

# Use of Customs Valuation Data in Transfer Pricing Analysis – Recent Rulings

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## Background

Prima facie a dichotomy exists in the objective of the Revenue and Customs department – while the latter seeks to raise the value of a transaction between related parties to increase the import duty, the former seeks to understate the transaction price between related entities to ensure taxable profits are maximised. The divergence in the interests of the two departments has led to uncertainty in respect of the use of Customs valuation for the purpose of Transfer Pricing analysis. New Delhi Bench of the Income tax Appellate Tribunal (“ITAT” or “the Tribunal”) in the case of ACIT v GP Global Energy Pvt. Ltd.<sup>1</sup> has adjudicated on the issue, allowing the use of Customs data for the purpose of Transfer Pricing upholding Chennai Tribunal’s ruling in Coastal Energy Pvt. Ltd. Vs. ACIT.<sup>2</sup>

## Judicial Trend

In Panasonic India (P) Ltd.<sup>3</sup>, the assessee argued that the import of raw materials from its Associated Enterprises (“AEs”) was based on valuation accepted by Special Valuation Bench of Customs department and should be adopted by the Transfer Pricing Officer (“TPO”). The Tribunal was of the view that where specific rules of law exist in the Statute on a particular subject, they would be applicable on that subject only, thereby rejecting reliance on Customs data for Transfer Pricing purpose.

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1. ITA No. 5695/Del/2018

2. ITA No. 2099/Mds/2011

3. ITA No. 1417/Del/2008

A similar approach was adopted by the Mumbai Tribunal in the case of Serdia Pharamaceuticals (India) Private Limited<sup>4</sup>, wherein it was held that the valuation made by Customs authority cannot be relevant for Transfer Pricing analysis due to conflicting objectives.

However, the Chennai Tribunal in the case of Coastal Energy (Supra) chose to depart from the above view. The taxpayer in this case had imported coal from AEs at a certain price. The TPO, based on information received from Customs authorities, concluded that the taxpayer had overstated its purchase price and accordingly made an adjustment for the price differential. This was upheld by the Dispute Resolution Panel. The assessee preferred an appeal before the Tribunal and contended against the use of Customs valuation in Transfer Pricing analysis. In this regard, the Tribunal held that the Customs authorities are “assigning values to the imported goods on the basis of scientifically formulated methods and they are responsible for making a fair assessment value of the imported goods. The valuation made by the customs authorities is not an arbitrary exercise.” Accordingly, the Tribunal upheld the TPO’s action of considering the Customs valuation as the Arm’s Length Price (“ALP”) for Transfer Pricing analysis.

Further, the Delhi Tribunal, in its recent ruling in ACIT v GP Global Energy Pvt Ltd <sup>5</sup>, upheld Chennai Tribunal’s decision in Coastal Energy (Supra). In the present case, CIT(A) placed reliance on the Chennai Tribunal’s ruling in Coastal Energy (Supra) and directed TPO to benchmark the assessee’s international transaction with its AEs

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4.ITA Nos. 2469/Mum/06, 3032/Mum/07 and 2531/Mum/08

5. Supra at 1

for the purchase of fuel oil/High Speed Diesel, relying upon valuation data that had been accepted by the Customs Department. The assessee had submitted the Mean of Platts Arab Gulf ('MOPAG') prices to the Customs Authorities and had submitted the same as CUP data to the Income Tax Department. The Delhi Tribunal confirmed the CIT(A)'s decision of allowing the use of Customs valuation for the purpose of Transfer Pricing analysis.

## Amicus Comments

Indian Government set up a Joint Working Group ("the Group") comprising of officers from Indian Revenue and Customs Department to study the interplay of Income Tax and Customs laws, and to suggest measures on co-operation between the two Departments. The Group vide Customs Circular No- 20/2007 dated 08.05.2007 (the "Circular"), suggested Co-operation and coordination between the two Departments on 'Transfer Pricing' issues through periodical meetings, information exchange and joint training programmes. However, there has been no further tangible action in this regard. Further, the Central Board of Direct Taxes ("CBDT") was also silent on this issue until 2018, when it signed an APA that accepted Custom's valuation for TP purposes. The acceptance by CBDT imparted confidence that Revenue is willing to accept practical resolution of Transfer Pricing problems

in sync with Customs valuation. Where transactional or price data is relied upon for benchmarking, same data can be reliable for both Customs and Transfer Pricing purposes.

The Customs and Transfer Pricing authorities may have divergent objectives and their purpose for collecting valuation data may not be the same, however, the agencies share the common mission to evaluate a transaction as per the economically relevant characteristics of the market. Therefore, Customs valuation of a transaction between two unrelated parties could act as an ideal comparable for Transfer Pricing benchmarking of a taxpayer's related party transaction when there's similarity on required metrics such as nature of goods, geographic region, quantity, etc. This is particularly true where the 'Transaction Value' method (Customs) equivalent of the 'Comparable Uncontrolled Price' (CUP) method (Transfer Pricing) is applied. If the import price is same as CUP or within the arm's length range based on CUP, chances of Customs data being accepted for Transfer Pricing purpose increase manifold.

The Delhi Tribunal's recent decision GP Global Energy (Supra) upholding the Chennai Tribunal's ruling in Coastal Energy (Supra) is a step in the right direction and should increase taxpayer certainty with respect to compliance under Customs and Transfer Pricing regulations.

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