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**Royal Malaysian
Customs Department**

**“The
descriptions of
the goods
imported were
not clearly
stated as
contactless smart
cards and plastic
cards”**

Case 1: Kad Bestari Co. Ltd.

1. Fact of the case:

- 1.1 Kad Bestari Co. Ltd. in Malaysia imports smart cards, plastic cards, magnetic stripe cards and card reader from supplier F in country.
- 1.2 The importer was audited by Post Clearance Audit Section of the Royal Malaysian Customs Department in year 2006.

2. Findings Of PCA

- 2.1 Checking of the import documents and account, it was found that the declared values were the price actually paid or payable to supplier F.
- 2.2 Further checks of documents on importations of contactless smart cards and plastic cards it was found that they were declared using tariff code: 8542.10.000 which does not levies any tax.
- 2.3 Contactless smart cards and plastic cards should be classified under the appropriate tariff codes, 8543.81.000 which levies a 10 % sales tax and 8523.30.000 which levies 20% import duty and 10% sales tax respectively.
- 2.4 Short paid duties amounted to 193,000 c.u.

3. Modus Operandi

- 3.1 Contactless smart cards and plastic cards were falsely declared as contact smart cards on importation using incorrect tariff code to avoid paying duties and taxes.
- 3.2 The descriptions of the goods imported were not clearly stated as contactless smart cards and plastic cards.

4. Decision By Customs

Bill of demand on the short paid duties payable was issued to Kad Bestari Co. Ltd.

“MBC placed orders for goods to be imported directly to the supplier”

1. Facts Of The Case

- 1.1 M-Baru Co. Ltd. (MBC) in Malaysia imports tiles and other products from supplier G in Country W.
- 1.2 MBC was audited by Post Clearance Audit Section of the Royal Malaysian Customs Department in year 2009.

2. Findings Of PCA

- 2.1 For a period of three years from 2006 to 2008 audited, MBC imported tiles declared amounting to over 360,000 c.u.. Forwarding agent M, handled the importations.
- 2.2 Checking on import documents and account, it was found that there were two sets of invoices for the same goods imported. The descriptions of the goods on both invoices for each transaction were the same except for the price of the goods.
- 2.3 Invoices supplied by MBC to the forwarding agent for customs clearance indicated very much lower prices for the goods compared to the prices for payments to the supplier as per invoices found at the MBC premises.
- 2.4 Short paid duties amounted to 300,000 c.u.

3. Modus Operandi

- 3.1 MBC placed orders for goods to be imported directly to the supplier.
- 3.2 Payments for the goods were made through telegraphic transfers as per invoices issued by the supplier G.
- 3.3 MBC issued another set of invoices at much lower prices for the goods to forwarding agent M for payment of taxes and customs clearance.

4. Decision By Customs

- 4.1 Bill of demand on the short paid duties payable was issued to MBC.
- 4.2 MBC was also compounded for fraudulent evasion of tax, which was an offence under the Malaysian Customs Act 1967.

Case 3: Matahari Enterprise

“MHE declared goods imported which does not include buying commissions received from HCL”

1. Facts Of The Case

- 1.1 Matahari Enterprise (MHE) in Malaysia imports garments from supplier N in country X. Goods imported is solely sold to Hijau Co. Ltd. (HCL).
- 1.2 MHE was audited by Post Clearance Audit Section of the Royal Malaysian Customs Department in year 2008.

2. Findings Of PCA

- 2.1 Checking on import documents and account, it was found that the declared values were the price paid by MHE to supplier N.
- 2.2 MHE is the sole agent for supplier N. Although no agreements being signed, MHE is to undertake to be supplier N's distributor, receive orders on behalf of N, shipping, forwarding and customs clearance arrangements.
- 2.3 MHE however did signed an escrow agreement with HCL. The agreement states that all orders and payments from HCL must be made to MHE for the goods imported from supplier N. Customs duties, forwarding charges, other fees and related expenses to be borne by HCL.
- 2.4 MHE will receive a 20% commission for each invoice issued by supplier N. MHE issued invoices to HCL, which includes CIF value of the goods, customs duties and forwarding charges and 20% commission on the value of the goods as per invoice issued by supplier N to MHE.
- 2.5 HCL is the real buyer and owner of the goods.
- 2.6 Short paid duties amounted to 50,000 c.u.

3. Modus Operandi

- 3.1 MHE declared goods imported which does not include buying commissions received from HCL.
- 3.2 Payments made by HCL for the goods and buying commissions to MHE through telegraphic transfers. Subsequently payments for the goods to supplier N were made by MHE
- 3.3 Buying commissions being part of the price actually paid or payable were not declared as to evade customs duties levied.

4. Decision By Customs

Bill of demand on the short paid duties payable was issued to MHE.

“Upon inspection of documents at the premises of the company, the audit team detected errors on the price declared...”

1. Facts of the case:

The business of this company includes importing and retailing in fresh vegetables, fruits, perishable goods and canned food. These goods were imported from country X, Y and Z.

2. Findings

Upon inspection of documents at the premises of the company the audit team detected errors on the price declared to Customs which cannot be accepted as the customs value. The findings are as follows:

2.1. Sales Commissions

Found several consignments of goods imported by ABC PTE. Ltd. involving elements of the sales commission charges that were not added as part of the custom's value upon declaration.

2.2. Double invoicing

Two pieces of invoice were found to have the same serial number and has been used for different purposes, namely:

- a. The first invoice was used for submission to the bank for the purpose of making payment to the supplier.
- b. The second invoice was used for declaration to the customs authorities. The value of goods in this invoice was lower as compared to the first invoice.

2.3. Blank original invoice of exporters.

- a. Blank original invoices with the names of 26 suppliers / exporters from various countries were found at the company premises.
- b. The blank invoices had information such as:
 - (i) Letterhead, name and address of the exporter
 - (ii) Rubber stamp of exporting companies
 - (iii) Signatures of suppliers
 - (iv) Column with subheadings for: number, type of goods, quantity, unit price and total.

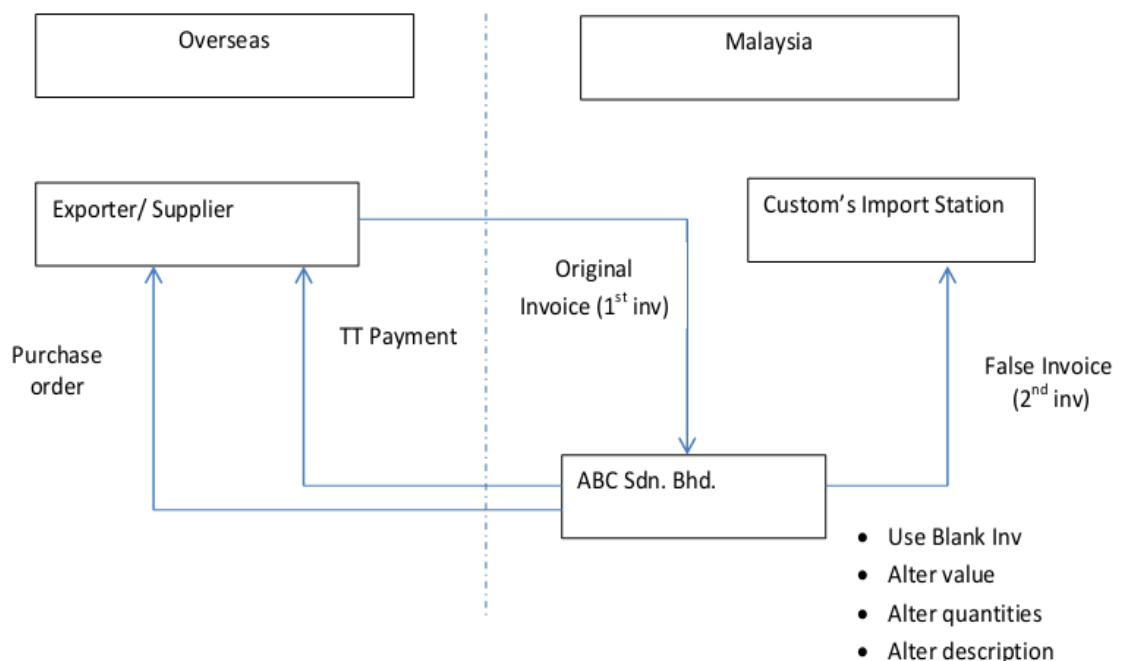
2.4. Goods not declared

- a. Some original invoice of exporters that were found at the premise could not be matched and cross checked with the import declaration because there was no detail information about the imports in the invoices that can be used as guide such as bill of lading, container number and the name of the ship.
- b. Upon further inspection of documents there were indications that ABC PTE. Ltd. deliberately avoided paying customs duties and taxes by not declaring imported goods, particularly those of a high duty/tax rates.

3. Modus Operandi

- 3.1. Modus operandi of this company can be summarized by reference to the import transaction flow charts and declaration as the diagram below.

ABC PTE. Ltd. Business Transaction.



- 3.2. ABC PTE. Ltd. manipulated information of the goods particularly when it comes to the importation of fruits mainly from Company BB Ltd (X country) and CC Co. Ltd. (Y country).

- 3.3. ABC PTE. Ltd. falsified the description of goods in the invoices used for declaration as follows:

- 3.3.1. Dutiable/taxable goods like fruits were declared as non-dutiable/taxable such as vegetables. This Modus operandi used by ABC PTE. Ltd was for importation from country X.

3.3.2. High-taxable goods were declared in lesser quantities than the actual quantity of imports. For instances China Lemon 0% import duty and 10% sales tax were declared in lesser quantities than actual. The differences in quantity were adjusted by increasing the quantity of low taxable goods such as pears which involve import duties of 0% and 5% sales tax.

3.3.3. ABC PTE. Ltd. copied the original invoice by creating new computer printed invoice in order to lower the actual value.

4. Decision

4.1. The declared value was not accepted as custom's value and a claim for short payment of duty/sales tax amounting to 70,000.00 c.u was issued to ABC Pt. LTD.

4.2. In addition, ABC PT. Ltd. was compounded 5,000.00 c.u for offense committed.

4.3. ABC PT. Ltd. paid the compound and amount of the claim in full.

Case 5: AAB Pt. Ltd

1. Facts of the case:

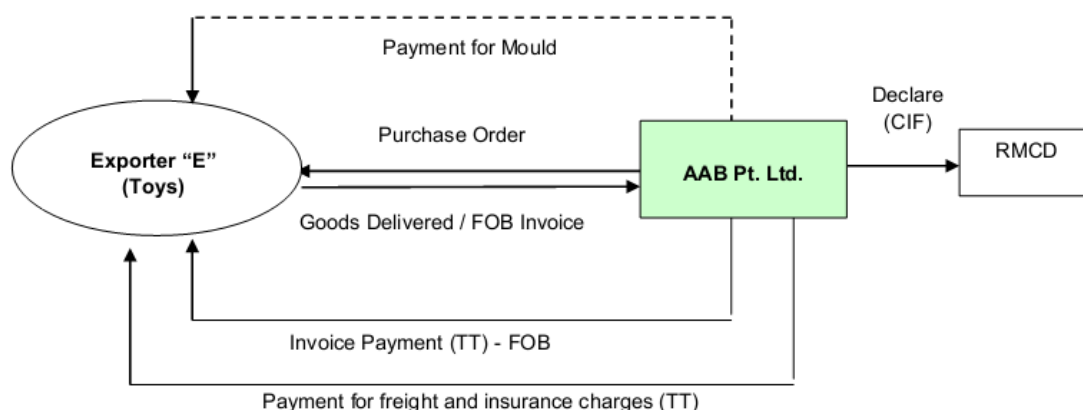
AAB Pt. Ltd is an importer, wholesaler and retailer of toys and baby products. These goods are imported from various suppliers from Country CC and DD.

2. Findings

- 2.1. A review on the company's ledger was done. The audit discovered various payment vouchers made to exporters for goods, insurance, freight and moulds.
- 2.2. Certain exporters' term of delivery was FOB. However, the same FOB value was declared by AAB Pt. Ltd. as CIF. Separate payment vouchers for insurance and freight were also discovered during the review.
- 2.3. Several payments were made by AAB Pt. Ltd. to exporter "E" for the development and provision of moulds for toys. The cost of mould was borne by AAB Pt. Ltd. and was not included in the price of goods charged by the exporter.

3. Modus Operandi

Transactions by AAB Pt. LTD with exporter "E" is shown in the diagram below.



3.1. FOB Invoice was declared as CIF value.

3.2. AAB Pt. Ltd made separate payments for freight and insurance charges for imported goods.

3.3. AAB Pt. Ltd didn't declare payments made for moulds on toys. The price actually paid or payable did not included the element of mould in accordance with regulation 5 (1) (a) (iii) Customs (Rules of Valuation) Regulations 1999 (Article 8(b) (ii) of the Agreement). The mould cost was incurred by AAB Pt. Ltd and there is objective and quantifiable data to form the basis for the addition.

4. Decision.

4.1. In determining the customs value, the value of assists i.e. the moulds shall be added to the price actually paid or payable for the imported goods in accordance with regulation 5 (1) (a) (iii) Customs (Rules of Valuation) Regulations 1999.

4.2. Additionally the payment of freight and insurance must also be included to the value of imported goods in accordance with regulation 5 (1) (a) (vii) Customs (Rules of Valuation) Regulations 1999.

4.3. A claim for short payment of duty/sales tax amounting to 50,000.00 c.u was issued and AAB Pt. Ltd was also compounded 1,000.00 c.u for offence committed.

4.4. AAB Pt. Ltd paid the compound and claim in full.



Singapore Customs

Case 6: Fraudulent Evasion of Customs Duty and GST

Brief Facts:

Importer A set up a sole proprietorship to import Japanese cars of various makes from suppliers in Japan between August 2006 and September 2007.

With the fraudulent intent to evade duty and GST, importer A deliberately arranged for the commercial invoices to reflect lower values than what he had actually paid for. Importer A then used these invoices to under-declare the value of the cars when he applied for import permits from Singapore Customs to bring the cars into Singapore for local sales.

With the help of computer forensics, crucial evidence relating to the under-declaration of values was obtained from the computers seized from Importer A's premise. The case was reinforced when our investigators managed to uncover the excess payments made by Importer A through reconciliation of the voluminous documents and records seized from him.

On 15 September 2010, Importer A was sentenced by the Court to fines totalling \$526,000 or in default, 54 weeks' imprisonment for fraudulent evasion of duty and Goods and Services Tax (GST) on 41 cars imported from Japan. The duty and GST evaded on these cars amounted to \$40,953.85 and \$12,286.15 respectively. Importer A pleaded guilty to 24 charges and the remaining 246 charges were taken into consideration.

Case 7: False Declaration of Country of Origin

“The country of origin of the goods was falsely declared”

Brief Facts:

A Company X and Person A were found guilty of fraudulent circumvention of origin involving the export of 54,568 pieces of ladies' garments valued at USD 99,592.86 to the United States. The country of origin of the goods was falsely declared as Indonesia when in actual fact; the country of origin was China.

The goods were earlier imported into Singapore from China and consigned to Person A who was asked by the China supplier to find a buyer in Singapore. As Person A was unable to find a buyer in Singapore, the China supplier instructed Person A to re-export the garments to the United States and to coordinate the arrangement for the re-exportation.

Person A then contacted Company X to arrange for the shipment to the United States, including obtaining the export permit. However, Person A furnished documents to Company X showing that the country of origin was Indonesia.

Company X then engaged the services of Company Y to obtain the export permit. Company X also provided Company Y with the false information that they had received from Person A even though Company X knew the information was false, as they had arranged for the earlier import permit for the same consignment.

The case was successfully solved through meticulous scrutiny of the import and re-export documents retrieved from the various parties.

On 20 October 2009, Company X was sentenced by the Court to a fine of \$4,000 and Person A was sentenced by the Court on 13 November 2009 to a fine of \$6,000 or in default- 3 weeks of imprisonment for making a false declaration under the Regulation of Imports and Exports Act.



**Directorate General of
Customs and Excise of
Indonesia**

**“The Customs
values which
were declared
by the importers
informed only
the printing cost
of film copies”**

Case 8: Implementation of PCA to the Film Importers: Royalty Case

Background Issues:

1. To follow up the intra department meeting on February 11th 2010 at The Centre of State Revenue Policy of Fiscal Policy Board, a meeting was held between chairman of National Board of Film Consideration (BP2N) and Head of Fiscal Policy Board (BKF) to conclude that the calculation of customs value for import movies merely based on printing price of the film copy not included royalties and dividend.
2. On March 26th 2010 the National Board of Film Consideration (BP2N) sent a letter to Director General of Customs and Excise requesting determination of customs value for import movies based on normal values because:
 - Taxes imposed to the national movies so far was higher than those of import movies.
 - Based on data from the website of Mojo Film Box Office, the revenues from circulating some of import movies that were paid to the film producer (52 titles) for the period of April 2009 until February 2010 amounted almost USD 60 million or equals to IDR 570 Billions (USD 1 = IDR 9,500)
3. On April 12th 2010 Director General of Foreign Trade sent a letter to Chief of BP2N informing that there was a unique factors of film containing Intellectual Property Right (IPR) so that the determination of customs values could not merely use a standard average price per meter i.e USD 0.43/meter.
4. On June 17th 2010 Head of Fiscal Policy Board (BKF) sent a letter to BP2N concerning the Issuance of Fiscal Incentive for National Film Industries and the determination of import movies that was as the result of the implementation of Customs Law No. 17/2006 not merely a policy.

The Facts

1. The procedure of declaring price of import goods is based on self assessment principles meaning that importers declare the price based on the price actually paid or payable.
2. So far the customs value of import movies only USD 0.43 per meter or approximately USD 1,290 for one roll of film. The local movies producers need much more costs than that amount to produce one movie.
3. Import movies are classified in HS Code 3706 with imposition of 10% duty.
4. Based on WTO Valuation Agreement ratified with Law No. 7/1994 about the Ratification of Agreement on Establishing the World Trade Organization and adopted by Customs Law No.10/1995 (amended Customs Law No. 17/2006) Directorate General of Customs and Excise has authority to carry out re-assessment in form of Post Clearance Audit (PCA).

5. The re-assessment was carried out selectively based on risk management with the consideration of volume of importation, import values, profile of importers, profile of commodities and other information/references.
6. Directorate of Audit carried out Post Clearance audit based on Task Letters No. ST-192/BC.6/2010, ST-193/BC.6/2010, ST-197/BC.6/2010 dated July 13th 2010 to the three biggest film importers.

The Results

From re-assessment through Post Clearance Audit, Directorate General of Customs and Excise concluded that:

- ✓ The Customs values which were declared by the importers informed only the printing cost of film copies.
- ✓ PCA found out fee paid to film producers for the value of IPR that was used as distribution costs which was in fact categorized as royalty.
- ✓ PCA determined that the fees which were categorized as royalty shall be added to the customs value. The total amount should be paid by film importers as the result of PCA implementation was IDR 388,589,371,000,- or equals to USD 40,904,144,- (USD 1 = IDR 9,500).

Best Practices

1. The explanation of WTO Valuation Agreement Article 8 para 1(c) #2: payment by the buyers for the purpose of distribution right or resale right of the import goods is not added to price paid or payable if the payment is not a requirement of goods sold to importing countries.
2. The decision of Committee on Customs Valuation No. 4.1/1984 states that cinematic, sound and video recording are not categorized as data and instruction so that the calculation of customs value is not only to the media carrier.
3. The definition of royalty and license by Organization of Economic Cooperation and Development (OECD) in ACVG para 1.6 point *t* states that royalty and licenses are all kind of payment in relation with the use, the right to use, IPR of literatures, artistic or scientific including cinematograph, film, patent, design or model, plan, formula, or secret process, or the use of or the right to use of industrial equipment commercially or scientifically, or the use of information of industrial experiences commercially or scientifically.



**General Department
of Cambodia
Customs and Excise**

**“...the importers
and their
brokers have
committed
fraudulent acts
by exploiting
from the
complexity of
classification of
goods.”**

Case 9: Fraudulent Acts by The Importers and Their Brokers

Cases:

1. On 24 March 2010, PCA team of the Department of Legal Affairs, PCA and Public Relation, stationed at Sihanoukville Customs, General Department of Cambodia Customs and Excise, implemented the Post Clearance Review by reviewing the import declarations imported by an import – export company, based on the risk management system’s indicator. This review led to the review of other 9 import declarations in 2008 and 2009. The review produced the result that the case was under the commercial fraud of misclassification of goods. The goods involved were organic chemicals of 1,000 drums.

The misclassification led to the loss of millions of Cambodia Riel to revenues for the government. Implementing customs law and regulation, the commercial fraud is one of customs offences so that it was filed with offence record/report to the Dispute Settlement Office for decision. The Consequence is that the company was fined with a huge amount of money to recover the revenue loss by this misclassification, and the credit of company was down graded in the risk management system.

2. On 24 November 2009, PCA team of the Department of Legal Affairs, PCA and Public Relation, stationed at Sihanoukville Customs, General Department of Cambodia Customs and Excise, implemented the Post Clearance Review by reviewing the import declarations imported by an import – export company, based on the risk management system’s indicator. The review produced the result that the case is under the commercial fraud of misclassification of goods. The goods involved were conditioners of 5 cartons, shampoo of 105 cartons, and cris coated green peas, cris mix nut of 20 cartons.

The misclassification led to the loss of equal to the difference amount of duty and tax of about more than 2 millions of Cambodia Riel. Implementing customs law and regulation, the commercial fraud is one of customs offences so that it was filed with offence record/report to the Dispute Settlement Office for decision. The Consequence was that the company was fined with some amounts of money to recover the lost amount by this misclassification, and the credit of company was down graded in the risk management system. The local brokerage firm who declared for the importer for this shipment was also down graded.

3. On 11 September 2009, PCA team of the Department of Legal Affairs, PCA and Public Relation, stationed at Sihanoukville Customs, General

Department of Cambodia Customs and Excise, implemented the Post Clearance Review by reviewing the import declarations imported by a local import – export company, based on the risk management system's indicator. The review produced the result that the case is under the commercial fraud of misclassification of goods. The goods involved are coffee 3 in 1 of 30 cartons.

The misclassification led to the loss which equal to the difference amount of duty and tax of about more than 2 millions of Cambodia Riel. Implementing customs law and regulation, the commercial fraud is one of customs offences so that it was filed with offence record/report to the Dispute Settlement Office for decision. The Consequence is that the company was fined with some amounts of money to recover the lost amount by this misclassification, and the credit of company was down graded in the risk management system. The local brokerage firm who declared for the importer for this shipment was also down graded.

4. On 07 September 2010, PCA team of the Department of Legal Affairs, PCA and Public Relation, stationed at Sihanoukville Customs, General Department of Cambodia Customs and Excise, implemented the Post Clearance Review by reviewing the import declarations imported by a local import – export company, based on the risk management system's indicator. The review produced the result that the case is under the commercial fraud of misclassification of goods. The goods involved were kitchen racks of 181 cartons.

The misclassification led to the loss which equal to the difference amount of duty and tax of about approximately 7 millions of Cambodia Riel. Implementing customs law and regulation, the commercial fraud is one of customs offences so that it was filed with offence record/report to the Dispute Settlement Office for decision. The Consequence is that the company was fined with some amounts of money to recover the lost amount by this misclassification, and the credit of company was down graded in the risk management system. The individual broker who declared for the importer for this shipment was also down graded.

Common Feature of Fraud

From the above 4 cases, we observed that the importers and their brokers have committed fraudulent acts by exploiting from the complexity of classification of goods. Different classification leads to different level of customs duty rate. The HS declared by importers and their brokers is the one with lower customs duty rate and they are not intended looking at the excise tax and VAT for general cargo. However, for some specific goods with high customs duty and excise tax, the fraudulent acts are so serious.



Royal Thai Customs

Case 10: Determining Transaction Value –Reimport Goods After Process

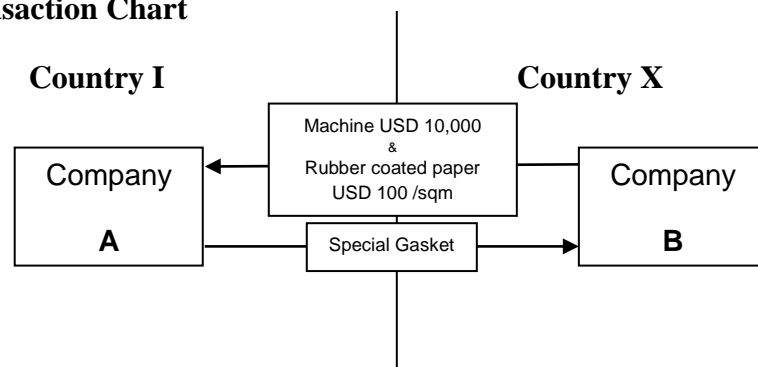
Fact of transaction

Company B is a big company in country X which produces motors but it could not produce a special gaskets. So, company B engaged company A to produce these products by sending machine, know how, training, and send necessary raw materials (rubber coated paper). The leasing price of machine was USD 10,000 in 2 years and B must also sent rubber coated paper (raw material) to company A. It was declared to customs USD 100 /sqm for raw materials and USD 10,000 for machine. There was agreement between Company A and B in a period of 5 years to produce this products and the life time of the machine was 5 years. After producing the products(gaskets), they must be sent back to company B.

Questions

1. Should the price of the machine USD 10,000 be transaction value?
2. What is the price of raw material(rubber coated paper) that should be declared to customs?
3. What is the principle of GATT Valuation should be used to support the answer?

Transaction Chart



Consideration

The importation of machine and raw materials was not sold for export to the country of importation but company A leased the machine and supported the raw material by B. In addition, company A must sent back the products to B. In this case, there are restrictions as to the

disposition or use of the goods. So, the transaction value of machine and raw materials are not acceptable for customs purpose.

For the machine, the customs value of the imported goods cannot be determined under the provision of Article I. Therefore, customs value shall be transaction value of identical or similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued, deductive value, computed value, and fall back respectively. In this case, the machine was very special because it must sent by company B and couldn't be bought anywhere. So, the customs value shall be determined by fall back method, using Article I of GATT Valuation again.

For the rubber coated paper, it must be sent from company B and produce the gaskets and then sent back to company B. company A couldn't sell to the other company. There is restrictions as to the disposition of the goods by the buyer. So, it shall not be transaction value, identical value and similar value. In addition, both of deductive and computed value cannot be accepted because the sale price was subject to some condition and you couldn't find the deductions, the cost or the value of the materials and fabrication or the other processing employed in producing the imported goods.

Therefore, If the customs value of the goods cannot be determined under the provisions of Article I through 6, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Article VII of GATT and on of the basis of data available in the country of importation.

Opinion

1. Transaction Value of the machine should be USD 25,000.
2. Transaction Value of rubber coated paper is USD 100 /sqm.
3. Use paragraph 1(b) on Note to Article I of GATT Valuation.

Case 11: Determining Transaction Value - Returnable Part

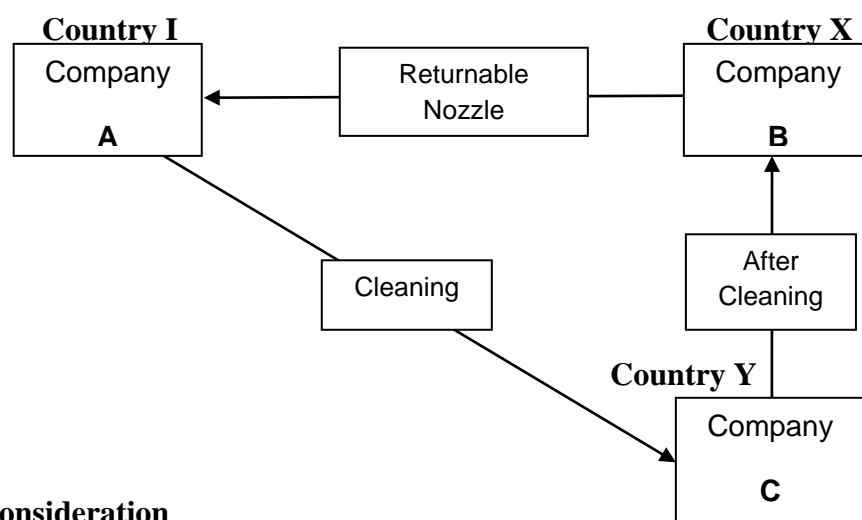
Fact of transaction

Company A is a petroleum company in country I and use nozzle (part) to support the energy for the machine. This part is a special part. After using this part for 6 months, it must be removed and sent to company C in country Y for cleaning. Company A can't stop the operation more than 72 hours, so the other nozzles will be sent from company B in country X. Company B in country X is an agent to distribute this products. The price of nozzle declared in invoice was USD 100,000, guarantee at USD 300,000 and it showed the word "returnable part" at the end of invoice.

Questions

1. Should the price USD 100,000 in invoice be the transaction value or not?
2. If not, what is the transaction value of this product?

Transaction Chart



Consideration

1. The price declared in invoice is USD 100,000 can't be use as the customs value because
 - Value of the price which declare in invoice (USD 100,000) is less than nozzle valuable that give to the company(USD 300,000).

- At the end of the invoice had the word “returnable part”, it was a condition of the sale or price.
 - You don’t know the imported goods which sent from Company B is the returnable part or the new one.
2. If the customs value of the imported goods couldnot be determined under the provisions of Article I, customs value shall be transaction value of identical goods, similar goods, deductive value, computed value and fall back respectively.
 - We cannot be determined under the Article II or Article III(identical or similar goods) because of the special part and neither the imported goods nor identical nor similar goods are sold at or about the time of importation.
 - Cannot use the deductive value, although the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation. The use of this valuation method would be unjustified.
 - Cannot use the computed value because we don’t know the cost or value of materials and fabrication or other processing employed in producing the imported goods.
 - So, if the customs value of the goods cannot be determined under the provisions of Article I through 6, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Article VII of GATT and on of the basis of data available in the country of importation.
 3. In paragraph 1(b) On Note to Article I of GATT Valuation, if the sale or price is subjected to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. In this case, there is the condition because the imported goods is the returnable part.
 4. Practically, the guarantee should be 85-90 % of the actual price.
 5. So, the reasonable price should not be less than USD 300,000.

Opinion

1. If we don’t know the price of the new one, transaction value of the goods should be USD 300,000.
2. Paragraph 1(b) on Note to Article I of GATT Valuation should be used to explained this case.