ASSESSABLE VALUE UNDER SECTION 14 OF THE CUSTOMS ACT, 1962 IN RESPECT OF GOODS SOLD UNDER AUCTION

With the help of this article, I am going to enlighten the minds of readers on the issue of calculating the assessable value under section 14 of the Customs Act, 1962 in respect of sold goods by way of auction.

In many cases, the GST department generally is of the view that IGST shall be deducted from sales value is perhaps based upon the view that IGST is a tax to be collected under IGST Act, 2017 and that IGST is not a constituent of customs duty. The department is in practice of delinking the levy of IGST from the levy of customs duty.

The issue, no doubt has become a matter of debate since inception of CGST Act, 2017. What is to be seen is whether the department's point of view will stand the test of law or not.

As per section 45(1) of the customs Act, 1962, all imported goods shall remain in custody of the person (approved) until these are cleared for home consumption. These goods are supposed to remain in customs area before

clearance. Then there is a procedure for clearance of these goods for home consumption on payment of customs duty.

What is significant here is to point out that the goods lying with custodians are still in customs area. The customs duty is yet to be paid. ***This is to emphasize that the sale price of the goods sold by custodian is in the nature of open market value, and taxes, duties etc. needs to be deducted in order to arrive at assessable value in such a manner that when one works out from assessable value upwards, the net amount shall come at par with sale price.***

Before going further, we need to know:

WHAT ARE CUSTOM DUTIES?

Section 2(15) of Customs Act, 2017 defines duty as duty of customs leviable under Customs Act, 1962. Section 12 of the said act is the charging provision. As per this, duties of customs shall be levied at such rates as specified under the Customs Tariff Act, 1975 or any other law for the time being in force on imported goods. Reading both these provisions together means that any duty charged not only under customs tariff Act but also under any other law is customs duty.

The above conclusion brings one at Customs Tariff Act,1975. Section 3 of the above mentioned act is important. The broad heading of this section itself says ***"levy of additional duty equal to excise duty, sales tax, local taxes and other charges."*** This indicates that all the amount payable under section 3 is the additional duty of customs.

Sub section 7 says that any article imported into shall be liable to IGST under Section 5 of the IGST Act, 2017. The levy of IGST under this sub-section has a language different from a language at subsection (3) or (5), whereunder there are provisions for levy of additional duty to counterbalance the excise duty or sales tax/VAT respectively. The collection of duties equivalent to excise duty or sales tax is termed as additional duty whereas under sub-section 7, the word used is IGST, as is leviable under IGST Act, 2017. The difference in language gives the scope of interpretation that IGST is not part of customs duty but is a separate tax leviable under separate tax law. This could be the reason for department's contention not to allow the deduction of IGST, while working out the assessable value from the sale/ bid value.

Such an interpretation may not hold good because of following reasons:-

a. As per Section 12 of the Customs Act, 1962, all duties and taxes are included in the ambit of customs duty.

b. The broad heading of section 3 of the Customs Tariff Act, 1975 says that it is ***levy of additional duty (of customs) equal to….***

c. Sub-section 12 of the section 3 of the Customs Tariff Act, 1975 lays down in explicit terms that the provisions of Customs Act, 1962 are applicable to duty/ tax/cess chargeable under section 3 of the said act. The provisions of this sub-section are sufficient to lay at rest any controversy in this regard. IGST payable at the time of import is in the nature of customs duty payable under section 12 of the Customs Act, 1962, which applies *mutatis mutandis* by virtue of section 3(12) of the Customs Tariff Act, 1975. It may be added here that the demand for IGST short paid, if any, at the time of import would be raised by customs department as Section 3(12) of the said act empowers customs for the same.

Assuming that the department's interpretation is correct, can one still claim deduction of IGST for arriving at assessable value. Kind attention is invited to Section 3(8) of the Customs Tariff Act, 1975, where under, it is mentioned that IGST is payable on assessable value under Section 14 of the Customs Act, 1962 and this value shall not

include the amount of IGST. This means the landing cost of the goods shall comprise of assessable value under Section 14 of the customs act, 1962, ibid, plus basic custom duty plus Cess plus IGST. So, when assessable value has to be worked out from landing cost, all the above deductions are legally mandatory.

Rule 7 of the Customs Valuation (Determination of price of imported goods) Rules, 2007 lays down that the value of imported goods shall be based upon the price at which these are sold in India subject to deduction on account of custom duties and other taxes payable in India. This rule, too, allows deduction of IGST along with customs duty from the market value to arrive at the assessable value.

The analysis will not be complete without referring to the relevant CGST/IGST provisions.

Section 7(2) of the IGST Act,2017 treats import of goods into Indian Territory as inter-state supply and section 5 (which is the charging section) lays down that IGST is payable on goods imported into India and that such IGST is payable on the value determined under the Customs Act, 1962. The insertion of these provisions into IGST Act, 2017 is to clearly

indicate that the tax payable shall be IGST to avoid any future dispute regarding its taxability as CGST/ SGST.

Further Rule 35 of the CGST Rules, 2017 lays down that where the value is inclusive of IGST/CGST/SGST, the tax amount has to be determined as follows:

X= A*R/100+R

Where X is the tax amount, A is the sale value (bid value in present case) and R is the rate of IGST.

This in other words means the tax amount is to be worked out by calculating in reverse manner. In a nutshell, the sale/bid value is to be treated as inclusive of IGST and for the purpose of arriving at assessable value under Section 14 of the Customs Act, 1962, the same has to be deducted.

It may also be added that generally the customs department is of the view that the importer would be charging IGST on the bid/sale value and hence the deduction is not permissible. It may be pointed out here that the transactions are to be seen in proper perspective. In fact, in a way there are, two transactions involved, first transaction is the liability of the

importer to pay customs duty and other taxes (which includes IGST), when the goods are still in customs area. Before these are permitted to be cleared for home consumption, all duties and taxes are required to be paid by the importer in the same manner as any importer pays at the time of import. Only after payment of Custom duty, Cess and IGST, the goods stand clear from customs area for onward sale into domestic market. This onward sale after getting clearance for home consumption is in the nature of second transaction. What is being disputed by the customs is at the stage of clearance of goods for home consumption is the first transaction. At this stage, IGST payable is also inbuilt in the sale value and the same needs to be deducted to arrive at the assessable value for customs purposes. The tax payable subsequent to clearance is not the subject matter of customs and the tax payable after clearance may not necessarily be IGST. It may be CGST/SGST as well, depending upon the place of supply.