

From : CRU Export NCH (cru-exportmcz1@gov.in)
To : asraf.mondal@gov.in
Cc :
Subject : Fwd: import from related supplier M/s. STAND21, FRANCE
Date : 12/04/2021 07:40:54

From: "Arjit Sagar" <arjit.sagar81@gov.in>
To: "CRU Export NCH" <cru-exportmcz1@gov.in>
Sent: Monday, April 12, 2021 12:33:47 PM
Subject: Fwd: import from related supplier M/s. STAND21, FRANCE

From: "Commissioner Customs Export Mumbai I" <comcusexp-mum1@gov.in>
To: "Rishi Yadav" <rishiyadav.81@gov.in>, "Arjit Sagar" <arjit.sagar81@gov.in>
Sent: Tuesday, March 30, 2021 3:06:04 PM
Subject: Fwd: import from related supplier M/s. STAND21, FRANCE

(Manish Mani Tiwari)
Commissioner of Customs (Export)
2nd Floor, New Custom House,
Ballard Estate, Mumbai.
Phone: +91-22-22620845

From: noreply-cbic1@nic.in
To: comcusexp-mum1@gov.in
Sent: Tuesday, March 30, 2021 1:12:14 PM
Subject: import from related supplier M/s. STAND21, FRANCE

This is investigation report No. 39/2021 dated 29.03.2021 in respect of imports made by M/s Stand21 Exports (India) Private Limited, from their related supplier M/s Stand21, France. 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 MINISTRY OF FINANCE

राजस्वविभाग DEPARTMENT OF REVENUE

IS 15700



प्रधानआयुक्तसीमाशुल्क का कार्यालय, चेन्नई - III

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CHENNAI-III

सीमाशुल्क गृह, 60, राजाजीसालै, चेन्नई-600001

CUSTOMS HOUSE, 60, RAJAJI SALAI, CHENNAI - 600001

दूरभाष: 04425221968

Phone: 044 25221968

F.No.S50/24/2011-SVB

Dated: 29 /03/2021

INVESTIGATION REPORT NO: 39 /2021

IEC NO. : 0402028597

PAN NO. AAGCS8964E

DOV No. DOV 0006784

Sub: Determination of Assessable Value of goods imported by **M/s. STAND21 EXPORTS (INDIA) PRIVATE LIMITED**, having their registered office at Shed No. 7/7, Hi-Tech Industrial Park, M.T.H Road, Ambattur Industrial Estate, Chennai – 600 058 from their related foreign supplier **M/s. Stand21 France** having its principal place of business at #12, Rue des Novalles, 21240 Dijon, Talant, France in terms of Section 14 of the Customs Act, 1962, read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 - Influence of Relationship on Pricing Pattern/Transaction Value of the goods - 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. STAND21 EXPORTS (INDIA) PRIVATE LIMITED , having their registered office at Shed No. 7/7, Hi-Tech Industrial Park, M.T.H Road, Ambattur Industrial Estate, Chennai – 600 058 from their related foreign supplier M/s. Stand21 France , #12, Ruedes Novalles, 21240 Dijon, Talant, France are related in terms of Rule 2 (2) (iv) of CVR, 2007. |
| 2. | Acceptance or Rejection of transactional value of imported goods under Rule 3 of CVR, 2007 | Transaction Value may be accepted in terms of Rule 3(3)(b) of the CVR, 2007 as no evidence of influence on transaction value is found as per documents submitted. |
| 3. | Additions, if any, under Rule 10 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. M/s. STAND21 EXPORTS (INDIA) PRIVATE LIMITED, having their registered office at Shed No. 7/7, Hi-Tech Industrial Park, M.T.H Road, Ambattur Industrial Estate, Chennai – 600 058 (hereinafter referred to as the “Importer” / “Indian Company”) is a Private Limited Company, have imported goods from **M/s. Stand21 France** having its principal place of business at #12, Ruedes novalles, 21240 Dijon, Talant, France (hereinafter referred to as the “Supplier” / “Seller” / “Foreign Company”). The Indian company was incorporated under the Companies Act, 2013 as Private Limited Company on 06.08.2002 with CIN No.U51311TN2002PTC049373 Indian Company. The importers are Manufactures and exporters solely engaged in manufacture and export of car racer safety wears viz., overalls, under wears, gloves and shoes.

2. During the course of Assessment of goods, Group-3, Air Commissionerate, Air Cargo Complex, Meenambakkam, Chennai – 600027, after scrutinizing the documents i.e., Copy of Memorandum of Association, Article of Association and copy of Company PAN Card, referred the case to SVB, Chennai on 18.04.2011 with the approval of Commissioner of Customs (AIR) for further investigation vide file S. Misc. 038/2011 - Gr.3.
3. Accordingly, the case was registered vide F.No.S50/24/2011-SVB with DOV Registration No. **DOV 0006784** and the case was taken up for investigation and their imports from the said supplier were ordered to be assessed provisionally with Extra Duty Deposit of 1% vide Circular 24/2011-SVB dated 27.05.2011. Necessary documents were called for from the importers vide this office letters dated 18.01.2013, 25.01.2016, 16.03.2016 and 12.01.2017 and summons dated 27.10.2017 and 05.02.2019 were also served on the importers under section 108 of the Customs Act, 1962.
4. As the importers have not furnished the required documents, the EDD was enhanced to 5% vide this office Circular 71/2011 dated 19.08.2011. The importers vide their letter dated 21.02.2019 and 18.03.2019 submitted that their maximum imports were input materials cleared under Customs Notification 32/1997 –Cus. dated 01.04.1997 for Job work and for 100% export thereafter and under Advance Licences with actual user condition for job work purpose and the imported materials from the related foreign suppliers are supplied to the importers on “free of cost basis”. The importers have also stated that occasionally, for their urgent requirements they have imported inputs (minimum quantity) “on free of cost basis” from their supplier M/s.

Stand21, France for which they have paid full Customs duties; that however such duty paid materials also were used only for manufacturing their export products as per the Export Order of the foreign supplier. The Importers have also submitted that their products are specially designed exclusively for Car Racers safety purpose made from 100% Aramide fabric, 50% Viscose Fire retardant + 50% Aramide fabric. Further, the importers have submitted the following documents:

a) DOCUMENTS RELATING TO IMPORT UNDER DUTY EXEMPTION SCHEME:

- Yearwise Bill of Entries with import invoices and Export Order Purchase Contracts.
- Export obligation completed details with "End User Certificate" and "EODC" issued by the Central Excise, Customs Department and DGFT.

b) DOCUMENTS RELATING TO IMPORTS UNDER FULL CUSTOMS DUTY PAID:

- Year wise Bill of Entries with Import Invoices.
- Relevant Export Invoice with Shipping Bills.

5. Subsequently, the Importers vide their letter dated 18.07.2019 submitted the following documents:-

- Annexure A & B as per CBIC Circular No. 05/2016-Customs dated 09.02.2016;
- Self certified copy of the statutory documents as proof of signatory authorization;
- Self certified Service Agreement dated 01.04.2018 entered between M/s.Stand21 France and M/s. Stand21 Exports India Private Limited, Chennai;
- Self Certified copy of the Memorandum of Association of the Indian Company;
- Copies of Annual Reports & Balance Sheets for the Financial years 2015-16,2016-17,2017-18 & 2019-20 duly certified by the Chartered Accountant;
- Transfer Pricing report filed before Income Tax Department for the year 2019-20.

6. Further, the importers vide their letter dated 23.03.2021 have declared that they have not paid any Royalty amount or any agency commission to the foreign supplier; that the resultant products manufactured by them out of the duty paid imported materials are for export purpose only; that the importers are not selling any products in domestic area.

7. The submissions made by the importers in Annexure A & B and their letters dated 21.02.2019, 18.03.2019, 12.07.2019, 18.07.2019 & 23.03.2021 are as follows:

- The importers are Private Limited Company;
- The importers are manufacturers and 100% exporters of car racer safety wears viz., Overalls, underwears, gloves, helmet parts and shoes;
- The Indian Company have declared that they are importing the goods from their foreign Supplier- M/s. Stand21, #12 RUE DES NOVALLES, 21240 Dijon, Talant, France;
- The Sellers are Traders;
- The Indian Company have entered into an Service Agreement with the foreign supplier with effect from 1st April 2018;

- As per the declaration made by the importers at Sl.no. 5.7 of Annexure-A, the Seller supplies the goods to the importer on "Free of Cost Basis;
- The importers have not imported any Capital goods from the Supplier;
- 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 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 importer in India;
- The importers have not entered into any Licensing/Royalty agreement with the seller;
- 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;
- 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;
- 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;
- The importers have not paid any Royalty amount or any agency commission to the foreign supplier;
- The resultant products manufactured by the importers out of the duty paid imported materials supplied by the foreign suppliers are for export purpose only;
- The importers are not selling any products in domestic area.
- The importers have submitted that occasionally, for their urgent requirements they have imported inputs (minimum quantity) "on free of cost basis" from their supplier M/s. Stand21, France for which they have paid full Customs duties;
- The importers have declared that the duty paid materials also were used only for manufacturing their export products as per the Export Order of the foreign supplier.

DISCUSSIONS AND FINDINGS

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

9. Relationship between the Importer and the Supplier:

As per the declaration made by the importers vide their letter dated 23.03.2021 and the Financial Statement for the year ended 31st March 2020 the share holding pattern of the Indian Company is as mentioned below:

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

| Sl. No. | Share holder's name | No. of Shares | % of Share holding |
|---------|----------------------------------|------------------|--------------------|
| 1. | M/s. STAND21 SARL, France | 74,79,984 | 99.86634% |
| 2. | Shri. Balasubramanian Manimannan | 10 | 0.00013 |
| 3. | Shri. Parimanam Prabhakar | 1 | 0.00001 |
| 4. | Smt. Ponjini Sivalingam | 9000 | 0.12016 |
| 5. | Smt. Deavakey Saraswathy | 1000 | 0.01335 |
| | Total | 74,89,995 | 100% |

10. 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.

11. Transaction Value

The importers are Manufactures and exporters solely engaged in manufacture and export of car racer safety wears viz., overalls, under wears, gloves and shoes. The importers have entered into an Service Agreement with the foreign supplier with effect from 1st April 2018; the Seller supplies the goods to the importer on "Free of Cost Basis; their maximum imports were input materials cleared under Customs Notification 32/1997 –Cus. dated 01.04.1997 for Job work and for 100% export thereafter and under Advance Licences with actual user condition for job work purpose and the imported materials from the related foreign suppliers are supplied to the importers on "free of cost basis". The importers have also stated that occasionally, for their urgent requirements they have imported inputs (minimum quantity) "on free of cost basis" from their supplier M/s. Stand21, France for which they have paid full Customs duties; that however such duty paid materials also were used only for manufacturing their export products as per the Export Order of the foreign supplier and the importers have also declared that the Seller does not sell the goods to any other unrelated buyer in India.

12. 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;"

13. 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 Manufactures and exporters solely engaged in manufacture and export of car racer safety wears viz., overalls, under wears, gloves and shoes. The Indian Company have entered into a Service Agreement dated 01.04.2018 with M/s. STAND21, France for work orders. The importers have cleared their input materials under Customs Notification 32/1997 –Cus. dated 01.04.1997 for Job work and for 100% export thereafter to the same overseas supplier and under Advance Licenses with actual user condition for job work purpose and the imported materials from the related foreign suppliers are supplied to the importers on “free of cost basis”.

14. The importers have stated that their foreign suppliers are not supplying identical/similar goods to any other Indian importer and the items are exclusively supplied to the importer. Further on retrieval of the EDW data from DOV website, 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 suppliers is not feasible.

15. The importer vide their letter dated 23.03.2021 have submitted the Cost Construction Statement with the margin of profit details in respect of the imported goods. The importers have attempted to demonstrate that the transaction value of samples of the main items imported is in line with normally acceptable profit margin by furnishing a Cost Construction Statement (Deductive method) in respect of some of the items imported from the foreign suppliers as tabulated below:

Table-1 Cost construction statement

| Sl. No. | Item Descp. & Model no. | CIF value of the goods (per Unit) | Customs duty | Clearing Cost | Transport Cost | Embroidery charges | Production & general admin expenses | Total cost | Profit | Importer's selling Invoice No. date (export Invoice No./ date) | Selling Price | Profit (in %) |
|--------------------|-------------------------------|-----------------------------------|--------------|---------------|----------------|--------------------|-------------------------------------|------------|--------|--|---------------|---------------|
| (Amount in Rupees) | | | | | | | | | | | | |
| 1. | Inputs for Mechanic Overhauls | 14281* | 4340** | 150 | 92 | 1500 | 3000 | 4742 | 2558 | STEI/123/19-20 dated 06.03.2020 | 7300 | 54% |
| 2. | Inputs for Underwear | 1305* | 380** | 20 | 5 | 0 | 250 | 275 | 74 | STEI/049/20--21 dated 16.07.2020 | 349 | 27% |
| 3. | Inputs for Gloves | 7723* | 2183** | 20 | 5 | 500 | 600 | 1125 | 485 | STEI/015/20-21 dated 16.07.2020 | 1610 | 43% |
| 4. | Inputs for Shoes | 14600* | 4799** | 30 | 20 | 1000 | 1000 | 2050 | 750 | STEI/016/20-21 dated 16.07.2020 | 2800 | 37% |

* The imported items are supplied by the foreign suppliers at “Free of Cost” and hence value mentioned for Customs purpose only.

** The goods were imported duty free under Customs Notification No.32/1997-Customs dated 01.04.1997 for jobbing and under Advance Licence.

16. 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”.

17. In the instant case, from the above table, it is seen that the margin of profit made by the Indian Company is 27% to 54% on items imported from the suppliers, which is normal in such kind of business to meet the selling and administrative expenses.

18. Thus, on the above examination of circumstances surrounding the sale reveals the fact that the invoice prices adopted by their related supplier 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.

19. 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.

20. 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 their 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);

(f) The importers have not entered into any Licensing/Royalty agreement with the seller;

(g) No Royalty is payable by the importers to their foreign suppliers.

21. In view of the above submissions made by the importers and from the Copies of the Balance sheet and copies of 3CEB reports for the year ended 31st March, 2020, no flow back of payments to the foreign suppliers was noticed on account of Royalty, Licence, Technical-know-how and Trademark fee or any other payments which requires addition under Rule 10 (1) (c), (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.

22. 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

23. 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 Importer and the Foreign Supplier

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
29/3/20
(BADAL PANIGRAHI)

Assistant Commissioner of Customs
Special Valuation Branch (CH III)

To

The Asst./Deputy Commissioner of Customs
Group-3, Air Cargo Complex, New Custom House,
Meenambakkam, Chennai – 600027.

Copy to:

1. The Joint Director(RMD),
O/o The Additional Director General,(R.M.D.)
Directorate of Systems,C.B.S.E.
NO.13, SIR Vithaldas Thackersey Marg, opp Patkar Hall,
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, V, VI, VII, VIII), Custom House, Chennai 600001 (for information)
4. The Deputy Commissioner of Customs,(SVB)
O/o the Commissioner of Customs
New Custom House, IGI Airport, New Delhi-110037.
5. The Deputy Commissioner of Customs,(SVB),
O/o the Commissioner of Customs, Custom House,
15/1, Strand Road, Kolkatta-700 001
6. The Deputy Commissioner of Customs
O/o the Commissioner of Customs,
GATT Valuation Cell, New Custom House,
Ballard Estate, Mumbai-400001.
7. The Deputy Commissioner of Customs,(SVB),
O/o the Commissioner of Customs, Custom House,
Wellington Island, Cochin, Kerala-682009.
8. The Deputy Commissioner of Customs,(SVB)
O/o the Commissioner of Customs
MENZIES Aviation BOBBA Bangalore Pvt Ltd.,
CARGO Terminal, Bangalore International Airport,
Devanahalli, Bangalore-560 300.
9. The Deputy Commissioner of Customs(Imports)
O/o The Commissioner of Customs,Air Cargo Complex,
Shamshbad, Hyderabad-501 218.
10. The Deputy Commissioner of Customs,(SVB),
O/o the Commissioner of Customs, Custom House,
Custom House, New Harbour Estate, Tuticorin-628 004.
11. The Deputy Commissioner of Customs,(SVB),
O/o the Commissioner of Customs,
Air Cargo Complex, Meenambakkam, Chennai – 600027.
12. The Deputy Commissioner GR 1, Customs House, Chennai-600001.
13. The Deputy Commissioner GR II, Customs House, Chennai-600001.
14. The Deputy Commissioner GR III, Customs House, Chennai-600001.
15. The Deputy Commissioner GR V, Customs House, Chennai-600001.
16. The Deputy Commissioner GR VB, Customs House, Chennai-600001.
17. The Deputy Commissioner GR VI, Customs House, Chennai-600001.
18. The Deputy Commissioner GR 7, Customs House, Chennai-600001.

19. Office copy.

20. Master File

21. Copy to EDI for uploading in Intranet.