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**WELCOMES**

**ICAI MEMBERS**

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- ✓ **CUSTOMS VALUATION RULES**
  - **IMPORTS**
  - **EXPORTS**
- ✓ **SVB & REFUND OF RD DEPOSIT**
- ✓ **CUSTOMS VALUATION & TRANSFER PRICING**

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**CUSTOMS VALUATION**

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## Section 14 of Customs Act, 1962

- Value of the imported goods and export goods shall be the transaction value of such goods
- Price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation / when sold for export from India for delivery at the time and place of exportation
- Buyer and seller of the goods are not related
- Price is the sole consideration for the sale
- Subject to such other conditions as may be specified in the rules made in this behalf
- Any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf
- Rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50
- Tariff values for certain specified items

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**CUSTOMS VALUATION -  
IMPORTS**

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# CUSTOMS VALUATION RULES - IMPORTS

Rule Number	Text of Rule	Rule Number	Text of Rule
Rule 1	Short Title, Commencement & Applicability of Rules	Rule 7	Deductive Value
Rule 2	Definitions	Rule 8	Computed Value
Rule 3	Determination Of method Of Valuation	Rule 9	Residual Method
Rule 4	Transaction value Of Identical goods	Rule 10	Cost & Services
Rule 5	Transaction value Of similar Goods	Rule 11	Declaration By Importer
Rule 6	Determination Of value where value can't be determined under Rule 3, Rule 4 and Rule 5	Rule 12	Rejection Of Declared values
		Rule 13	Interpretative Notes

➤ **Related Parties:**

- they are officers or directors of one another's businesses;
- they are legally recognised partners in business;
- they are employer and employee;
- any person directly or indirectly owns, controls or holds five 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; or
- they are members of the same family.

**Explanation I. - The term "person" also includes legal persons.**

**Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.**

- **“Transaction Value” means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962**
  
- ✓ **"identical goods" means imported goods –**
  - i. **which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;**
  - ii. **produced in the country in which the goods being valued were produced; and**
  - iii. **produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,**

**but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods**



- ✓ "similar goods" means imported goods –
  - i. which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
  - ii. produced in the country in which the goods being valued were produced; and
  - iii. produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

## **Rule 3: Determination of the method of valuation**

- **Value of imported goods shall be the *Transaction Value* adjusted in accordance with provisions of Rule 10 subject to Rule 12;**
- **Transaction value will be accepted if there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –**
  - (i) Are imposed or required by law or by the public authorities in India; or**
  - (ii) Limit the geographical area in which the goods may be resold; or**
  - (iii) Do not substantially affect the value of the goods;**
- **The sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the good being valued;**
- **No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller**
- **The buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes, provided relationship did not influence the price and closely approximates value of identical goods / similar goods / computed value / deductive value**
- **If transaction value cannot be established as above, sequentially through Rule 4 to Rule 9**

## **Rule 4: Transaction Value of Identical Goods**

- **Transaction value of identical goods sold for export to India**
- **Imported at or about the same time as the goods being valued**
- **Same commercial level and in substantially the same quantity as the goods being valued**
- **Reasonable / accurate adjustments if goods sold at a different commercial level or in different quantities or both**
- **Adjustment on accounts of costs and charges specified under Rule 10**
- **Lowest of value if more than one transaction value of identical goods**
- **Value of the goods provisionally assessed under section 18 of the Customs Act, 1962 shall not be considered**

## **Rule 5: Transaction Value of Similar Goods**

- **Transaction value of similar goods sold for export to India**
- **Imported at or about the same time as the goods being valued**
- **Same commercial level and in substantially the same quantity as the goods being valued**
- **Reasonable / accurate adjustments if goods sold at a different commercial level or in different quantities or both**
- **Adjustment on accounts of costs and charges specified under Rule 10**
- **Lowest of value if more than one transaction value of similar goods**
- **Value of the goods provisionally assessed under section 18 of the Customs Act, 1962 shall not be considered**

## **Rule 6: Determination of value where value can not be determined under rules 3, 4 and 5**

- **Value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8**
- **Order of application of rules 7 and 8 shall be reversed with approval of proper officer**

## **Rule 7: Deductive Value**

- **If the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented (if not available, goods imported within 90 days of such importation may be considered), unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions:**
  - i. either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;**
  - ii. the usual costs of transport and insurance and associated costs incurred within India;**
  - iii. the customs duties and other taxes payable in India by reason of importation or sale of the goods.**

## **Rule 7: Deductive Value**

- **If the goods being valued or identical or similar imported goods are sold in India after processing, unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India and giving due allowance to the processing charges and deductions specified above**

## **Rule 8: Computed Value**

- **sum of:-**
  - a) **the cost or value of materials and fabrication or other processing employed in producing the imported goods;**
  - b) **an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;**
  - c) **the cost or value of all other expenses under sub-rule (2) of rule 10.**

## **Rule 9 Residual Value**

- **Using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. However following will not be appropriate base:**
  - **the selling price in India of the goods produced in India;**
  - **a system which provides for the acceptance for customs purposes of the highest of the two alternative values;**
  - **the price of the goods in the domestic market of the country of exportation;**
  - **the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule**
  - **the price of the goods for the export to a country other than India**
  - **minimum customs values**
  - **arbitrary or fictitious values**

## **Rule 10: Cost & Services**

- **Following costs to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods will be added to the transaction value:**
  - **Commissions and Brokerage**
  - **Cost of containers**
  - **Cost of packing**
  - **Free of cost supplies including materials, tools, dies, engineering, development, art work, design work, royalties and licence fees as a condition of sale, any part of the proceeds of any subsequent resale, disposal or use of the imported goods, other payments as a condition of sale or payments by the buyer to a third party to satisfy an obligation of the seller**
  
- **Value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include:**
  - **Cost of transport of the imported goods to the place of importation**
  - **Loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation**
  - **Cost of insurance**



## **Rule 11: Declaration by Importer**

- **Full and accurate details relating to the value of imported goods**
- **Statement, information or document as considered necessary by the proper officer for determination of the value of imported goods under these rules**
- **Provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules**

## **Rule 12: Rejection of Declared Value**

- **Proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods**
- **Grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer needs to be specified**
- **Provide a reasonable opportunity of being heard**

## **Rule 13: Interpretative Notes**

- **Interpretative notes specified in the Schedule – Generally accepted accounting principles, price paid or payable, etc.**

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**CUSTOMS VALUATION -  
EXPORTS**

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<b>Rule Number</b>	<b>Text of Rule</b>
<b>Rule 1</b>	<b>Short Title, Commencement &amp; Applicability</b>
<b>Rule 2</b>	<b>Definitions</b>
<b>Rule 3</b>	<b>Determination of Method of Valuation</b>
<b>Rule 4</b>	<b>Determination of Export Value By Comparison</b>
<b>Rule 5</b>	<b>Computed Value method</b>
<b>Rule 6</b>	<b>Residual method</b>
<b>Rule 7</b>	<b>Declaration By Exporter</b>
<b>Rule 8</b>	<b>Rejection Of Declared Value</b>

## **Important Definitions of Terms used in Export Valuation Rule 2007:**

**“Goods of like kind & Quality” – The phrase is defined Rule2(1)(a) of Export Valuation Rule as “Goods of like Kind and Quality” means Export Goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person.**

**“Transaction Value” - means the value of Export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).**

## **Rule 3: Determination of the method of valuation:**

- **Value of export goods shall be the transaction value subject to Rule 8**
- **The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.**
- **If transaction value cannot be established as above, sequentially through Rule 4 to Rule 6.**

## **Rule 4: Determination of export value by comparison.**

- **Transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted as mentioned below**
- **Adjustment factors on account of difference - dates of exportation, commercial levels and quantity levels, composition, quality and design, domestic freight and insurance charges**

## **Rule 5: Computed Value Method**

### **➤ Value determined based on:**

- **cost of production, manufacture or processing of export goods;**
- **charges, if any, for the design or brand;**
- **an amount towards profit.**

## **Rule 6: Residual Method**

- ### **➤ Reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.**

## **Rule 7: Declaration by the Exporter**

- ### **➤ The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.**

## **Rule 8: Rejection of declared value**

- **Proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods**
- **Grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer needs to be specified**
- **Provide a reasonable opportunity of being heard**

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**SPECIAL VALUATION  
BRANCH (SVB)**

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- **Cases referred to SVB by Appraising Group / order of Commissioner of Customs**
  - **Import Transactions With Related Parties**
  - **Imports from Foreign Suppliers with whom Collaboration Agreement, Technical Assistance Agreement or any other agreement / contract of similar nature has been entered into**
  
- **Registration with SVB**
  
- **Declaration at time of filing first Bill of Entry – Related Party or otherwise / Provisional**
  
- **Execution of SVB Bond**
  
- **Bill of Entry is cleared with Revenue Deposit (RD) @ 1% of Assessable Value**

- Questionnaire generated by Customs to be submitted within 30 days of receipt of the Questionnaire – Refer SVB Annexure
  
- If Questionnaire not submitted within specified time, the RD will be increased to 5% of Assessable Value
  
- Determination of Value as per Customs Valuation Rules
  - Transaction Value
  - Similar Goods
  - Identical Goods
  - Computed Value
  - Deductive Value
  - Residual Value
  - Cost of Goods and Services

- **Personal Hearing and OIO by DC, SVB**
  
- **If no appeal,**
  - **Finalisation of Assessment of Bill of Entries by Appraiser**
  - **Differential Duties on loading / Refund of Revenue Deposit**
  
- **Appeal to Commissioner of Customs (Appeals) and further adjudication**
  
- **SVB Order valid for 3 years**
  
- **One SVB Order for multiple parties**
  
- **SVB Orders for different Ports may be different (practically followed)**
  
- **Renewal to be initiated before the expiry of the order**
  
- **Details of changes in transactions to be highlighted / Affidavit w.r.t. no changes**

- **Bill of Entries (Finally Assessed)**
- **SVB Order**
- **Details of Bill of Entries along with Revenue Deposit paid**
- **Chartered Accountant Certificate w.r.t. “No unjust enrichment”**
- **Claim to be prepared port wise and filed within 1 year of finalisation of assessment of the Bill of Entry**

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**TRANSFER PRICING**

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- ✓ **Transaction between two or more associated enterprises**
- ✓ **Either or both of whom are non-residents**
- ✓ **In the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises,**
- ✓ **And shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises**

"international transaction" shall include—

- ✓ the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- ✓ the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
- ✓ capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- ✓ provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- ✓ a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

## ✓ **Associated Enterprise**

### ✓ **CAPITAL**

- ▶ **one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or**
- ▶ **any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or**
- ▶ **where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or**
- ▶ **there exists between the two enterprises, any relationship of mutual interest, as may be prescribed**



## **✓ CONTROL**

- ▶ **a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or**
- ▶ **one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or**
- ▶ **the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or**

## ✓ **CONTROL**

- ▶ **ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or**
- ▶ **the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; Or**
- ▶ **where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or**

✓ **MANAGEMENT**

- ▶ **more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or**
  
- ▶ **more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or**
  
- ▶ **where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or**

✓ **METHODS**

- **Comparable Uncontrolled Price Method**
- **Resale Price Method**
- **Cost Plus Method**
- **Profit Split Method**
- **Transactional Net Margin Method**
- **Other Method**

✓ **F A R Analysis – Refer Functions, Assets and Risks Analysis**

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**CUSTOMS & TRANSFER  
PRICING**

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## RELATED PARTY

<b>CUSTOMS</b>	<b>INCOME TAX</b>
Officers or directors of one another's businesses;	Management
Legally recognised partners in business	Not covered directly
Employer and employee	Not covered
Any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them	Capital – Exceeding 26%
One of them directly or indirectly controls the other	Control / Management
Both of them are directly or indirectly controlled by a third person	Control
Together they directly or indirectly control a third person	Control / Management
members of the same family	Management???

## COVERAGE

Transaction	Income Tax	SVB
Import of Raw Material	Yes	Yes
Export of finished goods	Yes	No
Export of Services	Yes	No
Technical Service fees	Yes	Yes – If directly connected with goods
Royalty fee	Yes	No
Corporate Guarantee fees	Yes	No
Management Fees	Yes	No
Loan received or paid	Yes	No
Import of Capital goods	Yes	Yes
Reimbursement of expenses paid / received	Yes	Yes – If directly connected with goods

## **METHODS OF VALUATION**

<b><u>INCOME TAX</u></b>	<b><u>CUSTOMS</u></b>
<b>CUP</b>	<b>Identical Goods / Similar Goods</b>
<b>RSP</b>	<b>Deductive Value</b>
<b>Profit Split Method</b>	<b>No Parallel / Deductive Value</b>
<b>Cost Construction</b>	<b>Computed Value</b>
<b>TNMM</b>	<b>No Parallel</b>
<b>OTHER</b>	<b>Residual Value</b>



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