

Circular No. 25 / 2015

F. No. 467/34/2006-Cus.V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

15th October 2015

All Principal Chief Commissioners
All Chief Commissioners of Customs,
All Chief Commissioners of Customs & Central Excise,
All Directorate-Generals, Chief Departmental Representative,
All Principal Commissioners of Customs,
All Principal Commissioners of Customs & Central Excise
All Commissioners of Customs
All Commissioners of Customs & Central & Excise

Sir,

Subject: Valuation of second hand machinery -regarding

The Board has received representations from other Ministries, trade bodies and traders regarding issues arising from the interpretation of Board's circular no. 4/2008 – Cus dated 12th February 2008. The circular requires that field formations rely upon a chartered engineer's inspection report while valuing imports of second hand machinery and that inspection/appraisal reports issued at the port of loading should be accepted. The circular also states that there is no need to specify the agencies whose certificates alone would be accepted. It has been ascertained from field formations that the present practice in this regard is that if an importer produces a chartered engineer's appraisal report issued at the load port, with the ingredients indicated in para 8 (a) of the circular 4/2008-Cus, the same is being accepted by Custom Houses. Also, appraisal / inspection reports prepared by pre-shipment inspection agencies in India, which have been notified by DGFT, are also being accepted by the Custom Houses. However, if the report produced by the importer does not contain information mandated in the circular 4/2008-Cus dated 12th February 2008, the importer is advised to select any chartered engineer, empaneled by the Custom House, for

inspection / appraisalment of the second hand machinery. In this regard, consultations have also been held with DGFT, DIPP, Trade Associations (CII, FICCI, ASSOCHAM, BCHAA and others)

2. After due consideration of the suggestions and concerns put forth, the Board has decided to issue the following guidelines for valuation of imports of second hand machinery:

3. Where used second hand machinery is sold for export to India and the sale meets all of the requirements set out in Customs Valuation (Determination of Value of Imported Goods) Rules 2007, the price paid or payable for the goods is to be used as the basis for determining the assessable value.

4. However, it is frequently the case that as part of an arrangement, separate from the contract of sale, the second hand machineries are reconditioned, refurbished, modernized, or otherwise improved prior to their importation into India. In such situations, there is a change in the condition of the goods brought about prior to their importation. Similarly, other costs such pre-shipment inspection, dismantling and crating charges may be incurred by the buyer after the sale of the goods. Costs of all such elements need to be determined for the purpose of arriving at the value under section 14 of the Customs Act. Thus, there may be instances where the requirements of Rule 3 of the Valuation Rules are not met, in which case, the value for imposition of duty must be determined under one of the subsequent methods of valuation applied in sequential order.

5. In view of the nature of goods, there may be certain difficulties in applying Rule 4 or 5 of the CVR, 2007. These difficulties arise from the fact that the goods being valued are used second hand machinery, and it may be difficult to find data relating to sales of such goods to India, which could be considered identical or similar and meet all the requirements of Rule 4 and 5 of the CVR, 2007

6. Similarly, application of Rule 7 of CVR, 2007 where under goods being appraised are valued on the basis of subsequent sales of identical or similar goods in India, may also not be possible because the goods being appraised are imported for use rather than for resale. The difficulty of finding such sales of goods, which could be considered identical or similar to the goods being appraised, may preclude the application of this method.

7. Under Rule 8 of the CVR, 2007, goods are valued using the computed value method which is based, among other things, on the cost of production of the goods being appraised plus an amount for profit and general expenses. However, since used capital goods are not manufactured as such,

viz, as old and used machinery, it is not possible to calculate assessable value based upon the cost of production.

8. It follows that in cases where used capital goods cannot be appraised under Rule 3, and where there may be difficulty in applying Rules 4 to 8 of the CVR, 2007, the proper officer may be required to apply the residual method under Rule 9 so as to factor condition, depreciation, refurbishment, charges of disassembly & packing and any expenses incurred by way of pre-shipment inspection agency charges etc.

9. Given the nature of challenges in computing the value of second hand machinery under Rule 9, and the need to ensure that the approach applied reflects commercial reality and results in a value which is fair, and is arrived through uniform processes by all custom houses, it is felt that it is necessary to obtain inspection / appraisal reports from qualified neutral parties.

10. For this purpose, the Board has decided that Inspection / Appraisal Reports issued by Chartered Engineers, or their equivalent, based in the country of sale of the second hand machinery shall be accepted by all Custom Houses. For the purposes of uniformity, the format in which inspection/appraisal reports shall be prepared by the Chartered Engineer is annexed to this circular. In the event that an importer does not produce an inspection/appraisal report in the prescribed format from the country of sale, he shall be free to engage the services of inspection agencies notified as per HBoP 2015-20. In case the agencies notified in the HBoP not being at the port of import, the importers will be free to select any Chartered Engineer from those empaneled by the Custom House of the port of import.

11. No Custom House shall require any importer to have an inspection / appraisal report of second hand machinery from a particular Chartered Engineer. The importer shall be free to select any chartered engineer, empaneled by the Custom House for the respective class of goods, if so required.

12. To sum up, the following guidelines shall be followed:
- a). All imports of second hand machinery / used capital goods shall be ordinarily accompanied by an inspection / appraisal report issued by an overseas chartered engineer or equivalent, prepared upon examination of the goods at the place of sale.
 - b). The report of the chartered engineer or equivalent should be as per the Form A annexed to this circular.

c). In the event of the importer failing to procure an overseas report of inspection / appraisalment of the goods, he may have the goods inspected by any one of the agencies in India, as are notified by the DGFT under Appendix 2G of the HBoP 2015-20 and Aayat Niryat Forms to FTP 2015-20, as amended from time to time (para 2.59 of Handbook of Procedures 2015-20 refers).

d). At customs stations where agencies notified by DGFT are not present, importers may continue to avail of the services of locally empaneled chartered engineers.

e). In cases where the report is to be prepared by the agencies in India notified by DGFT or the chartered engineers empaneled by Custom Houses, the same shall be in the Form B annexed to this circular.

f). The value declared by the importer shall be examined with respect to the report of the chartered engineer. Similarly, the declared value shall be examined with respect to the depreciated value of the goods determined in terms of the circular No. 493/124/86-Cus VI dated 19/11/1987 and dated 4/1/1988. If such comparison does not create any doubt regarding the declared value of the goods, the same may be appraised under rule 3 of the CVR, 2007. If there are significant differences arising from such comparison, Rule 12 of the CVR, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and condition of the goods, determine whether the declared transaction value conforms to Rule 3 of CVR, 2007. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9.

13. This circular supersedes circular 4/2008-Cus dated 12th February 2008.

14. Any difficulty in the implementation of the foregoing guidelines may be brought to the notice of the Board.

Yours faithfully,



(S. Kumar)

Commissioner (Cus & EP)

Phone: 011-2309 2080

Fax: 011-2309 4432

Form B

(Refer Para 12(e) of Circular No. 25/2015 dated 15th October 2015

[On the letter Head of the Chartered Engineer/firm if inspection report is issued in India]

I, _____ (name of chartered engineer) hereby certify that I have carried out an inspection of the used machinery covered under invoice no _____ dated _____ issued by _____ (name of co) as per the details below:-

I/We have visually inspected the second hand machinery/capital goods and certify the following:

- (i) Place of Inspection _____
- (ii) Date of Inspection _____
- (iii) Duration of inspection (in hours) _____

Details of Importer:

- (i) Name: _____
- (ii) Address: _____
- (iii) Importer Exporter Code No. _____

Details of the goods:

- i. Name of Manufacturer of the machine _____ (with address/country/tel/website, if available; in case of multiple machines or a plant, details may be provided in a separate sheet)
- ii. Year of the manufacture of machinery:
- iii. Serial no. / ID No. or the manufacturer's plate affixed on the machine: _____ (please also enclose a photograph)
- iv. Description of Machine
- v. Whether original invoice relating to the machine is available?
- vi. If yes, value _____ currency _____ Date of Invoice _____ (please enclose copy)
- vii. If no, please estimate the original sale price of the machinery:
- viii. Present condition of machinery and expected lifespan:

(In case the goods being inspected are second hand spares of capital goods, it should be certified whether "such spares have at least 80% residual life of original spare")
Refer: Para 2.31 of the Foreign Trade Policy 2015-20

(Please attach close up photographs of the machinery; multiple photographs may be taken, if necessary.)

- ix. Has any reconditioning or repairs been carried out immediately preceding this inspection: YES/No
- x. If yes, have these been carried out at the expense of the seller or by the purchaser or a third party?
- xi. Are there invoices to indicate the cost thereof: **YES/NO** (please enclose relevant invoices)
- xii. If No, then estimated cost thereof _____
- xiii. Please briefly describe the nature of repairs and/or refurbishment:
- xiv. Were any charges incurred by the purchaser, for dismantling, packing and transporting the machinery to the port of export? If yes, please indicate the charges _____
- xv. Any catalogues / documentation of the machine are available? If yes, please provide the details and copies.

(e) The following means/aids/technical reference material have been used for inspecting the goods:

- (i) _____
- (ii) _____
- (iii) _____

I/We hereby declare that the particulars and statements made in this certificate are true and correct..

Date _____ Signature _____

Seal of the
Inspecting
Agency

Name of the Inspecting

Person/Inspector _____

Designation _____

Address (office) _____

E Mail Address _____

Phone Number _____

Instructions:

1. This certificate shall be presented before Indian Customs (by the importer of the second hand machine(s)) as a part of the import declaration under Customs Act, 1962, which is a legal declaration
2. The Chartered Engineer must enclose a copy of the certificate issued by the Institute of Chartered Engineers which qualifies him to perform such appraisal/inspection
3. Please attach a copy of the relevant notification of DGFT which notifies the firm for Pre-shipment Inspection in India (where applicable) Or,
4. Please attach copy of Customs House letter authorising you / your firm as an empanelled chartered engineer.

Form A

(Refer Para 12(b) of Circular No. 25/2015 dated 15th October 2015)

**[On the letter head of the Chartered Engineer/Firm or
an equivalent entity in the country of sale]**

I, _____ (name of chartered engineer) hereby certify that I have carried out an inspection of the used machinery covered under invoice no _____ dated _____ issued by _____ (name of company/firm) as per the details below:-

I/We have visually inspected the second hand machinery/capital goods and certify the following:

- (a) (i) Country of Inspection _____
(ii) Place of Inspection _____
(iii) Date of Inspection _____
(iv) Duration of inspection (in hours) _____

(b) Details of seller:

- (i) Name: _____
(ii) Address: _____
(iii) Telephone No. _____
(iv) E-mail _____
(v) Status: Actual user or dealer

(c) Details of Importer:

- (i) Name: _____
(ii) Address: _____
(iii) Importer Exporter Code No. _____

(d) Details of the goods:

- i. Name of Manufacturer of the machine _____ (with address/country/tel/website, if available; in case of multiple machines or a plant, details may be provided in a separate sheet)
ii. Year of the manufacture of machinery:
iii. Serial no. / ID No. or the manufacturer's plate affixed on the machine: _____
(please also enclose a photograph)

- iv. Description of Machine
- v. Whether original invoice of the machine is available?
- vi. If yes, value ____ currency ____ Date of Invoice _____ (please enclose copy)
- vii. If no, please estimate the original sale price of the machinery,:
- viii. Present condition of machinery and expected lifespan:
(In case the goods being inspected are second hand spares of capital goods, it should be certified whether "such spares have at least 80% residual life of original spare")
Refer: Para 2.31 of the Foreign Trade Policy 2015-20
-
-
-
- (Please attach close up photographs of the machinery; multiple photographs may be taken, if necessary.)
- ix. Has any reconditioning or repairs been carried out immediately preceding this inspection:
YES/No
- x. If yes, have these been carried out at the expense of the seller or by the purchaser or a third party?
- xi. Are there invoices to indicate the cost thereof: **YES/NO** (please enclose relevant invoices)
- xii. If No, then estimated cost thereof _____
- xiii. Please briefly describe the nature of repairs and/or refurbishment:
- xiv. Are there any charges incurred / to be incurred by the purchaser, for dismantling, packing and transporting the machinery to the port of export? If yes, pi indicate the charges _____

xv. Any catalogues / documentation of the machine are available? If yes, please provide the details and copies.

(e) The following means/aids/technical reference material have been used for inspecting the goods:

(i) _____

(ii) _____

(iii) _____

I/We hereby declare that the particulars and statements made in this certificate are true and correct.

Date _____ Signature _____

Seal of the
Inspecting
Agency

Name of the Inspecting
Person/Inspector _____
Designation _____
Address (office) _____
E Mail Address _____
Phone Number _____

Instructions:

1. This certificate shall be presented before Indian Customs (by the importer of the second hand machine(s)) as a part of the import declaration under Customs Act, 1962, which is a legal declaration
2. The Chartered Engineer / Chartered Valuer / Qualified Expert must enclose a copy of the certificate issued by a national body which qualifies him to perform such appraisal/inspection
3. The photograph of the Chartered Engineer / Chartered Valuer / Qualified Expert shall be affixed to this report