

EY Tax Alert

CBIC notifies Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023

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Executive summary

This Tax Alert summarizes a recent notification¹ issued by the Central Board of Indirect Taxes and Customs (CBIC) notifying Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (the Rules).

The Rules provide as follows:

- ▶ CBIC may issue order specifying complete description of the identified goods with 8-digit HSN (harmonized system of nomenclature) Code, the particular unique quantity code, technical or other specifications necessary to be declared in the bill of entry and the checks to be exercised. The said order shall be valid for a period not less than one year and not exceeding two years.
- ▶ An importer of identified goods shall be required to declare the value of goods using the unique quantity code specified in the order.
- ▶ Where required by the Customs Automated System, the importer shall also fulfill the specified obligations. In case such obligations are not fulfilled, the proper officer shall provide an additional time period of ten days.
- ▶ The officer may also ask for further information and documents from the importer to examine truthfulness and accuracy of the declared value. He may provisionally assess and clear goods subject to importer furnishing appropriate security.
- ▶ Where the requisite information is not provided or the proper officer still has a reasonable doubt about the value declared basis the details furnished by the importer, the further proceedings shall be in accordance with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

The rules will be operationalized from 11 February 2023.

¹ Notification no. 03/2023-Customs (NT) dated 11 January 2023

Background

- ▶ Finance Act, 2022 amended section 14 of the Customs Act, 1962 to include provisions for rules enabling CBIC to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly.
- ▶ CBIC shared the draft Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2022 inviting suggestions and feedback from stakeholders.
- ▶ CBIC has now notified Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023.
- ▶ These will be operationalized from 11 February 2023.

Key provisions

- ▶ Where in respect of any class of imported goods or a subset thereof, having regard to the trend of the declared value of such goods or any other relevant criteria, CBIC has reason to believe that such goods may not be declared at their truthful or accurate value but below it, CBIC may specify such goods as identified goods.

- ▶ For the above purpose, CBIC shall rely upon a written reference made to it by any person.

Such reference can also be made by an officer of Customs (Commissioner or Additional Director General) or a person representing any other Government Department.

- ▶ The reference shall be accompanied with:
 - ▶ Name, address, mobile number, email and other contact details of the person,
 - ▶ complete description and the 8-digit HS Code of the imported goods,
 - ▶ the manner in which or method by which value for such goods is declared below their truthful or accurate value by importers,
 - ▶ information with attached documentary evidence, data and analysis bringing out the basis put forth in support of the claim made,
 - ▶ an approximate quantification of the extent of undervaluation.
 - ▶ other sources of reliable information, if any, that may be considered while examination, and
 - ▶ suggestions, if any, of additional obligations and checks that may be considered while examining the reference.
- ▶ The written reference shall be forwarded by CBIC for examination to the Screening Committee.
- ▶ The Screening Committee shall make a preliminary examination of the reference in order to decide whether it, or part thereof, is a case to be taken up for detailed examination.
- ▶ The reference found suitable for detailed examination shall be comprehensively examined by the Evaluation Committee to assess the likelihood, based on the

preponderance of probabilities, whether the value of the relevant class of goods may not be declared truthfully or accurately.

- ▶ For this purpose, the Evaluation Committee may undertake data analysis and consider the following additional information:
 - ▶ trend in international prices keeping in view quality and nature of goods,
 - ▶ information received through stakeholder consultation or disclosures,
 - ▶ reports or certificates of experts, academic papers, research papers, published reports, open-source intelligence etc.,
 - ▶ disclosures made under applicable provisions of the Customs Act, rules and regulations or under any other law,
 - ▶ costing in relation to manufacturing or assembly of the goods,
 - ▶ additional information from the person who made the reference, and
 - ▶ reliable information from any other source.
- ▶ Where the reasoned and detailed examination report of the Evaluation Committee concludes the likelihood that the value of the relevant class of goods may not be declared truthfully or accurately, the report shall specify:
 - ▶ complete description of the class of imported goods, with 8-digit HS Code,
 - ▶ the brands, if any, which have been noticed in connection with the said likelihood,
 - ▶ the precautionary unit value which may be used by the Customs Automated System to require the fulfilment of additional obligations by the importer and the checks to be exercised, where the declared value is less than the precautionary unit value,
 - ▶ the particular Unique Quantity Code which shall be necessarily used by the importer to declare the value in the bill of entry,
 - ▶ technical or other specifications related to value of goods necessary to be declared in the bill of entry such as make, model, brand, grade,
 - ▶ other additional obligations of the importer for demonstrating the truthfulness and accuracy of the declared value, and
 - ▶ the checks to be exercised with respect to the imported goods, including the circumstances and manner of exercising them.
- ▶ Other additional obligations of the importer may include furnishing manufacturer invoice, manufacturer 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.
- ▶ The detailed report shall be transferred to the Screening Committee for confirmation and the said Committee will provide recommendations to CBIC.

- ▶ CBIC shall consider the recommendation and if satisfied that the recommended report should be accepted, it may issue order specifying therein:
 - ▶ complete description of the identified goods with 8-digit HS Code,
 - ▶ the particular Unique Quantity Code which shall be necessarily used by the importer to declare the value in the bill of entry,
 - ▶ the technical or other specifications necessary to be declared in the bill of entry,
 - ▶ other obligations of the importer, and
 - ▶ the checks to be exercised with respect to the imported goods, including the circumstances and manner of exercising them.
- ▶ The order shall be valid for a period not below one year and not exceeding two years in the first instance.
- ▶ An importer of identified goods shall be required to declare the value of goods using the Unique Quantity Code specified in the order and the required technical or other specifications at the time of filing bill of entry.
- ▶ Where required by the Customs Automated System, the importer shall also fulfill 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.

Where the importer has not already fulfilled the specified additional obligations, the proper officer shall provide a time period of ten days.
- ▶ The 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.
- ▶ The officer may provisionally assess and clear the goods subject to importer furnishing appropriate security in terms of section 18 of the Customs Act.
- ▶ Where the importer does not provide requisite information and documents or does not fulfil other obligations, 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, the further proceedings shall be taken in accordance with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- ▶ The Screening Committee shall, on the expiry of half of the validity period of the order, initiate a mid-term review to assess whether the identified goods may be de-specified either before the expiry of the validity period or not, or the validity period needs to be extended.
- ▶ CBIC shall also consider the review report made by the Screening Committee and if satisfied with the reasons and recommendations made therein, shall make the appropriate changes by issuing an order with respect to the previously specified goods.

- ▶ These rules shall not be applied to:
 - ▶ imports not involving duty,
 - ▶ goods for which tariff value has been fixed in terms of section 14(2) of Customs Act,
 - ▶ goods which attract import duty on specific rate,
 - ▶ 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,
 - ▶ imports where buyer and seller are related and an investigation on relationship has already been contemplated or finalized,
 - ▶ Project imports,
 - ▶ imports by Government, Public Sector Undertakings,
 - ▶ imports made in non-commercial quantities,
 - ▶ goods imported for the purpose of re-export, and
 - ▶ imports specified by CBIC.

Comments

- a. The objective of the Rules seems to prevent undervaluation of the notified class of goods. Presently, the same is being done by the authorities as post import activity.
- b. In order to avoid any subjectivity, appropriate guidelines may be issued for officers seeking additional information from importers under the Rules.
- c. Businesses may need to analyze whether the exception with respect to imports not involving duty would cover the imports made by EOUs and SEZs.
- d. At present, the Rules seem to be silent on the procedure to be followed if the license or authorization conditions are not met.
- e. It is relevant to note that in the draft rules, imports made by warehouses licensed under section 65 of Customs Act were also excluded from the applicability of these rules.

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