Valuation in India

by
Bharat Raichandani
Advocate
09.08.2010

Lakshmi Kumaran & Sridharan
ATTORNEYS

Scope

- History
- Valuation rules
- Principles
- Major disputes
- Suggestions

Provisions relating to Valuation

- Section 14 of Customs Act, 1962
- Customs Valuation Rules, 1963
- Customs Valuation Rules, 1988
- Customs Valuation Rule, 2007

Provisions relating to Valuation

- Prior to 1988 India followed the BDV concept
  - Deemed or Notional concept
- India implemented TV concept from August 1988 through the Customs Valuation Rules, 1988
  - Closely follows the WTO Agreement on implementation of GATT
- Customs Valuation Rules, 2007 (Current Rule)

Section 14 of Customs Act, 1962

- Value of imported/export goods shall be:
  - Transaction value i.e.
    - Price actually paid or payable for the goods
  - Sold for export to India
  - For delivery at the time & place of importation
  - Where the buyer & seller are not related
  - Price is the sole consideration for the sale

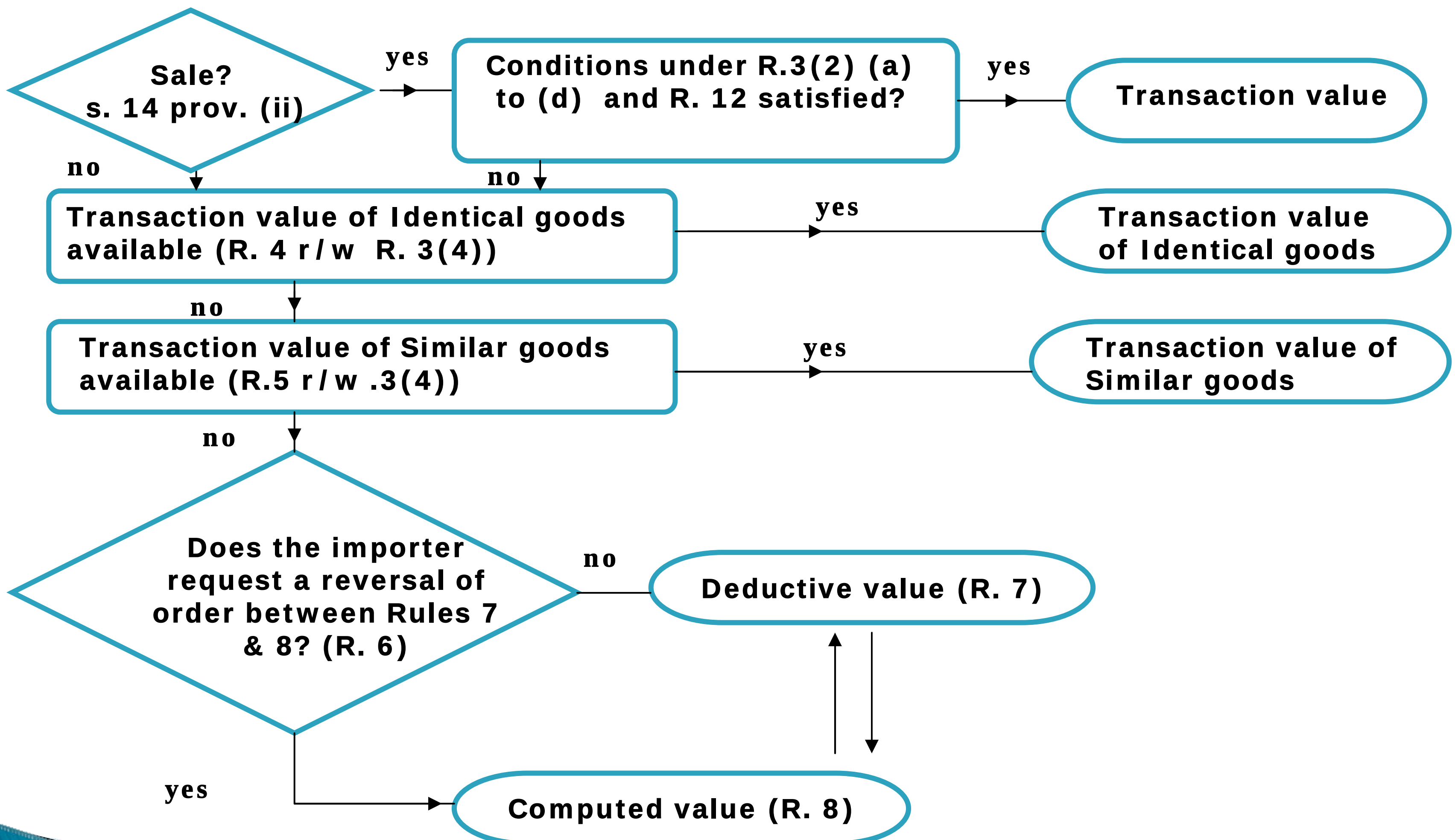
Customs Valuation Rules, 2007

- Rule 3(1)
  - Value of imported goods shall be the Transaction Value (subject to Rule 12)
  - TV may be adjusted as per Rule 10

Customs Valuation Rules, 2007

- Rule 3(2)
- Reasons for non-acceptance/rejection of TV
  - Restrictions as to disposition/use of goods by buyer
  - Sale/price is subject to some condition for which price not determinable
  - If proceeds of subsequent resale etc. by buyer accrue to seller
  - Buyer and seller are related and this has influenced the price

Method of Valuation



Methods of determining TV

- Method 1 — Transaction value
- Method 2 — Transaction value of identical goods
- Method 3 — Transaction value of similar goods
- Method 4 — Deductive method
- Method 5 — Computed method
- Method 6 — Residual method

Rule 4 – Identical Goods

- Value of identical goods
  - Sold for export to India
  - At or about the same time as goods being valued
- Identical goods (Rule 2(1)(d)):
  - same in all respects(physical characteristics, quality and reputation)
  - Produced in same country
  - Produced by same person
- Due regard to commercial and quantity levels

Rule 5 – Similar Goods

- Value of similar goods
  - Sold for export to India
  - At or about the same time as goods being valued
- Similar goods (Rule 2(1)(d)):
  - Though not alike have like characteristics and component materials and are commercially interchangeable
  - Produced in same country
  - Produced by same person
- Due regard to commercial and quantity levels

Lakshmi Kumaran & Sridharan
ATTORNEYS

Rule 7 – Deductive Value

- Identify Unit price of imported goods sold at the greatest aggregate quantity to unrelated persons
- Deduct the following from unit price:
  - Commission paid or usual sales profit and general expenses
  - Transportation, insurance and associated costs
  - Customs duties and other taxes payable for import and sale

Lakshmi Kumaran & Sridharan
ATTORNEYS

Rule 8 – Computed value

- Value of imported goods shall be sum of:
  - Cost of materials, fabrication etc. employed in producing said goods
  - Profit and general expenses of the producers in exporting country
  - Cost/value of all expenses mentioned in Rule 10

Lakshmi Kumaran & Sridharan
ATTORNEYS

Rule 9 – Residual method

- Value to be determined "using reasonable means consistent with the principles and general provisions of these rules"
- Method cannot be based on:
    - Selling price of goods in India
    - Price of goods in domestic market of exporting country
    - Price for export to country other than India
    - Minimum customs values
    - Arbitrary or fictitious values

Rule 10 – Additions/ adjustments

- Rule 10(1)(a) – following when incurred by buyer
  - Commissions and brokerages, except buying commission (eg. Selling commission)
  - Cost of containers which are treated as being one with the goods (eg. Perfume bottle)
  - Cost of packing

Lakshmi Kumaran & Sridharan
ATTORNEYS

Rule 10 – Additions/ adjustments

- Rule 10(1)(b) – where following are supplied directly or indirectly by buyer
  - materials, components, parts etc.,
  - Tools, dies, moulds etc.,
  - Materials consumed, or
  - Engineering, art work, plans etc. undertaken elsewhere than in India and necessary/used in production of imported goods

Lakshmi Kumaran & Sridharan
ATTORNEYS

Rule 10 – Additions/ adjustments

- Rule 10(1)(c) – Royalties and license fees
  - Related to imported goods
  - That buyer is required to pay
  - As a condition of sale of the goods

Rule 10 – Additions/ adjustments

- Rule 10(1)(d)
  - Any part of proceeds of subsequent resale, disposal/use that accrues (directly or indirectly) to seller
- Rule 10(1)(e)
  - Other payments made as a condition of sale of imported goods to the seller/third party to satisfy obligation

Lakshmi Kumaran & Sridharan ATTORNEYS

Landmark Cases

- Collector V Essar Gujarat [1997 (92) E.L.T. 72 (S.C.)]
- Eicher Tractors Ltd. V Commissioner of Customs [2000 (122) E.L.T. 321 (S.C.)]
- Commissioner of Customs v Sony India Ltd. [2008 (231) E.L.T. 385]

Concept of Relationship

- Rule 2(2) – persons deemed related if:
  - Officers/directors in each others business
  - Legally recognized partners
  - Employer-employee
  - Any person owns/controls 5% or more of outstanding voting stocks or shares or both
  - One directly/indirectly controls other
  - Both directly/indirectly controlled by 3rd party
  - Members of same family
- Person includes legal persons

Lakshmi Kumaran & Sridharan ATTORNEYS

Special Valuation Branch

- SVB examines transactions between related parties
- Based on the evidence produced by the buyer it either
  - accepts declared price; or
  - determines the value
- Instructions issued by CBEC vide Circular dated 11/2001-Cus. dated 23.2.2001

Lakshmi Kumaran & Sridharan
ATTORNEYS

Special Valuation Branch

- Related parties should obtain SVB order at the time of importation of goods.
- SVB order revised every three years
- Importer should:
  - Explain pricing methodology followed
  - Demonstrate that relationship has not influenced the price

Congruence of Customs and Income Tax departments

- Concept of relationship
  - In Customs – Related Persons
    - Rule 2 of Customs Valuation Rules
    - in line with GATT Valuation Rules
  - In Income Tax – Associated enterprise
    - Section 92A of Indian Income Tax Act, 1961
    - much wider concept of relationship than in Customs
- Exchange of Information between the departments taking place

Thank You