

Lesson 7

Customs Law - Search, Seizure, Confiscation of Goods, Offences and Penalties

LESSON OUTLINE

This lesson is divided into the following parts:

- I. Search, Seizure, Confiscation of Goods, Offences and Penalties

LEARNING OBJECTIVES

The Custom duty derived its value from the word “custom” under which whenever a merchant entered a Kingdom with his merchandise, he had to give some gift to the king. Subsequently, this custom formalized into the levy of custom duty or tax on goods imported into and exported from the country was organized through various laws during the British period. After Independence the Sea Customs Act 1878, the Land Customs Act, 1924 and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly the Indian Customs Act, 1934 was repealed by the Customs Tariff Act, 1975(CTA).

At the end of this lesson, the students will

- Be familiar with the adjudication provisions.

As per the Customs Act, 1962 the Central Board of Excise and Customs (the Board) has been given the powers to appoint Customs Ports, Airports and Inland Container Depots (ICD), where the imported goods can be brought in for unloading or loading of export goods. Similarly, powers have been given to the Board to notify places as Land Customs Stations (LCS) for clearance of goods imported or exported by land or by inland water.

CUSTOMS LAW

PART V: SEARCH, SEIZURE, CONFISCATION OF GOODS, OFFENCES AND PENALTIES

This part is divided into

- I. Searches, Seizure and Arrest (Section 100 to 110A)
- II. Confiscation of goods and conveyances and imposition of penalties (Section 111 to 127)
- III. Offences and Prosecutions (Section 132 to 140A)

I. SEARCHES, SEIZURE AND ARREST

The Customs Law seeks to regulate imports and exports. It is, therefore, necessary for the customs Department to be fully equipped to meet situations where there is any illegal export or import of goods. In any fiscal enactment, it is common to find provisions relating to searches, seizure and arrest. These provisions only advance the primary objective of the law namely "Prevention of illegal imports and exports. At the same time, it should be remembered that the Customs Act does not aim at detection of a crime. The Customs Officers are also not primarily concerned with the detection and punishment of a crime but they are entrusted in ensuring that there is no smuggling of contraband articles. They have to safeguard the recovery of customs duty properly applicable to the goods. Chapter XIII of the Act consisting of Sections 100 to 110A contains detailed provisions in regard to searches, seizure and arrest. These are discussed below:

(A) POWER TO SEARCH SUSPECTED PERSONS ENTERING OR LEAVING INDIA(SECTION 100)

Under Section 100 of the Act where the proper officer of the Customs has reason to believe that the following categories of persons have secreted any goods, liable to confiscation or any documents thereto, he may search such persons.

The categories of persons referred to in the above paragraph are: -

- (a) any person who has landed from or is about to board, or is on board any vessel within the Indian Customs waters;
- (b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;
- (c) any person who has got out of, or is about to get into, or is in vehicle, which has arrived from, or is to proceed to any place outside India;
- (d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;
- (e) any person in a customs area.

(B) POWER TO SEARCH SUSPECTED PERSONS IN CERTAIN OTHER CASES (SECTION 101)

Under Section 101 of the Act, an officer of the Customs empowered generally or specially by an order of Principal Commissioner of Customs can search any person if he has reason to believe that any person has secreted about his person, the following goods which are liable to confiscation, or documents relating thereto:

- (a) gold;
- (b) diamonds;
- (c) manufactures of gold or diamond;
- (d) watches;
- (e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

The power under Section 101 is without prejudice to the power conferred under Section 100 of the Act. Again under Section 101 any person can be searched.

(C) PERSONS TO BE SEARCHED MAY REQUIRE TO BE TAKEN BEFORE GAZETTED OFFICER OF CUSTOMS OR MAGISTRATE (SECTION 102)

Section 102 of the Act provides that when any officer of Customs is about to search any person in terms of Sections 100 and 101, he shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of customs or magistrate. If such requisition is made, the officer of customs may detain the person making it until, he can bring him before the gazetted officer of customs or the magistrate. The Gazetted Officer of customs or the magistrate before whom any "such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person. In other cases, he shall direct that a search be made. Before making a search, the officer of Customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do. The search would be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses. Where the person to be searched is a female, the search shall be done only by a female.

(D) POWER TO SCREEN OR X-RAY BODIES OF SUSPECTED PERSONS FOR DETECTING SECRETED GOODS (SECTION 103)

Section 103 of the Act contains powers, to screen or X-Ray bodies of persons suspected of secreting certain goods liable to confiscation. Under this section, detention of a person and production without unnecessary delay before the nearest Magistrate by the proper officer is envisaged. The Magistrate before whom any person is brought shall, if he sees how reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person. On the other hand, where the Magistrate has reasonable ground for believing that any such person has any such goods liable for confiscation secreted in his body and the Magistrate is satisfied that an X-Ray is necessary for this purpose, he may make an order to a radiologist possessing qualifications recognised by the Central Government for the purpose of screening or X-raying the body of any person, such person would be taken to a radiologist for the purpose of screening or X-raying the body. The radiologist shall, after the screening or X-Ray, forward his report together with the X-Ray picture taken by him to the Magistrate without unnecessary delay. On receipt of the report of radiologist, if the Magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct; that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction. In the case of a female, the

advice and supervision of a female registered medical practitioner is required. For the purposes of complying with the provisions of this section any person brought before the Magistrate may be detained by him for such period as the Magistrate may direct.

The above provisions will not apply to any such person who admits that goods liable to confiscation are secreted in his body and who voluntarily submits himself for suitable action being taken for bringing out such goods.

(E) POWER TO ARREST (SECTION 104)

If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest [Section 104(1)].

Every person arrested shall, without unnecessary delay, be taken to a magistrate (Sub-section 2 of Section 104)

Where an officer of customs has arrested any person he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898.

As per sub-section (4), notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to--

- (a) prohibited goods; or
- (b) evasion or attempted evasion of duty exceeding Rs. 50 Lakh, shall be cognizable.

All other offences under the Act shall be non-cognizable except the two above.

As per sub-section (6), notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 135 relating to -

- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
- (b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or
- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

Except as provided in sub section (6), all other offences under this Act shall be bailable.

POWER TO SEARCH PREMISES (SECTION 105)

Section 105 of the Act deals with it. The Assistant/Deputy Commissioner of Customs or any other officer of customs in case of any area adjoining the land frontier or the coast of India specially empowered by name in this behalf by the Board, if he has reason to believe that any goods liable to confiscation or any documents or things which in his opinion will be useful to any proceedings under the Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents, or things. For the purposes of conducting such a search, the provisions of

the Code of Criminal Procedure, 1973 relating to searches would apply.

POWER TO STOP AND SEARCH CONVEYANCES (SECTION 106)

Section 106 of the Act deals with it. Accordingly, where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and

- (a) rummage and search any part of the aircraft, vehicle or vessel;
- (b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- (c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

(2) Where for the above purpose—

- (a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognised means, and thereupon such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;
- (b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

POWER TO INSPECT (SECTION 106A)

Section 106A of the Act empowers an Officer of Customs to enter any place intimated under Chapter IVA or IVB of the Act and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for this inspection the accounts maintained under the said Chapter IVA or Chapter IVB and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or likely to be illegally exported.

POWER TO EXAMINE PERSONS (SECTION 107)

Under Section 107 of the Act, any Officer of Customs empowered specially or generally by an order of the Principal Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods —

- (a) require any person to produce or deliver any document or thing relevant to the enquiry;
- (b) examine any person acquainted with the facts and circumstances of the case.

POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS (SECTION 108)

Section 108 of the Act deals with it. Accordingly, any Gazetted Officer of customs duty (the words

"empowered by the Central Government", has been omitted by Finance Act, 2008 w.e.f. 13th July 2006) shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.

Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (45 of 1860).

Section 108A. (1) Any person, being—

- (a) a local authority or other public body or association; or
- (b) any authority of the State Government responsible for the collection of value added tax or sales tax or any other tax relating to the goods or services; or
- (c) an income tax authority appointed under the provisions of the Incometax Act, 1961;
- (d) a Banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
- (e) a co-operative bank within the meaning of clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961; or
- (f) a financial institution within the meaning of clause (c), or a non-banking financial company within the meaning of clause (f), of section 45-I of the Reserve Bank of India Act, 1934; or
- (g) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or
- (h) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
- (i) a Registrar within the meaning of the Companies Act, 2013; or

(j) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or

(k) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or

(l) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or

(m) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or

(n) the Post Master General within the meaning of clause (j) of section 2 of the Indian Post Office Act, 1898; or

(o) the Director General of Foreign Trade within the meaning of clause (d) of section 2 of the Foreign Trade (Development and Regulation) Act, 1992; or

(p) the General Manager of a Zonal Railway within the meaning of clause (18) of section 2 of the Railways Act, 1989; or

(q) an officer of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934, who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act.

(2) Where the proper officer considers that the information furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such information and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information has not furnished the same within the time specified in sub-section (1) or sub-section (2), the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

(3) Where a person who is required to furnish information has not furnished the same within the time specified in sub-section (1) or sub-section (2), the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

Section 108B. Where the person who is required to furnish information under section 108A fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such information continues.".

POWER TO REQUIRE PRODUCTION OF ORDER PERMITTING CLEARANCE OF GOODS IMPORTED BY LAND (SECTION 109)

Under Section 109 of the Act, any Officer of Customs appointed for any area adjoining the land frontier of India and "empowered generally or specially by an order by the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under Section 47 permitting clearance of the goods. The provisions of this section shall not apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of Section 7.

SEIZURE OF GOODS, DOCUMENTS AND THINGS (SECTION 110)

Under Section 110 of the Act, if the proper officer of Customs has reason to believe that any goods are liable to confiscation under the Act, he may seize such goods. Where it is not practicable to seize such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be, after its seizure under Sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

In exercise of the powers conferred by Sub-section (1A) of Section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature of the goods, has specified the following goods, namely:

1. Liquors;
2. Primary cells and primary batteries including re-chargeable batteries;
3. Wrist watches including electronic wrist watches; watch movements or components thereof;
4. All electronic goods including television sets, video cassette recorders, tape recorders, calculators, computers; components and spares thereof including diodes, transistors, integrated circuits etc; and
5. Dangerous drugs and psychotropic substances."

Where any goods, being goods specified above have been seized by a proper officer under Sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of —

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of the Magistrate, photographs of such goods and certifying such photographs as true; or
- (c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

Where any application is made as above, the Magistrate, shall allow the application.

Where any goods are seized and no notice in respect thereof is given under clause (a) of Section 124 within 6 months of seizure of the goods, the goods shall be returned to the person from whose possession they were seized. This period of 6 months however, can be extended by the Commissioner of Customs for a period not exceeding six months.

The proper officer may seize any documents or things which in his opinion, will be useful for, or relevant to, any proceeding under this Act. The person from whose custody any documents are seized is entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

Provisional Release of goods, document and things seized pending Adjudication (Section 110A)

Any goods, documents or things seized under Section 110 may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

PART II: CONFISCATION OF GOODS AND CONVEYANCES AND IMPOSITION OF PENALTIES (SECTION 111 TO 127)

Goods become liable to confiscation if the Importer or Exporter contravenes any of the provisions of the Customs Act, 1962 or any other Act for the time being in force in relation to the importation and exportation of goods. Some of the more important allied statutes that get attracted in this manner are, to mention just a few, the Arms Act, the Copyright Act, the Dangerous Drugs Act, the Foreign Exchange Management Act, the Imports and Exports (Control) Act, the Trade Marks Act and the Ancient Monuments Preservation Act. The responsibility of the Officers of Customs to ensure that none of the provisions of these and such enactments is contravened, is thus onerous. It is also to meet that there are several instances of contraventions of these provisions and this has paved the way to procedures being laid down for, not only bringing the contraventions to the notice of those concerned, but also to take those responsible to task for non-compliance with statutory obligations. Of course, there are contraventions of the Customs Act, 1962 also and all these are taken care of by the set procedures for adjudication.

We have already seen that Section 28 of the Customs Act provides for a notice to be issued to the Importer or Exporter of any goods if duties of Customs have not been levied or have been short levied or erroneously refunded. Similarly, if any contravention of any provision of any Act for the time being in force is noticed, it is a statutory obligation placed on the Department that a notice of show cause be issued to the person concerned, so that he is given an opportunity to explain his side of the matter. Section 124 of the Customs Act lays down as follows:

(A) CONFISCATION OF IMPROPERLY IMPORTED GOODS ETC. (SECTION 111)

Under Section 111, the following goods brought from a place outside India shall be liable to confiscation: -

- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of Section 7 for the unloading of such goods;
- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of Section 7 for the import of such goods;
- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of Section 32, other than goods inadvertently unloaded but included in the record kept under Sub-section (2) of Section 45;
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of Section 33 or Section 34;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under Section 109 is not produced or which do not correspond in any material particular with the specification contained therein;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to Sub-section (1) of Section 54.
- (n) any dutiable or prohibited goods transited with or without transhipment or attempted to be so transited in contravention of the provisions of Chapter VIII;
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed, unless the non-observance of the condition was sanctioned by the proper officer;
- (p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

PENALTY FOR IMPROPER IMPORTATION OF GOODS, ETC. (SECTION 112)

Under Section 112, any person:

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111;

shall be liable:

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher. Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;
- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
- (iv) in the case of goods falling both under clauses (i) and (ii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

Case: GOPAL SAHA v UOI, 2016 (H.C):

Gold bars imported without declaration and clearance were confiscated by the department and a penalty of Rs.10,07,00,000/- was imposed on the ground that the goods are prohibited goods. But the petitioner contended that the gold bars are not prohibited goods for penalty under Section 112 (b) (i) of Customs Act, 1962. The case falls under Section 112 (b) (ii) which imposes penalty not exceeding 10% of duty or Rs. 5000 whichever is greater. Hence the penalty equal to value of smuggled goods is untenable under the law.

The CALCUTTA HIGH COURT held that when a provision provides for punishment it has to be strictly construed - expression "goods in respect of which any prohibition is in force" in the

context of Section 112 of the Act would imply goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof –

The Court remanded the matter for the imposition of such other quantum of penalty that may be permissible

CONFISCATION OF GOODS ATTEMPTED TO BE IMPROPERLY EXPORTED, ETC. (SECTION 113)

The following export goods shall be liable to confiscation, under Section 113 of the Act:

- (a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;
- (b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of Section 7 for the export of such goods;
- (c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;
- (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;
- (f) any goods which are loaded or attempted to be loaded in contravention of the provisions of Section 33 or Section 34;
- (g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;
- (h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77;
 - (i) any goods entered for exportation which do no correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77;
 - (ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under Section 75.
- (i) any goods on which import duty has not been paid and which are entered for exportation under Section 74;
- (j) any goods cleared for exportation under a claim for drawback which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or

employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;

- (k) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

PENALTY FOR ATTEMPT TO EXPORT GOODS IMPROPERLY ETC. (SECTION 114)

According to Section 114 any person who, in relation to any goods, does or omits to do, any act, which act or omission would render such goods liable to confiscation under Section 113, or abet the doing or omission of such an act, shall be liable:

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher. Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;
- (iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is greater.

PENALTY FOR SHORT-LEVY OR NON-LEVY OF DUTY IN CERTAIN CASES (SECTION 114A)

Section 114A inserted by the Finance (No. 2) Act, 1996 w.e.f. 28.9.96, prescribes a mandatory penalty equal to the duty or interest not levied, short levied, not paid or part paid or erroneously refunded by reason of collusion or willful mis-statement or suppression of facts by the person liable to pay the duty. The section reads as under—

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has not been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under Sub-section (2) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under Sub-section (2) of Section 28, and the interest payable thereon under Section 28AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be

taken into account.

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeal), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under Section 28AB, and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114.

Explanation — For the removal of doubts, it is hereby declared that:

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under Sub-section (2) of Section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

PENALTY FOR USE OF FALSE AND INCORRECT MATERIAL (SECTION 114AA)

Section 114AA provides that if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

CONFISCATION OF CONVEYANCES (SECTION 115)

(1) The following conveyances shall be liable to confiscation, under Section 115:

- (a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;
- (b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;
- (c) any conveyance which having been required to stop or land under Section 106 fails to do so, except for good and sufficient cause;
- (d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;
- (e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal.

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

“Market price” in this section, means market price at the date when the goods are seized. (Explanation added to the section).

PENALTY FOR NOT ACCOUNTING FOR GOODS (SECTION 116)

Under Section 116, if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant or Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable:

- (a) in the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act, to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;
- (b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

PENALTIES FOR CONTRAVENTION, ETC., NOT EXPRESSLY MENTIONED (SECTION 117)

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provisions of this Act, with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees (Section 117).

CONFISCATION OF PACKAGES AND THEIR CONTENTS (SECTION 118)

- (a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.
- (b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation (Section 118).

CONFISCATION OF GOODS USED FOR CONCEALING SMUGGLED GOODS (SECTION 119)

Any goods used for concealing smuggled goods shall also be liable to confiscation, in terms of Section 119.

“Goods” does not include a conveyance used as a means of transport.

CONFISCATION OF SMUGGLED GOODS NOTWITHSTANDING ANY CHANGE IN FORM, ETC. (SECTION 120)

- (1) Smuggled goods may be confiscated notwithstanding any change in their form.
- (2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods

cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation (Section 120).

CONFISCATION OF SALE-PROCEEDS OF SMUGGLED GOODS (SECTION 121)

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation (Section 121).

ADJUDICATION OF CONFISCATIONS AND PENALTIES (SECTION 122)

Section 122 provides that in every case in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged:

- (a) without limit, by a Principal Commissioner of Customs or a Joint Commissioner of Customs;
- (b) where the value of the goods liable to confiscation does not exceed two lakh rupees, by an Assistant or Deputy Commissioner of Customs;
- (c) where the value of the goods liable to confiscation does not exceed ten thousand rupees, by a Gazetted Officer of customs lower in rank than an Assistant or Deputy Commissioner of Customs.

ADJUDICATION PROCEDURE SECTION 122A

The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

The adjudicating authority may, if sufficient cause is shown at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

However, no such adjournment shall be granted more than three times to a party during the proceeding.

BURDEN OF PROOF IN CERTAIN CASES (SECTION 123)

Section 123(1), provides that where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be:

- (a) in a case where such seizure is made from the possession of any person:
 - (i) on the person from whose possession the goods were seized; and
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

Section 123 shall apply to gold and manufactures of watches and any other class of goods which the Central Government may by notification in the Official Gazette specify.

The Central Government has notified the following other classes of goods, for the purposes of Section 123(2), namely:

1. Cosmetics.

2. Cigarettes.
3. Transistors and Diodes.
4. Synthetic yarn and Metallised yarn.
5. Fabrics made wholly or mainly of synthetic yarn.
6. Cassette Tape Recorders.
7. Electronic Calculators.
8. Whisky.
9. Watches, watch movements (including partly assembled movements), dials and cases for watches.
10. Zip fasteners.
11. Video Cassette Recorders and Video Cassette Players.
12. T.V. Sets.

ISSUE OF SHOW CAUSE NOTICE BEFORE CONFISCATION OF GOODS ETC. (SECTION 124)

Section 124, provides that, no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person:

- (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter;

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

This provision has been made to make it obligatory on the part of adjudicating officers to follow the principles of natural justice. Any order of confiscation or any order imposing a penalty on any person without giving him an opportunity as laid down in Section 124 becomes void and is set aside in a court of law, as can be seen from the following decrees:

"The Commissioner of Central Excise should see that every show cause notice issued under the provisions of the Act strictly complies with, not only the letter of the law, but also the spirit of it (AIR 1962 MAD. 366 at p. 368). The Department is not absolved of the obligation under Section 124 for issuing a show cause notice before passing an order confiscating any goods or imposing any penalty on any person under Chapter XIV of the Customs Act (AIR 1972 GUJ. 115). The object of the show cause notice is not to merely mention the statutory provisions under which the person to whom the notice is issued is liable to be punished by the imposition of penalty; the real object of such a notice is to indicate, besides the nature of the contravention which is sought to be punished under any provision of the Act, the penalty also that is sought to be imposed on the petitioner (AIR 1962 MAD. 366 at p. 368).

OPTION TO PAY FINE IN LIEU OF CONFISCATION (SECTION 125)

Under Section 125 whenever confiscation of goods is authorised by this Act, the officer adjudicating it

may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods, or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to Sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods, the duty chargeable thereon.

Where any fine in lieu of confiscation of goods is imposed the owner of such goods or the other person shall, in addition, be liable to any duty and charges payable in respect of such goods.

ON CONFISCATION PROPERTY TO VEST IN CENTRAL GOVERNMENT (SECTION 126)

- (1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.
- (2) The officer adjudicating the confiscation shall take and hold possession of the confiscated goods (Section 126).

AWARD OF CONFISCATION OR PENALTY BY CUSTOMS OFFICERS NOT TO INTERFERE WITH OTHER PUNISHMENTS (SECTION 127)

The award of any confiscation or penalty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI or under any other law (Section 127).

Some important case laws relating to adjudication are given herein below to highlight the parameters within which the adjudicating officer has to function:-

- (a) In revision application of M/s. Bijee Products (India) Pvt. Ltd., the Government of India observed: "The lower authorities have not gone into the merits of the refund claim nor have they examined whether the claim was within the time limit specified under the Rules. Government of India, accordingly, set aside the order of the Appellate Collector since it is not a speaking order and direct the Appellate Collector to consider the appeal de-novo now and pass an order on merits"- (1982 ELT 591).
- (b) "If a personal hearing was not given to the petitioner at the adjudication/appellate stage in spite of a specific request made by him in reply to the show cause notice, the adjudication order is not sustainable in law.The revision application disposed of without giving a speaking order is also invalid.If the basic order is invalid, the remaining appellate/ revisionary orders will also be ineffective". - [1982 ELT 350 (P&H)].
- (c) "If the Collector has disposed of the case in a summary fashion without giving due consideration to the points urged by the Appellants and passing a speaking order dealing with them, the case is fit for remand for de-novo trial." - (1982 ELT 436 CBEC).
- (d) "The Assistant Collector (Adjudicating Officer) has no power under law to modify his earlier order or to issue a corrigendum, for Section 154 of the Customs Act only provides for the correction of clerical or arithmetical mistakes or any error or errors arising from accidental slip or omission. As such, the corrigendum issued by the Assistant Collector was without authority." - [1986 (9) ECR 231 - CEGAT].
- (e) "The Assistant Collector, who has given his decision on the 1st February, 1962 has not taken

any of these factors into consideration nor has he taken into consideration any of the other evidence offered by the petitioners for deciding this point. Under the circumstances, we find that the decision given by the Assistant Collector, is a result of total non-application of his mind. The same can be said with greater force with regard to the order which the Collector has passed in appeal against the above order. Whatever be the reasons for the Collector to delay his order for months after the appeal was heard, we find that after this long deliberation over the merits of the appeal, the only order which is recorded is: 'I have examined the facts and merits of the case. I have carefully considered the pleas advanced by the appellants in the appeal petition as also the arguments at the time of personal hearing on 26.12.64. I, however, see no reason to interfere with the decision taken by the Assistant Collector ... in his order ... dated 2.2.63. I uphold the said order and consequently, the appeal is rejected.' It is too obvious to mention that this order cannot be considered as a speaking order. It does not reveal what the facts are that the Collector took into consideration before coming to his conclusion. Under the circumstances, the order suffers from the same infirmity as the order passed by the Assistant Collector does". - (1983 ELT 744 GUJ).

- (f) "It is well established that it is not a good return to a rule nisi for the issue of a writ certiorari to state that the order is justified on facts not contained in the order. This court cannot take cognizance of any fact which does not appear upon the face of the order. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order, bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. This ground is not mentioned in the impugned order". - 1984 (15) ELT 379 (MAD).
- (g) ".... In this connection, I may state that the Assistant Collector is a quasi-judicial authority and has to discharge his duties and functions in a quasi-judicial manner. I would like to impress upon the Assistant Collector that he is not bound by any administrative instructions. The questions of fact and law which may be raised before him by the parties are required to be determined by him after full application of mind in an objective manner without feeling in any way controlled by any administrative instructions and he will deal with clearly and expressly the reasonings which may be advanced on behalf of the petitioners. It is only when the petitioners' reasoning is dealt with that it would show that there has been application of mind by him. The above observations have been made in view of the fact that administrative instructions have been brought to my notice by the counsel for the petitioners. For these reasons, the order of the Assistant Collector and the consequent demands are liable to be quashed". - [1985 (22) ELT 726 (RAJ)].

III. OFFENCES AND PROSECUTION PROVISIONS (SECTION 132 TO 140A)

The Customs Act, 1962 contains the following provisions in regard to offences and prosecutions:-

(A) FALSE DECLARATION, FALSE DOCUMENTS, ETC. [SECTION 132]

Whosoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both (Section 132).

(B) OBSTRUCTION OF OFFICER OF CUSTOMS [SECTION 133]

If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under Act, such person shall be punishable with imprisonment for a term which may extend to 2 years or with fine, or with both (Section 133).

(C) REFUSAL TO BE X-RAYED [SECTION 134]

If any person

- (a) resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a magistrate under Section 103; or
- (b) resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in Section 103;

he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both (Section 134).

(D) EVASION OF DUTY OR PROHIBITIONS [SECTION 135]

- (1) without prejudice to any action that may be taken under the Customs Act, if any person –
 - (a) is in relation to any goods in any way knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt at evasion of any - duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or
 - (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be, or
 - (c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113.
 - (d) fraudulently availing or attempts to avail of drawback or any exemption from duty provided under this Act in connection with Export of goods

he shall be punishable, -

- (A) Any goods the market price of which exceeds one crore rupees or
- (B) The evasion or attempted evasion of duty exceeding '50 lakh rupees
- (C) Such categories of prohibited goods as the Central Government may specify.
- (D) With '50 lakh in case of clause (d) referred above.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than three years;

- (E) in any other case, with imprisonment for a term which may extend to three years or with fine, or with both.
- (2) If any person convicted of an offence under this section or under Sub-section (1) of Section 136 is again convicted of an offence under this section, then he shall be punishable for the

second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

In the absence of special and adequate reasons to the contrary to be recorded in the judgement of the court such imprisonment shall not be for less than one year.

- (3) For the purposes of the above provisions the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than (one year) namely:-
- (i) the fact that the accused has been convicted for the first time for an offence under this Act;
 - (ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;
 - (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;
 - (iv) the age of the accused.

(E) PREPARATION [SECTION 135A]

If a person makes preparation to export any goods in contravention of the provisions of the Act, and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both (Section 135A).

(F) POWER OF COURT TO PUBLISH NAME, PLACE OF BUSINESS, ETC., OF PERSONS CONVICTED UNDER THE ACT [SECTION 135B]

(1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the court convicting, the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.

(2) No publication under Sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal having been preferred, has been disposed of.

(3) The expenses of any publication under Sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court (Section 135B).

(G) OFFENCES BY OFFICERS OF CUSTOMS [SECTION 136]

(1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any fraudulent export is effected or any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

(2) If any officer of customs

- (a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or documents secreted about this person; or
- (b) arrests any person without having reason to believe that he has been guilty of an offence punishable under Section 135; or
- (c) searches or authorises any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in Section 105 are secreted in that place,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both (Section 136).

(H) COGNIZANCE OF OFFENCES [SECTION 137]

(1) No court shall take cognizance of any offence under Section 132, Section 133, Section 134 or Section 135, except with the previous sanction of the Commissioner of Customs.

(2) No court shall take cognizance of any offence under Section 136

- (a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs, except with the previous sanction of the Central Government;
- (b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant or Deputy Commissioner of Customs, except with the previous sanction of the Commissioner of Customs (Section 137).

(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of offence to the Central Government, of such compounding amount and in such manner of compounding as may be specified by rules.

Provided that nothing contained in this sub-section shall apply to –

- (a) a person who has been allowed to compound once in respect of any offence under Section 135 and 135A;
- (b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely –
 - (i) the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - (ii) the Chemical Weapons Convention Act, 2000;
 - (iii) the Arms Act, 1959;
 - (iv) the Wild Life(Protection) Act, 1972

- (c) a person involved in smuggling of goods certain specified goods
- (d) a person who has been allowed to compound once in respect of any offence under this chapter for goods of value exceeding rupees one crore;
- (e) a person who has been convicted under this Act on or after the 30th day of December, 2005.

(I) OFFENCES TO BE TRIED SUMMARILY [SECTION 138]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Chapter (other than the offence punishable for a term of imprisonment of three years or more under section 135) may be tried summarily by a Magistrate (Section 138).

(J) PRESUMPTION OF CULPABLE MENTAL STATE [SECTION 138A]

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation — In this section, “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability (Section 138A).

(K) RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [SECTION 138B]

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, statement should be admitted in evidence in the interests of justice.

(2) The provisions of Sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court (Section 138B).

(L) ADMISSIBILITY OF MICRO FILMS, FASCIMILE COPIES OF DOCUMENTS AND COMPUTERS PRINTOUTS AS DOCUMENTS AND AS EVIDENCE [SECTION 138C]

Section 138C authorises the admissibility of (a) microfilms of documents for the reproduction of image(s) embodied in such microfilms; (b) a facsimile copy of a document; and (c) a computer print-out as admissible evidence in any proceedings under the Customs Law without further requirement of production of the original document itself.

Such acceptance is subject to a series of conditions to safeguard revenue interests, whereby the proper officer is allowed to satisfy himself that such print-outs, facimiles or micro films do indeed reflect correctly the position as obtained in the original document itself.

(M) PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES [SECTION 139]

Where any document —

- (i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or
- (ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act,

and such document is tendered by the prosecution in evidence against him and any other person who is tried jointly with him, the court shall —

- (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
- (c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

Explanation - For the purposes of this section, "document" includes inventories, photographs and lists certified by a Magistrate under Sub-section(1C) of Section 110 (Section 139).

(N) OFFENCES BY COMPANIES [SECTION 140]

(1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer should be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section, —

- (a) "company" means a body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm (Section 140).

(O) APPLICATION OF SECTION 562 OF THE CODE OF CRIMINAL PROCEDURE, 1898, AND OF THE PROBATION OF OFFENDERS ACT, 1958 [SECTION 140A]

(1) Nothing contained in Section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under the Customs Act unless that person is under eighteen years of age.

(2) The provisions of Sub-section (1) shall have effect notwithstanding anything contained in Sub-section (3) of Section 135 (Section 140A).

SECTION 157. General power to make regulations. - (1) Without prejudice to any power to make regulations contained elsewhere in this Act, the Board may make regulations consistent with this Act and the rules, generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :-

(a) the form of a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transhipment, declaration for transhipment boat note and bill of coastal goods;

(ai) the manner of export of goods, relinquishment of title to the goods and abandoning them to customs and destruction or rendering of goods commercially valueless in the presence of the proper officer under clause (d) of sub-section (1) of section 26A;

(aii) the form and manner of making application for refund of duty under sub-section (2) of section 26A;

[(aa) the form and manner] in which an application for refund shall be made under section 27;

(ab) the form, the particulars, the manner and the time of delivering the passenger and crew manifest for arrival and departure and passenger name record information and the penalty for delay in delivering such information under sections 30A and 41A;

(b) the conditions subject to which the transhipment of all or any goods under sub-section (3) of section 54, the transportation of all or any goods under section 56 and the removal of warehoused goods from one warehouse to another under section 67, may be allowed without payment of duty;

(c) the conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under section 65.

(d) The manner of conducting audit of the assessment of duty of the imported or export goods at the office of the proper officer or the premises of the importer or exporter , as the case may be.

**SELF TEST
ST QUESTIONS**

(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).

1. What are the provisions under Customs Act, regarding the search of suspected persons?

2. What are the powers of Customs Officer with regard to search of premises and stoppage and search of conveyance?
 3. What are the provisions with regard to confiscation of improperly imported goods and penalty thereon ?
 4. When does an exporter is liable for confiscation of goods and penalty thereon as per the provisions of Customs Act, 1962?
 5. When does a conveyance used for import or export of goods is liable for confiscation?
 6. What is the liability of the owner of the confiscated conveyance and how he can get relieved of the same ?
 7. What are the provisions with regard to confiscation of smuggled goods in case such goods are mixed with other goods or are repacked or are changed in form etc.?
 8. What provisions are made under the Customs Act, 1962 to deal with various kinds of offences of Customs?
 9. Can a mere preparation towards an act of offence of Customs laws be punished under the Act? State the circumstances.
 10. What are the provisions under Customs Act, regarding the power of Court to publish name, place of business, etc. of persons convicted under the Act?
 11. When can a Court take cognizance of an offence committed under the Customs Act, 1962?
 12. What are the provisions under the Customs Act, with regard to use of Statements, and documents as evidence during prosecution for an offence of Customs?

SUGGESTED READINGS

- (1) Customs Law Manual — *R. K. Jain*
 - (2) Indirect Taxes—Law and Practice — *V.S. Datey*

