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F.No.467/08/2004-Cus.V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Sub:- Customs Valuation Rules, 1988 – Determination of assessable value for goods sold on high seas – reg.

Representations have been received on the Ministry to clarify the manner of determining the value of imported goods imported on high-sea-sales basis. As per the existing practice in Mumbai Custom House, the "high-seas-sales-charges" are added to the declared CIF value in terms of Public Notice No.145/2002, dated 3.12.2002. Such "high-seas-sales-charges" are taken to be 2% of the CIF value as a general practice. In case the actual high-sea-sale contract price is more than "the CIF value plus 2%", then the "actual contract price" paid by the last buyer is being taken as the value for the purpose of assessment. In some of the custom houses, however, audit has raised objection stating that if, in a particular transaction, there were about three/four high-sea-sales, then high-sea-sales service charges @ 2% has to be added to the CIF value, for each such transaction.

2. The matter has been examined taking into account the Advisory Opinion 14.1 of the GATT Valuation Code, which stipulates that if the importer can demonstrate that the immediate sale under consideration took place with a view to export the goods to the country of importation, then such transaction would constitute an international transfer of goods. The later transaction, which led to the import, would be the relevant transaction for assessment and Rule 4 of Customs Valuation Rules, 1988 would apply. Hon'ble Supreme Court, in the case of M/s.Hyderabad Industries Limited [2000(115)E.L.T.593(S.C)] have also upheld that the service charges/high-seas-sales-commission ('actuals') are includable in the CIF value of imported goods. Therefore, it is clarified that the actual high-seas-sale-contract price paid by the last buyer would constitute the transaction value under Rule 4 of Customs Valuation Rules, 1988 and inclusion of commission on notional basis may not be appropriate. However, the responsibility to prove that the high-seas-sales-transaction constituted an international transfer of goods lies with the importer. The importer would be required to furnish the entire chain of documents, such as Original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first international transfer of goods to the last transaction. In case of doubt regarding the truth or accuracy of the declared value, the Department may reject the declared transaction value and follow the sequential methods of valuation under Customs Valuation Rules, 1988.

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