

From : CRU Export NCH (cru-exportmcz1@gov.in)

To : asraf.mondal@gov.in

Cc :

Subject : Fwd: This is investigation report in respect of imports made by M/s Seo Yeong Diotech Pvt. Ltd., from their related supplier M/s Seo Yeong Co., Ltd., Korea. This is forwarded for necessary action as per Para 9 of CBEC Circular No. 05/2016 dated 09.02.2016.

Date : Aug 11 2021 12:51 PM

From: "CCU Customs Mumbai Zone I" <ccu-cusmum1@nic.in>

To: "pr.ccgeneral" <pr.cc-general@gov.in>, "NAGENDRA BHADUR" <import-1nch@gov.in>, "Tejas D Koli" <commr.import2@gov.in>, "CRU Export NCH" <cru-exportmcz1@gov.in>, "Chetankumar Shantilal Patel" <audit-commr.cusz1mum@gov.in>

Sent: Wednesday, August 11, 2021 11:37:57 AM

Subject: Fwd: This is investigation report in respect of imports made by M/s Seo Yeong Diotech Pvt. Ltd., from their related supplier M/s Seo Yeong Co., Ltd., Korea. This is forwarded for necessary action as per Para 9 of CBEC Circular No. 05/2016 dated 09.02.2016.

Respected Sir,

Please see email dated 10.08.2021 of SVB, Chennai therewith attached **SVB Investigation Report 77/2021 dated 09.08.2021 in case of M/s Seo Yeong Diotech Pvt. Ltd.**, the same is forwarded for information and necessary action please.

Regards,

**Principal Chief Commissioner's Office
Mumbai Customs Zone-I**

From: "CCU Customs Mumbai Zone I" <ccu-cusmum1@nic.in>

To: "Priyanka Nitin Kamble" <priyankank.c071601@gov.in>

Sent: Tuesday, August 10, 2021 4:50:09 PM

Subject: Fwd: This is investigation report in respect of imports made by M/s Seo Yeong Diotech Pvt. Ltd., from their related supplier M/s Seo Yeong Co., Ltd., Korea. This is forwarded for necessary action as per Para 9 of CBEC Circular No. 05/2016 dated 09.02.2016.

Regards,

**Principal Chief Commissioner's Office
Mumbai Customs Zone-I**

From: "ARUN KUMAR SHARMA" <svb-chennai3@gov.in>

To: "DGOV DGOV" <directorate.valuation@dov.gov.in>

Cc: svbnewdelhi@gmail.com, svbcustomsbacc@gmail.com, "Dinesh Damodaran" <szu.valuation@gov.in>, "chennai import office" <chennai-importoffice@gov.in>, "PrincipalCommissionerofCustoms(VII),AirCargoComplex,CHENNAI CHENNAICUS" <pcommr7acc-cuschn@gov.in>, "DGARM DELHI" <dgarm-cbec@gov.in>, custtech2016@gmail.com, "Goa Customs Commissionerate" <commr-cusgoa@nic.in>, "Vasanthagesan Murugesan" <vasanth.irs2009@gov.in>, "Commissioner" <commr@cochincustoms.gov.in>, "PrincipalCommissioner CustomHouseVisakhapatnam" <prcomm1-cusvzg@gov.in>, "cus kport" <cus.kport@gmail.com>, "CCU Customs Ahmedabad Zone" <ccu-cusamd@nic.in>, "customhouse customhouse" <cus-ahmd-guj@nic.in>, "CCP Jamnagar" <commr-custjmr@nic.in>, "Kandla Commissionerate" <commr-cuskandla@nic.in>, "COMMISSIONER MUNDRA" <commr-cusmundra@nic.in>, "AHMEDABADAPPEAL AHMEDABADAPPEAL" <commrappl-cusamd@nic.in>, "CCU Customs Bengaluru Zone" <ccu-cusblr@nic.in>, "Principal Commissioner of Customs, Bengaluru Airport and Air Cargo Complex" <commrappacc-cusblr@nic.in>, "Commissionerate of Customs Bangalore" <commr-citycusblr@nic.in>, "MANGALORE MANGALORE" <commr-cusmnglr@nic.in>, "COMMISSIONER AUDIT" <chennaicus-audit@gov.in>, "SUJATHA RAO G U" <aircusappl-chennai@gov.in>, "ARUN KUMAR SHARMA" <cusappl2-chennai@gov.in>, "CCU Customs Delhi Zone" <ccu-cusdel@nic.in>, "Manish Kumar" <cegen-delhi@gov.in>, "DELHIAIRCARGO Import DELHIAIRCARGO Import" <commraccimp-cusdel@nic.in>, "Sanjeeb Kumar Mishra" <imp.icdtkd@gov.in>, "DELHIPPGotherICDs DELHIPPGotherICDs" <commriddppg-cusdel@gov.in>, "Kavita Bhatnagar" <ccaudit.del@gov.in>, "DELHICUSTOMSAPPEAL DELHICUSTOMSAPPEAL" <commrappl-cusdel@nic.in>, "CCU Customs Prev. Delhi Zone" <cccpdz-cbec@nic.in>, "DELHI PREV DELHI PREV" <commrprev-cusdel@nic.in>, "Customs Ludhiana" <customs.ldh@gov.in>, "COMMISSIONER CUSTOMS PREVENTIVE AMRITSAR" <commr-cusasr@nic.in>, "Customs Preventive Commissionerate Jodhpur" <commr-cusjdpr@gov.in>, "CCU Customs Kolkata Zone" <ccu-cuskoa@nic.in>, "Prashant Kumar Rohit" <kolcus-airport@gov.in>, "NIMA PAKHRIN" <kolcus-port@gov.in>, "CUSTOMS PREVENTIVE WB" <commrprev-cuswb@nic.in>, "CCU Customs Mumbai Zone I" <ccu-cusmum1@nic.in>, "pr.ccgeneral" <pr.cc-

general@gov.in>, "NAGENDRA BHADUR" <import-1nch@gov.in>, "Tejas D Koli" <commr.import2@gov.in>, "Commissioner Customs Export Mumbai I" <comcusexp-mum1@gov.in>, "Chetankumar Shantilal Patel" <audit-commr.cusz1mum@gov.in>, "CCU Customs Mumbai Zone II" <ccu-cusmum2@nic.in>, "Commissioner NS GEN JNCH" <commr-nsgen@gov.in>, "Dinesh Kumar Fuldiya" <ns1-jnch@gov.in>, "N V Kulkarni" <commr-ns2@gov.in>, "N V KULKARNI" <commr-ns3@gov.in>, "D S GARBYAL" <commr-ns5@gov.in>, "Audit JNCH" <audit-jnch@gov.in>, "CCU Customs Mumbai Zone III" <cczone3@mumbaicustoms3.gov.in>, "Principal Commissioner of Customs" <commrap-cus1mum-3@nic.in>, "Airport Special Cargo Mumbai" <apsc.mumbai@gov.in>, "Mr. Vinayak Azaad" <import.acc@gov.in>, "Commissioner Export Air Cargo Complex Mumbai" <commr-cus4mum3@nic.in>, "Commissioner General Air Cargo Complex Mumbai" <commr-cus5mum3@nic.in>, "MUMBAI Preventive MUMBAI Preventive" <commrprev-cusmum@nic.in>, "CCU Customs Prev. Patna Zone" <ccu-cuspatna@nic.in>, "Cus Patna" <cuspatna@nic.in>, adcpv@commissionercustomslucknow.gov.in, "CCU Customs Prev. Trichy Zone" <ccuprev-custrichy@nic.in>, "TUTICORIN TUTICORIN" <commr-custuticorin@nic.in>, "TRICHYCUS(PRV) TRICHYCUS(PRV)" <commrprev-custrichy@nic.in>

Sent: Tuesday, August 10, 2021 3:04:40 PM

Subject: This is investigation report in respect of imports made by M/s Seo Yeong Dietech Pvt. Ltd., from their related supplier M/s Seo Yeong Co., Ltd., Korea. This is forwarded for necessary action as per Para 9 of CBEC Circular No. 05/2016 dated 09.02.2016.

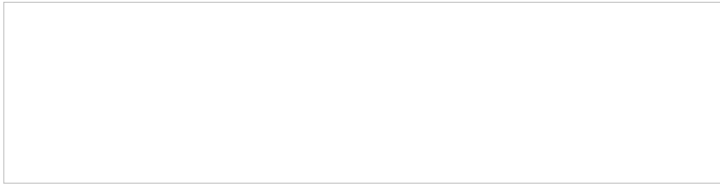
This is investigation report in respect of imports made by M/s Seo Yeong Dietech Pvt. Ltd., from their related supplier M/s Seo Yeong Co., Ltd., Korea.

This is forwarded for necessary action as per Para 9 of CBEC Circular No. 05/2016 dated 09.02.2016.

Regards,

Admin, SVB, Chennai

For any clarification, pl contact at svb-chennai3@gov.in





IS15700:2005 Cft No.SQ/L-6000159

वित्त मंत्रालय
राजस्वविभाग



MINISTRY OF FINANCE
DEPARTMENT OF
REVENUE
OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS, CHENNAI-III
CUSTOMS HOUSE, 60, RAJAJI SALAI, CHENNAI - 600001
Phone: 044 25221968, Fax: 044 25242425

प्रधानआयुक्तसीमाशुल्क का कार्यालय, चेन्नई - III

सीमाशुल्क गृह, 60, राजाजीसालै, चेन्नई-600001

दूरभाष: 04425221968, फैक्स:044 25242425

F.NO.S50/104/2011-SVB

Date: 09.08.2021

IEC: 0407017631

PAN No : AALCS0674C

DOV No: DOV0008046 & DOV0008047

INVESTIGATION REPORT: No.77/2021

Sub: Determination of Assessable Value of imports made by M/s Seo Yeong Dietech Pvt. Ltd., having their office at No.280/7B, Sengadu Village, Sriperumbudur Taluk, Kancheepuram District-602105 from their related foreign suppliers-M/s. Seo Yeong Co.,Ltd, #388-16, Samrak-Dong, Sasang-GU, Pusan, Korea. - Influence of relationship on Pricing Pattern - Issuance of Investigation Report- Reg.

Sl.No	Investigation conducted	Recommendations in the Investigation Report
1.	Relationship in terms of Rule 2(2) of CVR, 2007	The Importers M/s Seo Yeong Dietech Pvt. Ltd., having their office at No.280/7B, Sengadu Village, Sriperumbudur Taluk, Kancheepuram District-602105 from their related foreign suppliers-M/s. Seo Yeong Co., Ltd, #388-16, Samrak-Dong, Sasang-GU, Pusan, Korea are related in terms of Rule2(2)(iv)of CVR, 2007.
2.	Acceptance or Rejection of transactional value of imported goods under Rule 3 of CVR, 2007	The transaction value may be accepted in terms of Rule 3 3 (b) of CVR 2007 as no evidence of influence on transaction value is found as per documents submitted.
3.	Additions, if any, under Rule 10 (1) (c) to (e) of CVR 2007	There is no evidence of any payment over and above the invoice value of the imported goods to make any addition under the provisions of Rule 10 (1) (c) to (e) of the Customs Valuation Rules, 2007.

Brief Facts and Submissions

M/s Seo Yeong Dietech Pvt. Ltd., having their office at No.280/7B, Sengadu Village, Sriperumbudur Taluk, Kancheepuram District-602105 (hereinafter referred to as the "Importer"/"Indian Company") is a Private Limited Company, have imported goods from M/s. Seo Yeong Co., Ltd, #388-16, Samrak-Dong, Sasang-GU, Pusan, Korea. (hereinafter referred to as the "Foreign Company"/"Supplier"). The Indian company was incorporated under Companies Act, 1956 as Private Limited Company on 18.07.2007 with CIN No. U35900TN2007PTC064263. The Indian Company is a manufacturer, primarily engaged in the business of manufacture, process, assemble, import, export, produce, convert, fabricate, finish, remodel, recondition, buy, sell, design, handle, contract, subcontract or otherwise deal in and act as agent, brokers, stockists, transporters, consultants, advisors, service providers of jigs, fixtures, press tools machine tools, plastic injection mould, blow moulds, compression moulds and various other types of moulds, die casting dies comprising of gravity, sand and low and high pressure die casting dies, various components made out of steel, cast iron, plastics, aluminium, rubber, alloys or any other raw material, both general purpose

and special purpose machines, machinery parts, auto mobile components for automobile and engineering industries.

2. During the course of assessment of goods by the Assessing Group-4, Custom House, Import Commissionerate, Chennai has found that the Indian Company and the Foreign Supplier are related in terms of Rule 2(2) of the Customs Valuation (Determination of Value of imported goods) Rules, 2007 and after scrutinising the documents i.e., List of Directors, Articles and Memorandum of Association, & Certificate of Incorporation, submitted by the importer, assessed the Bill of Entry provisionally and referred the case to Special Valuation Branch, Custom House, Chennai vide their letter no. S.Misc-415/2011-Group-4 dated 17.11.2011 with the approval of Commissioner of Customs (Imports) for further investigation.

3. Accordingly, the case was registered vide F.No.S50/104/2011-SVB with DOV Registration No. DOV No. DOV0008046 & DOV0008047 and the case was taken up for investigation and Circular No. 144/2011 SVB dated 21.11.2011 was issued by SVB, Chennai, ordering for Provisional Duty Assessment with Extra Duty Deposit of 1% on the assessable value of goods in addition to the duty payable in terms of Board's Circular No. 11/2011 dated 23.02.2001 and also necessary documents were called for from the importers vide the above said Circular. The importers vide their letter dated 19.12.2011 submitted copies of duly filled in Annexure- I, II & III, Importer & Exporter Code Certificate, three years financial Reports (Audited), Company Memorandum and Articles of Association, Bills of Entry & Invoices, Copy of the agreement entered with the holding company, Copy of Pan Card, RBI approval letter and copies of Balance Sheets for the Financial Years 2008-09, 2009-10, 2010-11, duly certified by the Chartered Accountant.

4. The importers have submitted Annexure A & B as furnished below:

Annexure - A

Sl.No.	IMPORTER	
1.	Name & Address of the Importer	SEO YEONG DIETECH PVT LTD., No.280/7B, Sengadu Village, Sriperumbudur Taluk, Kancheepuram District-602105
1.1	IEC Code	0407017631
1.2	Central Excise Registration Number, if any	AALCS0674CEM002
1.3	Service Tax Registration number, if any,	AALCES0674CST001
1.4	PAN Number	AALCS0674C
2.	Whether the importer is a proprietorship/partnership/private limited company/public limited company/branch office of company incorporated outside India/wholly owned subsidiary etc.?	PRIVATE LIMITED
3.	Whether the importer is manufacturer of manufacturer cum trader or only a trader?	MANUFACTURER ONLY

3.1	If the Importer is a manufacturer, please provide address of unit(s); and jurisdictional Central Excise / Service Tax Commissionerate, division & range	SEO YEONG DIETECH PVT LTD., No.280/7B, Sengadu Village, Sriperumbudur Taluk, Kancheepuram District-602105 Central Excise No.AALCS0674CEM002 Commissionerate: 65 Chennai-IV Division: 07 Sriperumbudur Range: 01 Sriperumbudur.
3.2	If the Importer is a manufacturer, please briefly describe the manufacturing activity undertaken (principal inputs and description of goods manufactured)	Our major inputs is MS and SS steel block.
3.3	If the Importer is a manufacturer cum trader, please list the goods which are imported and traded	NIL
3.4	If the Importer is only a distribution & marketing company or maintenance & services co. etc., please briefly describe the business activity and commodities traded/serviced etc.	Manufacturing of Aluminium die casting Moulds & Dies
SELLER		
4.	Name, address, website of the foreign seller from whom the goods are imported	SEO YEONG CO LTD No. 383-16, SAMRAK-GONG, SASANG-GU, PUSAN, KOREA WEBSITE: WWW.MOLDSY.COM
4.1	Whether the seller is the manufacturer of the imported goods or a trader?	Manufacturing of Aluminium Die Casting Moulds & Dies
4.2	Please specify the clause of Rule 2(2), CVR 2007 in terms of which the Buyer (importer) and seller are related, if applicable - Please provide details of the relationship	Subsidiary Company
4.3	Please provide a gist and title of all agreement between the buyer (Importer) and the seller and / or with their associates	Enclosed
GOODS		
5.	Have goods identical to the goods imported under the present BE, been imported earlier? If yes, please provide details.	No.
5.1	Whether the importer has imported any capital goods, plant, machinery, equipment, etc. from the seller of the imported goods or its related or associated concerns?	Yes. Enclosed.
5.2	Does the seller of the imported goods supply the same directly to any other unrelated person in India? If so, please furnish details of other importers in India, if available	No.
5.3	Has the price of the goods been settled in manner consistent with the way the price is settled by the seller with unrelated buyers?	No.
5.4	Please provide the information under Rule 3(3)(b) of CVR, 2007, if any	No.
5.5	If the price of the imported goods determined on the basis of a price list? If yes, please provide copy of the price list and the basis of arriving at the invoice value	No.

5.6	If the price is not based upon a price list then is the price declared a Transfer Price?	No.
5.7	What is the basis on which the price has been settled between the buyer and seller?	Purchase Order.
Other payments (Costs & Services under Rule 10 of CVR, 2007)		
6.	Whether the goods imported by the importer are sold under a trade mark, design, licencing/royalty agreement or patent owned or controlled by the seller of the goods or any other person?	No.
6.1	Whether the product manufactured by the importer using the imported goods is sold under a trade mark, design, licencing/royalty agreement or patent owned or controlled by the seller of the goods or any other person?	No.
6.2	Whether any amount or any part of the proceeds of any subsequent resale, disposal or use of the imported goods accrues, directly or indirectly to the seller?	No.
6.3	Whether there are any other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller?	No.
6.4	Is any amount paid or payable, directly or indirectly to or on behalf of the seller of the imported goods in connection with the production of the imported goods? (for example materials, parts, components, tools, dies, moulds, engineering, development, art work, design work, plans or sketches undertaken elsewhere than in India)	No.
6.5	Are any services rendered by or on behalf of the importer relatable to the goods imported or undertaken on behalf of the seller of foreign goods?	No.
6.6	Will the price paid or payable by the importer be settled with the seller at the end of defined period by means of debit note / credit note (post – import price adjustment)?	No.
7.	Has the importer or any of its associates entered into an Advance Pricing Agreement with the Income Tax Authorities or obtained Advance Ruling? (Please enclose copy)	No.
Note		
1. The replies to this questionnaire shall be signed by the Authorise signatory of the importer accompanied by a self-certified copy of the statutory document as proof of such authorisation.		
2. In cases where the import takes place through CHs of Mumbai / Delhi / Chennai / Kolkata / Bangalore, the importer will be free to select the SVB of Customs House of Import or the Customs House most proximate to the Corporate Office, as convenient to him.		

Annexure - B

Details of Importer		
1.	Name of the Importer with full address of the Corporate Office, registered office, administrative office/factory	SEO YEONG DIETECH PVT LTD., No.280/7B, Sengadu Village, Sriperumbudur Taluk, Kancheepuram District-602105.
1.1	Please attach a copy of the Annex A filed at the Customs Station	Attached
1.2	Please provide the copy of the bill of entry, invoice, bill of lading, packing list and LC in respect of which Annex A was filed	Attached
1.3	Please provide copies of all provisionally assessed bills of entry and accompanying invoice, bill of lading, packing list and LC since filing of Annex A at all ports	Attached
1.4	Please provide Annual reports, if any, for a period of upto three preceding years	Yes
1.5	Please provide Balance Sheets, if any, for a period of upto three preceding years	Yes
1.6	Please provide, copy of Transfer Pricing report filed before Income Tax Dept, if any, or a Transfer Pricing Report prepared for Customs Purposes / Tax Purposes, if any	No.
1.7	Please provide copy of Advance Pricing Agreement, if any	No.
1.8	Whether the importer has imported any capital goods, plant, machinery, equipment, etc., from the seller of the importer goods or its related or associated person? Please furnish copies of Bills of Entry, Invoice, Packing list, bill of lading & LC (or remittance details), as applicable.	No.
Details of goods imported		
2.	Whether the imported goods are component parts of CKD / SKD sets of local assembly into finished goods? If yes, furnish a complete list of the items imported in CKD / SKD condition	No.
3.	Are the imported goods or identical or similar goods (meaning assigned in terms of CVR, 2007) internationally quoted in any data bases, commodity exchanges, industry publications (e.g. PLATT, Public Ledge etc)? If yes, Please provide details of price listings and copies of relevant printed material.	No.
3.1	If the imported goods are for stock & sale, please provide a pricelist of sale in India of the imported goods.	No.
3.2	If the imported goods are for captive consumption by the importer please provide the price list of the goods manufactured and sold in India.	No.
Terms & Conditions of Sale		
4.	Whether the imported items are exclusively supplied by the sellers to the importer in India?	Yes.

4.1	Whether the product imported is sold under a trade mark, design or patent owned or controlled by the seller of the goods or any other person? If yes, please provide details and copies of the agreements.	No.
4.2	Whether the importer is incurring any expenses on behalf of the seller or their associates? If yes, please provide copies of the agreement and details of the expenses incurred.	No.
4.3	Whether any amounts are paid by the importer in the form of agency commission, overriding commission or any other remuneration, including that for services rendered by or on behalf of the seller, to other importers in India or to the seller of the imported goods, or their related or associated concerns or persons. If yes, please provide copies of the agreements and details of such expenses.	No.
4.4	Is the price paid or payable by the importer to the settled with the seller at a future date by means of debit note /credit note (Post – Import price adjustment)? If yes, please provide details.	No.
Relationship particulars		
5.	Specify the role, if ay, of the seller or any of its associate business entities, in your corporate policy, design specification, quality control, marketing, sub-licensing of patent, franchise, etc.?	No.
5.1	Whether any legal liabilities created by contracts or agreements entered into by the seller devolve on the importer? If so, details thereof.	No.
5.2	Whether the seller is in a position, directly or indirectly, to exercise restraint over the importer, legally or operationally, in any manner? If so, details thereof.	No.
5.3	Whether the converse position for serial no.5.2 of 5.3 applies? If so, details thereof.	No.
5.4	Whether any third party is in a position, directly or indirectly, to exercise restraint over both the importer and the seller of imported goods, legally or operationally, in any manner? If so details thereof.	No.
5.5	Whether the importer and the seller of the imported goods, together, are in a position, directly or indirectly, to exercise restraint over a third person, legally or operationally, in any manner? If so, details thereof.	No.

5. The submissions made by the importers in Annexure A & B and their letters dated 19.12.2011 and 07.12.2016 are as follows:

- The importers are Private Limited Company;
- The importers are Manufacturers.

- The Suppliers are Manufacturers of Moulds & Dies;
- Nature of transaction is sale to the importers;
- The importers have imported Capital goods from the Suppliers (Para 5.1 Annexure A);
- The Indian Company has declared in Para 5.2 of Annexure-A that identical/similar goods are not being supplied by the Seller to any other unrelated buyers in India;
- The price of the imported goods are based on the Purchase Orders raised by the importers;
- The importers have declared in Para 4.4 of Annexure-B that no Debit Notes or Credit Notes in favour of the seller were issued;
- The imported items are exclusively supplied by the Sellers to the importers in India;
- The importers have not entered into any Advance Pricing Agreement with the Income Tax authorities (Para 7 Annexure -A);
- No amount or any part of the proceeds of any, subsequent resale, disposal or use of the imported goods accrues, directly or indirectly to the seller (Para 6.2, Annexure-A);
- No amount has been actually paid or to be paid as a condition of sale of the imported goods by the buyer to the seller or by the Buyer to the third party to satisfy an obligation to the seller; (Para 6.3, Annexure-A)
- No amount paid or payable, directly or indirectly to or on behalf of the seller of the imported goods in connection with the production of the imported goods; (Para 6.4, Annexure-A)
- No services rendered by or on behalf of the importers relating to the goods imported or undertaken on behalf of the seller of Foreign goods (Para 6.5, Annexure-A);

DISCUSSIONS AND FINDINGS

6. The records of the case, including all the written submissions made by the importers have been scrutinized and the following facts emerge:

7. Relationship between the Importers and the Suppliers:

As per the declaration made by the importers in Annexure-A, the Indian company- M/s Seo Yeong Dietech Pvt. Ltd., Chennai, is controlled by M/s. Seo Yeong Co., Ltd, Korea which is the ultimate holding Company. The share holding pattern of the Indian Company, as per the Notes to the Financial Statement for the year ended 31stMarch, 2016, is as below:

Table-1 - The share holding pattern of the Indian Company

Sl.No	Share holder's name	No.of Shares	% of total shares of the company
1	M/s. Seo Yeong Co. Ltd., Korea (the holding company)	35,29,421	99.99%
2	Dongsuk Kim	10	00.01%
	Total	35,29,431	100%

8. By virtue of this relationship, the Indian Company and the Foreign Suppliers are related in terms of Rule 2(2)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

9. Transaction Value

The importers are manufacturers, primarily engaged in the business of manufacture, process, assemble, import, export, produce, convert, fabricate, finish, remodel, recondition, buy, sell, design, handle, contract, subcontract or otherwise deal in and act as agent, brokers, stockists, transporters, consultants, advisors, service providers of jigs, fixtures, press tools machine tools, plastic injection mould, blow moulds, compression moulds and various other types of moulds, die casting dies comprising of gravity, sand and low and high pressure die casting dies, various components made out of steel, cast iron, plastics, aluminium, rubber, alloys or any other raw material, both general purpose and special purpose machines, machinery parts, auto mobile components for automobile and engineering industries. The importers have declared in the Annexure-A that the price of the goods imported are determined as per the Purchase Orders raised by the importers; and the Seller does not sell the identical/similar goods to any other unrelated buyer in India.

10. For the sake of brevity the Rule 3(3) of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 are reproduced below:

“Rule 3 of Customs Valuation Rules, 2007 for Determination of the method of Valuation:-

(a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicates that the relationship did not influence the price.”

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;”

11. Thus the transaction value of imported goods can be accepted if either of the conditions of Rules 3(3) (a) or 3 (3) (b) are fulfilled. The importers are primarily engaged in the business of manufacture, process, assemble, import, export, produce, convert, fabricate, finish, remodel, recondition, buy, sell, design, handle, contract, subcontract or otherwise deal in and act as agent, brokers, stockists, transporters, consultants, advisors, service providers of jigs, fixtures, press tools machine tools, plastic injection mould, blow moulds, compression moulds and various other types of moulds, die casting dies comprising of gravity, sand and low and high pressure die casting dies, various components made out of steel, cast iron, plastics, aluminium, rubber, alloys or any other raw material, both general purpose and special purpose machines, machinery parts, automobile components for automobile and engineering industries. The importers have declared in Annexure-A Sl.no. 5.7 that the price has been settled between the Buyer and Seller on the basis of the Purchase Orders raised by the Importers. The importers have submitted copies of the Purchase Orders

raised by the importers along with copies of Bills of Entry & Invoices. Comparative study of the declared Invoice Prices of the imported items with relevant Purchase Orders and the Bills of Entry, in respect of some of their imports were made and the findings are tabulated below:-

Table-2: Comparative study of Unit prices mentioned in the Purchase Orders, Invoices and the Bills of Entry.

S.No	Description	Purchase order No. & date	Unit price as per the purchase order	Invoice No. & date	Unit Price (as per Import Invoice) (USD)	(QTY. as per B/E)	B/E No & Date
1	Mould Die Insert - HMI Kappa 1.2	SEO/20-21/060 15.05.2020	\$13000	JUN,08 TH ,2020 08.06.2020	\$13000	1 Set	8062220/ 02.07.2020
2	Mould Die Insert - Nissan Oil Pan LS #3	SEO/20-21/064 25.06.2020	\$45000	JUN,25 TH , 2020 25.06.2020	\$45000	1 Set	8192970/ 17.07.2020
3	Mould Die Insert - Cover Coolent Duct # 6	SEO/19-20/72 07.09.2019	\$78000	JUL,03 TH , 2019 07.07.2019	\$78000	1 Set	4186978 /23.07.2019
4	Mould Die Insert - U2 T.C Cover #4	SEO/18-19/086 17.07.2018	\$26652	SEP, 21 TH , 2018 21.09.2018	\$26652	1 Set	8388953 /09.10.2018
5	Mould Die Insert - 3 CYL Case Front Die M34	SEO/17-18/092 21.10.2017	\$22730	SY271117 27.11.2017	\$22730	1 Set	4215221 /01.12.2017
6	Mould Die Insert - Kappa 1.0 C/Block #1	SEO/17-18/044 26.05.2017	\$4400	SY290717 07.07.2017	\$4400	1 Set	2690439/ 02.08.2017
7	Mould Die Insert - U2 1.7 T/C Cover # 2	SEO/17-18/059 30.05.2017	\$17600	SY160217A 16.08.2017	\$17,600	2 Set	2962555/ 24.08.2017
8	Mould Die Insert - Kappa 1.0 C/Block #3	SEO/17-18/065 01.06.2017	\$7100	SY310817 31.08.2017	\$7100	1 Set	3513394/ 06.10.2017
9	Mould Die Insert - Kappa 1.2 C/Block # 1	SEO/16-17/026 06.04.2016	\$43300	MAY,18 TH ,201 6 18.05.2016	\$43300	1 Set	5610266/ 13.06.2016
10	Mould Die Insert - YB Rack Housing LH	SEO/16-17/089 18.06.2016	\$17910	2308216 23.08.2016	\$17910	1 Set	6574769/ 01.09.2016

12. From the above table, it is seen that the unit prices mentioned in the import invoices of related suppliers, Purchase Orders and Bills of Entry declared values are matching.

13. The importers in their submissions have stated that their foreign supplier does not supply identical or similar goods to any other unrelated buyers in India and the items are exclusively supplied to the importer. To cross verify the above, the EDW data from DOV website was searched and it is found that the related supplier had not supplied identical or similar goods to any third party in India during the contemporary period. Therefore, comparison of identical or similar third party supplies from same supplier is not feasible.

14. Further, the importers have attempted to demonstrate that the transaction value of sample of the main items imported is in line with normally acceptable profit margin by furnishing a Cost Construction Statement on the strength of related imports, Invoice / Bill of Entry and Local Sales Invoice. The Cost Construction Statement (Deductive method) produced by the Importers vide their letter dated 21.06.2021 is furnished below:

Table-3: Cost Construction Statement (Deductive method) submitted by the Indian Company.

ITEM DESCP.	Selling price	Administrative Expenses			Landing Cost			Total cost of the goods (C+D+E+ F+G+H)	Profit (B-I) in Rs. & in %
		Sales & marketing expense	Personnel & General Admin Expenses	Warehouse & Transport Expenses	CIJ Value of the goods	Duty per unit	Clearing Cost .		
AMOUNT IN RUPEES									
A	B	C	D	E	F	G	H	I	J
Mold Die Insert-Kappa 1.4MP1	2400000	168000	240000	72000	1495000	123338	2711	2101049	298951 12.46%
Mold Die Insert-Slide NO1	825000	57750	82500	24750	523250	43168	2711	734129	90871 11.01%
Mold Die Insert-Slide Gamma2	2375000	166250	237500	71250	1495000	123338	2711	2096049	278951 11.75%
Mold Die Insert-Slide No.1	1240000	86800	124000	37200	822250	67836	2711	1140797	99203 8.00%
HYD Cylinder (RT-180-190ST)	52000	3640	5200	1560	29900	2467	2711	45478	6522 12.5%
HYD Cylinder (S210S-1D 1DS70N30)	52000	3640	5200	1560	29900	2467	2711	45478	6522 12.5%
Mold Die Insert-KAPPA New 1.2 CYL Block No.1-4	6250000	437500	625000	187500	3901920	321908	17194	5491022	758978 12.14%
Mold Die Insert-Oil Pan BR10HS	5500000	385000	550000	165000	3424500	282521	20761	4827782	672218 12.122%
Mold Die Insert-KAPPA New1.2 CYL.D Block No.1	3200000	224000	320000	96000	2003300	165272	16715	2825287	374713 11.71%
Insert Core PIN Spare (Gamma2)	310000	21700	31000	9300	175835	14506	23555	275896	34104 11.00%

15. The interpretative Notes to Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007, provides that:

“Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm’s overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced”.

16. In the instant case, from the above table, it is seen that the margin of profit made by the Indian Company is 8% to 12.5% on items supplied by the related foreign suppliers, which is normal in such kind of business.

17. Thus, on the above examination of circumstances surrounding the sale reveals the fact that the invoice prices adopted by their related suppliers to the Indian Company appears to be at arm’s length as if it is between a buyer and a seller in the normal course of International trade.

18. In view of the above, it seems that the relationship does not have any influence on the unit price of the imports. Hence, the declared invoice price of the imported goods from related foreign supplier can be accepted as Transaction Value under Rule 3 (3) (b) read with Rule 7 of the Customs Valuation Rules, 2007 based on comparison of test values.

19. Addition, if any, under Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

As regards the issue as to whether there is any requirement of addition of any value / cost / payment to the transaction value in terms of Rule 10 (1) (c), (d) or (e) of

the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, it is observed that in reply to the Questionnaire the importers have inter alia submitted the following:

- (a) The Indian company has not incurred any expenses on behalf of the seller or its associates;
- (b) No amount or any part of the proceeds of any, subsequent resale, disposal or use of the imported goods accrues, directly or indirectly to the seller;
- (c) No amount has been actually paid or to be paid as a condition of sale of the imported goods by the buyer to the seller or by the Buyer to the third party to satisfy an obligation to the seller;
- (d) No amount paid or payable, directly or indirectly to or on behalf of the seller of the imported goods in connection with the production of the imported goods (for example: materials, parts, components, tools, dies, moulds, engineering, development, art work, design work, plans or sketches undertaken elsewhere than in India);
- (e) No services rendered by or on behalf of the importers relatable to the goods imported or undertaken on behalf of the seller of Foreign goods;
- (f) The Indian Company have declared that the goods imported are not sold under a trade mark, design, licensing/royalty agreement or patent owned or controlled by the seller of the goods or any other person;

20. Indian Company had entered into a Technical Licence Agreement with M/s. Seo Yeong Co.Ltd., Korea w.e.f. 01.11.2007 and subsequently was amended on 01.04.2016. The Technical Licence Agreement read with the amending agreement provides as follows:

“Article 2: Grant Licence:

2.1 LICENSOR hereby grants to LICENSEE on the terms and conditions of this Licence Agreement an exclusive, nontransferable licence to manufacture use and sell the Licenced Products using the Industrial Property Rights and Technical Information furnished by LICENSOR in the Contract Territory”.

“Article 6: Consideration: 6.1 In consideration of the Technical information and the Industrial Property Rights furnished by LICENSOR to LICENSEE under this agreement, LICENSEE shall pay to LICENSOR the following sums of money in the manner specified below:

- (a) Royalty: 8% of the sale price. The sale price for this purpose shall be exclusive of the taxes levied by the Government, State or Central, on sales of the Licensed Products.
- (b) Royalty shall be computed for and at the end of every calendar year ending December of each year. The LICENSEE shall make payment to LICENSOR within 3 years after receipt of relevant Invoice from LICENSOR.”

21. As per provision of Rule 10(1)(c) of CVR, 2007 :-

“royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable” should be addable to the transaction value.

22. Further Rule 10(1)(e) of Customs Valuation Rules, 2007 stipulates that:-

“all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable” should be addable to the transaction value.

Explanation to the Rule 10(1)(e) says that *“Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.”*

23. Based on the interpretation of the above Rules, it has been established during various rulings of Hon'ble Courts & Tribunals that for including the Royalty to assessable value, the following two conditions have to be fulfilled:

- i. There is a nexus between goods imported & payment of royalty;
- ii. Royalty is pre-condition for sale of goods.

24. The importers have submitted the Royalty Statement as on 31.03.2020 certified by their Chartered Accountant on 19.04.2021, as mentioned below:

Table-4: ROYALTY STATEMENT SUBMITTED BY THE IMPORTERS:

Sl. No	Financial Year	Period	Total Sales Value (Excluding Tax) (Rs.)	% of Royalty	Royalty Value (Rs.)	% of TDS	Value of TDS	Royalty Payable	Royalty Paid
1	2007-08							Nil	Nil
2	2008-09							Nil	Nil
3	2009-10							Nil	Nil
4	2010-11							Nil	Nil
5	2011-12							Nil	Nil
6	2012-13							Nil	Nil
7	2013-14							Nil	Nil
8	2014-15							Nil	Nil
9	2015-16							Nil	Nil
10	2016-17	Apr-Jun Q1	2,00,14,250	8	16,01,140	10.30	1,64,918	14,36,222	14,36,222
		Jul-Sep Q2	4,01,48,850	8	32,11,908	10.30	3,30,827	28,81,081	Nil
		Oct-Dec Q3	2,74,22,000	8	21,93,760	10.30	2,25,958	19,67,802	Nil
		Jan-Mar Q4	4,01,84,992	8	32,14,799	10.30	3,31,125	28,83,674	Nil
11	2017-18							Nil	Nil
12	2018-19							Nil	Nil
13	2019-20							Nil	Nil
14	2020-21							Nil	Nil
	Total Royalty		12,77,70,092		1,02,21,607		10,52,828	91,68,779	14,36,222
	(LESS) Remitted Value of Royalty							14,36,222	
	Net Payable in Balance Sheet							77,32,557	

25. In this case, as per the Technical Licence Agreement which was effective from 01.11.2007 read with the amendment dated 01.04.2016 to the said Licence Agreement, Royalty is payable by the Indian Company for the use of Industrial Property Rights and Technical Information furnished by LICENSOR to the Licensor M/s. Seo Yeong Co. Ltd., Korea, Royalty at the rate of 8% of the sale price exclusive of the taxes levied by the Government, State or Central, on sales of the Licenced Products. On perusal of the Balance Sheets for the for the years 2011-2020 submitted by the importers and the Royalty Statement submitted by the importers, it is seen that the importers have paid Royalty for the year 2016-17 only and they have

not paid any Royalty for the Financial Years 2007-2008 to 2015-2016 and from 2017-2018 to 2019-2020.

26. Shri. Kumaresan, Assistant Manager, Finance of the Indian Company had appeared for the personal hearing held before the then Deputy Commissioner of Customs (SVB) on 13.03.2014 and stated that as of date they have not paid any Royalty to their foreign supplier; that however in future they will be paying Royalty amounts to their supplier when there is a profit in their activity.

27. The importers vide their letter dated 11.08.2014 have submitted a Certificate issued by the Chartered Accountants of the Indian Company, wherein the Chartered Accountants-M/s. Sukumar & Associates have certified that no Royalty/or Technical Fees has been provided or made in the company books for the periods 1st April 2007-08 to 31st March 2014.

28. Further, the importers vide their letter dated 30.07.2021 have declared that they have paid Royalty only for the financial year 2016-17; that due to financial crisis they have not paid any Royalty other than for the financial year 2016-17; that as per the Royalty Agreement, they have calculated the royalty 8% on the total sales value (excluding applicable taxes) for the Financial Year 2016-17; Royalty payment is not a pre-condition for supply of goods by the parent company M/s. Seo Yeong Co. Ltd., and royalty is payable only on sales of the Indian Company; that the Indian company is free to procure goods from other than the Foreign suppliers and hence the royalty is not includable in the assessable of the imported goods.

29. From the above submissions made by the importers, it is observed that the importers have demonstrated vide their submissions that royalty payment is not a condition of sale of the imported goods. Further, it is observed that, a conjoint reading of the Technical Licence Agreement which was effective from 01.11.2007 and the Amendment dated 01.04.2016 to the said Technical Licence Agreement does not lead to the conclusion that the Royalty paid/payable by the Indian Company for the licensed technology are, in any way, a pre-condition to the sale of the imported goods.

30. From the above emerging facts and as per the above submissions of the importers, it is found that the amount paid by the Indian company towards Royalty are not addable to their declared invoice value, under Rule 10 (1) (c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

31. Further, the importers have entered into a Technical Fee Agreement with M/s. Seo Yeong, Korea on 01.04.2016 for sending Engineers/Technicians from M/s. Seo Yeong, Korea for assisting the Indian Company in the manufacture of the Licenced products, for consideration.

32. On careful examination of the said Technical Fee Agreement, it is observed that the Indian Company has incurred expenses towards salary, travelling expenses etc., for the visit of Engineers/Technicians from M/s. Seo Yeong, Korea in order to provide technical assistance in the manufacture of the Licenced products.

Therefore, these payments are not related to the Imported goods and do not fall under the purview of Rule 10(1) (d) & (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, these expenses are not addable to the transaction value under the provisions of the CVR, 2007.

33. Further, in view of the above submissions made by the importers and from the copy of the Balance sheets and copy of 3CEB reports for the years 2011-2012 to 2019-2020, no flow back of payments to the foreign suppliers was noticed which requires addition under Rule 10 (1) (d) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In view of the above, no addition is warranted under Rule 10 (1) (c), (d) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

34. In terms of CBIC Circular No.05/2016 dated 09.02.2016, in any case, where, the circumstances of sale or terms and conditions of the agreement between buyer and related seller change, or any other payments of the kind referred under Rule 10 (1) (c), (d) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 become payable, the importers shall be required to declare the same at the place of import in the prescribed format at Annexure-C of the said Circular. Therefore, as and when any change in the circumstances of sale or terms and conditions of the agreement between the Importer and their related foreign Suppliers change or any payment which needs to be added to the declared invoice values under Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the importer is under an obligation to bring the said facts to the notice of the respective Assessing Group in terms of CBIC Circular No.05/2016 dated 09.02.2016.

CONCLUSION

35. From the above analysis of information provided by the Importer to this Branch for issuance of Investigation Report the following facts emerge:

a. Relationship between the Importers and the Foreign Suppliers:

The Importers and the Foreign Suppliers are related persons in terms of Rule 2(2) (iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

b. Acceptance or Rejection of transactional value of imported goods:

The transaction value may be accepted in terms of Rule 3(3) (b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

c. Payments other than invoice values of imported goods:

There is no evidence of any payment over and above the invoice value of the imported goods to make any addition under the provisions of Rule 10(1)(c) to (e) of the Customs Valuation (Determination of value of imported Goods) Rules, 2007. Hence, no addition can be made under Rule 10(1)(c)(d) & (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

d. This investigation report is based solely on the basis of Importer's information and declarations made in various written submissions made to this Branch.

- e. This does not take into account any suppression or mis-declaration affecting the invoice value which shall be dealt with appropriately under the law and procedure as and when noticed. This decision shall be reviewed as and when information, additional or contrary to whatsoever furnished, is brought to the notice of this Branch.
- f. This Investigation Report is forwarded to all Customs stations for necessary action as per CBEC Circular No.5/2016 dated 09.02.2016.

This is issued with the approval of the Pr. Commissioner (Preventive), Chennai III Commissionerate.

Badal Panigrahi
9.8.2021

(BADAL PANIGRAHI)

Assistant Commissioner of Customs
Special Valuation Branch (CH III)

To

The Asst./Deputy Commissioner of Customs, Group-4,
Commissionerate II, Custom House, Chennai – 600 001.

Copy to:

1. The Joint Director(RMD),
O/o The Additional Director General,(R.M.D.)
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New Marine Lines, Mumbai-400 020.
2. The Joint/Additional Commissioner,
Directorate General of Valuation,
Southern Zonal Unit, Chennai-01.
3. The Principal Commissioner/ Commissioner of Customs (Chennai I, II, III, IV, VII, VIII),
Custom House, Chennai 600001 (for information)
4. The Deputy Commissioner of Customs,(SVB)
The O/o Commissioner of Customs New Custom House,
IGI Airport, New Delhi-110037.
5. The Deputy Commissioner of Customs,(SVB),The O/o Commissioner of Customs, Custom
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The O/o Commissioner of Customs,GATT Valuation Cell,
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7. The Deputy Commissioner of Customs (SVB),
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9. The Deputy Commissioner GR 1, Customs House, Chennai-600001.
10. The Deputy Commissioner GR II, Customs House, Chennai-600001.
11. The Deputy Commissioner GR III, Customs House, Chennai-600001.
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14. The Deputy Commissioner GR VI, Customs House, Chennai-600001.
15. The Deputy Commissioner GR 7, Customs House, Chennai-600001.
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