notified identified goods.

11. Procedure in respect of identified goods.- (1) An importer of identified goods shall be required to declare *inter alia* the value of goods using the Unique Quantity Code specified in the notification and the aspect specified at clause (c) of sub-rule (2) of rule 10 at the time of filing bill of entry.

(2) Where required by the Customs Automated System, the importer of identified goods shall also fulfil the specified additional obligations, and the assessment of goods or the goods themselves shall be subjected to specified checks so as to enable and assist the importer to demonstrate the truthfulness and accuracy of the declared value.

(3) Where the importer has not already fulfilled the specified additional obligations on the Customs Automated System, the proper officer would provide time of 10 days for compliance.

(4) The proper officer may, in addition to the specified obligations, ask for further information and documents from the importer to examine the truthfulness and accuracy of the declared value.

(5) On the request of importer, the proper officer may provisionally assess and clear the goods, subject to importer furnishing appropriate security in terms of Section 18 of the Act.

(6) Where, upon production of requisite information or documents and fulfilment of specified obligations or exercise of specified checks, the proper officer is satisfied with the truthfulness and accuracy of declared value, he shall accept the declared value for the purpose of these rules.

(7) Where the importer does not provide requisite information and documents or does not fulfil other obligations in the time prescribed, or where on the basis of the information and documents received from the importer or results of other checks exercised, the proper officer still has reasonable doubt about the truth or accuracy of the value declared in relation to the identified goods, the further proceedings shall be in accordance with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

12. Review.- (1) The Screening Committee shall, on expiry of half of the validity period of notification issued under rule 5, initiate a mid-term review to assess whether the identified goods may be de-notified either before expiry of the validity period or not, or the validity period needs to be extended.

(2) Apart from the mid-term review under sub-rule (1), the Screening Committee may conduct review before mid-term, or as and when needed.

(3) Based on the review conducted, the Screening Committee shall make reasoned recommendation in report to the Board to withdraw, or extend the notification related to the identified goods, or to add, alter or delete any of the parameters that were specified by the Board while notifying the identified goods in terms of rule 5.

(4) The said report shall be made to the Board at least 30 days prior to the expiry of validity period.

13. Exceptions.- These rules shall not be applied to –

(a) imports not involving duty;

(b) goods for which tariff value has been fixed by the Board in terms of sub-section (2) of section 14 of the Act;

(c) goods which attract import duty on specific rate basis;

(d) imports made in terms of authorization or license issued under duty exemption scheme of the Foreign Trade (Development and Regulation) Act, 1992 in which the inputs imported prior to export are physically contained in the export product;

(e) imports made in relation to section 65 of the Act;

(f) imports where buyer and seller are related and an investigation on relationship has already been contemplated or finalized;

(g) Project imports;

(h) imports by Government, Public Sector Undertakings;

(i) imports made in non-commercial quantities;

(j) goods imported for the purpose of re-export; or

(k) imports specified by the Board.

14. Power to relax.- Where the Screening Committee informs that it is unable to comply with its duties within the time period as specified, for the reasons beyond its control, even while it has met regularly and as and when necessary for efficient conduct and timely

discharge of its functions, the Board may after considering the case allow for compliance of the duties a further time period not exceeding 30 days.

15. Digital Record Keeping.- The processes specified in rule 6, rule 7, rule 8, rule 9 and rule 12 shall be enabled and processed on an electronic application, set up and maintained by the Directorate General of Valuation.

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