

CUSTOMS ACT, 1962

52 of 1962

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SCHEDULE 1 :- SCHEDULE

CUSTOMS ACT, 1962

52 of 1962

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An Act to consolidate and amend the law relating to customs. Be it enacted by Parliament in the Thirteenth Year of the Republic of India as follows :

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

.

- (1) This Act may be called the Customs Act, 1962 .
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. :-

In this Act, unless the context otherwise requires,

- (1) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, ¹[Commissioner (Appeals)] or Appellate Tribunal;
- (1A) "aircraft" has the same meaning as in the Aircraft Act, 1934 (22 of 1934);
- (1B) "Appellate Tribunal" means the Customs, Excise and ³[Service Tax] Appellate Tribunal constituted under section 129 ;
- (2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil,
- (3) "baggage" includes unaccompanied baggage but does not include motor vehicles;
- (4) "bill of entry" means a bill of entry referred to in section 46 ;
- (5) "bill of export" means a bill of export referred to in section 50 ;
- (6) "Board" means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963);
- (7) "coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another;
- ⁴[(7A) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Customs (Appeals) under sub-section (1) of section 4 ;
- (8) "Commissioner of Customs", except for the purposes of Chapter XV, includes an Additional Commissioner of Customs;]
- (9) "conveyance" includes a vessel, an aircraft and a vehicle;
- (10) "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport;
- (11) "customs area" means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;
- (12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port, and includes a place appointed under clause (aa) of that section to be an inland container depot;
- (13) "customs station" means any customs port, customs airport or

land customs station;

(14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

(15) "duty" means a duty of customs leviable under this Act;

(16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 ;

(17) "examination", in relation to any goods, includes measurement and weighment thereof;

(18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(19) "export goods" means any goods which are to be taken out of India to a place outside India;

(20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to the exporter;

(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes

(i) any naval vessel of a foreign Government taking part in any naval exercises;

(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

¹ [(21A) "Fund" means the Consumer Welfare Fund established under Section 12C of the Central Excise Act, 1944 (1 of 1944);]

(22) "goods" includes

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property;

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(24) "import manifest" or "import report" means the manifest or report required to be delivered under section 30 ;

(25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

- (26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;
- (27) "India" includes the territorial waters of India;
- (28) "Indian customs waters" means the waters extending into the sea up to the limit of contiguous zone of India under S.5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river;
- (29) "land customs station" means any place appointed under clause (b) of section 7 to be a land customs station;
- (30) "market price", in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;
- (30A) "National Tax Tribunal " means the National Tax Tribunal established under Sec. 3 of the National Tax Tribunal Act, 2005.
- (31) "person-in-charge" means,
- (a) in relation to a vessel, the master of the vessel;
 - (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
 - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
 - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;
- (32) "prescribed" means prescribed by regulations made under this Act;
- (33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;
- (34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;
- (35) "regulations" means the regulations made by the Board under any provision of this Act;
- (36) "rules" means the rules made by the Central Government under any provision of this Act;
- (37) "shipping bill" means a shipping bill referred to in section 50 ;
- (38) "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;
- (39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or

section 113 ;

(40) "tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14 ;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of section 14 ;

(42) "vehicle" means conveyance of any kind used on land and includes a railway vehicle;

(43) "warehouse" means a public warehouse appointed under section 57 or a private warehouse licensed under section 58 ;

(44) "warehoused goods" means goods deposited in a warehouse;

(45) "warehousing station" means a place declared as a warehousing station under section 9 .

1. Substituted for "Collector (Appeals)" by the Finance Act, 1995, w.e.f. 26-5-1995.

3. Clauses (7A) and (8) substituted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier clause (8) was substituted by the Finance Act, 1992, w.e.f. 14-5-1992., Collector (Appeals), Deputy Collector of Customs and Assistant Collector of Customs are substituted by the references to authorities Chief Commissioner of Customs, Commissioner of Customs, Commissioner (Appeals), Deputy Commissioner of Customs and Assistant Commissioner of Customs, respectively, by the Finance Act, 1995, w.e.f. 26-5-1995.

4. Inserted by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.se (8) was substituted by the Finance Act, 1992, w.e.f. 14-5-1992.

1. Inserted by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

CHAPTER 2 OFFICERS OF CUSTOMS

3. Classes of officers of customs. :-

[There shall be the following classes of officers of customs, namely :-

(a) Chief Commissioners of Customs;

(b) Commissioners of Customs;

(c) Commissioners of Customs (Appeals);

¹ [(cc) Joint Commissioners of Customs;]

(d) Deputy Commissioners of Customs;

(e) Assistant Commissioners of Customs; and

(f) such other class of officers of customs as may be appointed for the purposes of this Act.]

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

4. Appointment of officers of customs :-

[.

(1) The ¹["Board"] may appoint such persons as it thinks fit to be officers of customs.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Board, a Commissioner of Customs or a ²[Joint] or Assistant Commissioner of Customs ³[or Deputy Commissioner of Customs] to appoint officers of customs below the rank of Assistant Commissioner of Customs ³ [or Deputy Commissioner of Customs].]

1. In Section 4, sub-section (1) and (2) the words "Central Government" shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

2. Substituted for "Deputy" by the Finance Act, 1999, w.e.f. 11-5-1999.

3. Inserted, *ibid*.

5. Powers of officers of customs. :-

.

(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter 15 and section 108 .

6. Entrustment of functions of Board and customs officers on certain other officers. :-

The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

CHAPTER 3 APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, WAREHOUSING STATIONS, ETC.

7. Appointment of customs ports, airports, etc. :-

(1)The ¹[Board] may, by notification in the Official Gazette, appoint

- (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- (aa) the places which alone shall be inland container depots for the unloading of imported goods and the loading of export goods or any class of such goods;
- (b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- (d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

² "(2) Every notification issued under this section and in force immediately before the commencement of the Finance Act, 2003 shall, on such commencement, be deemed to have been issued under the provisions of this section as amended by section 105 of the Finance Act, 2003 and shall continue to have the same force and effect after such commencement until it is amended, rescinded or superseded under the provisions of this section."

1. Substituted for "Central Government" by the Finance Act, 2003

2. Inserted By The Finance Act, 2003

8. Power to approve landing places and specify limits of customs area. :-

The Commissioner of Customs may

- (a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
- (b) specify the limits of any customs area.

9. Power to declare places to be warehousing stations. :-

. The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

10. Appointment of boarding stations. :-

The Commissioner of Customs may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from vessels by officers of customs.

CHAPTER 4 PROHIBITIONS ON IMPORTATION AND EXPORTATION OF GOODS

11. Power to prohibit importation or exportation of goods. :-

(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:

- (a) the maintenance of the security of India;
- (b) the maintenance of public order and standards of decency or morality;
- (c) the prevention of smuggling;
- (d) the prevention of shortage of goods of any description;
- (e) the conservation of foreign exchange and the safeguarding of balance of payments;
- (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- (g) the prevention of surplus of any agricultural product or the product of fisheries;
- (h) the maintenance of standards for the classification, grading or marketing of goods in international trade;
- (i) the establishment of any industry;
- (j) the prevention of serious injury to domestic production of goods of any description ;
- (k) the protection of human, animal or plant life or health;
- (l) the protection of national treasures of artistic, historic or archaeological value;
- (m) the conservation of exhaustible natural resources;
- (n) the protection of patents, trade marks and copyrights;
- (o) the prevention of deceptive practices;
- (p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion,

complete or partial, of citizens of India ;

(q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;

(r) the implementation of any treaty, agreement or convention with any country;

(s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;

(t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;

(u) the prevention of the contravention of any law for the time being in force;

(v) any other purpose conducive to the interests of the general public.

CHAPTER 4 DETECTION OF ILLEGALLY IMPORTED GOODS AND PREVENTION OF THE DISPOSAL THEREOF

11A. Definitions :-

. . In this Chapter, unless the context otherwise requires,

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force ;

(b) "intimated place" means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11C ;

(c) "notified date", in relation to goods of any description, means the date on which the notification in relation to such goods is issued under section 11B ;

(d) "notified goods" means goods specified in the notification issued under section 11B .

11B. Power of Central Government to notify goods. :-

. If, having regard to the magnitude of the illegal import of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal import, circulation or disposal of such goods, or facilitating the detection of such goods, it may, by notification in the Official Gazette, specify goods of such class or description.

11C. Persons possessing notified goods to intimate the place of storage, etc. :-

.

(1) Every person who owns, possesses or controls, on the notified date, any notified goods, shall, within seven days from that date, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) in relation to the notified goods owned, possessed or controlled by him and the place where such goods are kept or stored.

(2) Every person who acquires, after the notified date, any notified goods, shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition and shall, immediately on such acquisition, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) in relation to the notified goods acquired by him :

Provided that a person who has delivered a statement, whether under sub-section (1) or sub-section (2), in relation to any notified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further statement in relation to any notified goods acquired by him, after the date of delivery of the said statement, so long as the notified goods so acquired are kept or stored at the intimated place.

(3) If any person intends to shift any notified goods to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(4) No person shall, after the expiry of seven days from the notified date, keep or store any notified goods at any place other than the intimated place.

(5) Where any notified goods have been sold or transferred, such goods shall not be taken from one place to another unless they are accompanied by the voucher referred to in section 11F .

(6) No notified goods (other than those which have been sold or transferred) shall be taken from one place to another unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by rules made in this behalf) prepared by the persons owning, possessing or controlling such goods.

11D. Precautions to be taken by persons acquiring notified goods. :-

. No person shall acquire (except by gift or succession, from any other individual in India), after the notified date, any notified goods
(i) unless such goods are accompanied by,

- (a) the voucher referred to in section 11F or the memorandum referred to in sub-section (2) of section 11G , as the case may be; or
- (b) in the case of a person who has himself imported any goods, any evidence showing clearance of such goods by the Customs Authorities; and
- (ii) unless he has taken, before acquiring such goods from a person other than dealer having a fixed place of business, such reasonable steps as may be specified by rules made in this behalf, to ensure that the goods so acquired by him are not goods which have been illegally imported.

11E. Persons possessing notified goods to maintain accounts.

:-

.

(1) Every person who, on or after the notified date, owns, possesses, controls or acquires any notified goods shall maintain (in such form and in such manner as may be specified by rules made in this behalf) a true and complete account of such goods and shall, as often as he acquires or parts with any notified goods, make an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the person from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the notified goods to which such accounts relate :

Provided that it shall not be necessary to maintain separately accounts in the form and manner specified by rules made in this behalf in the case of a person who is already maintaining accounts which contain the particulars specified by the said rules.

(2) Every person who owns, possesses or controls any notified goods and who uses any such goods for the manufacture of any other goods, shall maintain (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) a true and complete account of the notified goods so used by him and shall keep such account at the intimated place.

11F. Sale, etc., of notified goods to be evidenced by vouchers.

:-

. On and from the notified date, no person shall sell or otherwise transfer any notified goods, unless every transaction in relation to the sale or transfer of such goods is evidenced by a voucher in such form and containing such particulars as may be specified by rules made in

this behalf.

11G. Sections 11C, 11E and 11F not to apply to goods in personal use. :-

- .
- (1) Nothing in section 11C , section 11E and section 11F shall apply to any notified goods which are
- (a) in personal use of the person by whom they are owned, possessed or controlled,
 - (b) kept in the residential premises of a person for his personal use.
- (2) If any person, who is in possession of any notified goods referred to in sub- section (1), sells, or otherwise transfers for a valuable consideration, any such goods, he shall issue to the purchaser or transferee, as the case may be, a memorandum containing such particulars as may be specified by rules made in this behalf and no such goods shall be taken from one place to another unless they are accompanied by the said memorandum.

CHAPTER 4B PREVENTION OR DETECTION OF ILLEGAL EXPORT OF GOODS

11H. Definitions :-

- . . In this Chapter, unless the context otherwise requires,
- (a) "illegal export" means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force ;
 - (b) "intimated place" means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11J ;
 - (c) "specified area" includes the Indian customs waters, and such inland area, not exceeding one hundred kilometres in width from any coast or other border of India, as the Central Government may, having regard to the vulnerability of that area to smuggling, by notification in the Official Gazette, specify in this behalf :
Provided that where a part of any village, town or city falls within a specified area, the whole of such village, town or city shall, notwithstanding that the whole of it is not within one hundred kilometres from any coast or other border of India, be deemed to be included in such specified area;
 - (d) "specified date", in relation to specified goods, means the date on which any notification is issued under section 11I in relation to those goods in any specified area;
 - (e) "specified goods" means goods of any description specified in the notification issued under section 11I in relation to a specified area.

11I. Power of Central Government to specify goods. :-

If, having regard to the magnitude of the illegal export of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal export or facilitating the detection of goods which are likely to be illegally exported, it may, by notification in the Official Gazette, specify goods of such class or description.

11J. Persons possessing specified goods to intimate the place of storage, etc. :-

(1) Every person who owns, possesses or controls, on the specified date, any specified goods, the market price of which exceeds fifteen thousand rupees shall within seven days from that date, deliver to the proper officer an intimation containing the particulars of the place where such goods are kept or stored within the specified area.

(2) Every person who acquires (within the specified area), after the specified date, any specified goods,

(i) the market price of which, or

(ii) the market price of which together with the market price of any specified goods of the same class or description, if any, owned, possessed or controlled by him on the date of such acquisition, exceeds fifteen thousand rupees shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition :

Provided that a person who has delivered an intimation, whether under sub-section (1) or sub-section (2), in relation to any specified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further intimation so long as the specified goods are kept or stored at the intimated place.

(3) If any person intends to shift any specified goods to which sub-section (1) or sub-section (2) applies, to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(4) No person shall, after the expiry of seven days from the specified date, keep or store any specified goods to which sub-section (1) or sub-section (2) applies, at any place other than the intimated place.

11K. Transport of specified goods to be covered by vouchers. :-

.

(1) No specified goods shall be transported from, into or within any specified area or loaded on any animal or conveyance in such area, unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by rules made in this behalf) prepared by the person owning, possessing, controlling or selling such goods :

Provided that no transport voucher shall be necessary for the transport, within a village, town or city, of any specified goods the market price of which, on the date of transport, does not exceed one thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), where the Central Government, after considering the nature of any specified goods, the time, mode, route and the market price of the goods intended to be transported, the purpose of the transportation and the vulnerability of the specified area with regard to the illegal export of such goods, is satisfied that it is expedient in the public interest so to do, it may,

(i) by notification in the Official Gazette, specify goods of such class or description and of a market price exceeding such sum as that Government may notify; and different sums in relation to the specified goods of the same class or description, or different classes or descriptions, may be notified for the same specified area or for different specified areas, and

(ii) direct that no person shall transport any goods so specified unless the transport voucher in relation to them has been countersigned by the proper officer.

11L. Persons possessing specified goods to maintain accounts.

:-

.

(1) Every person who, on or after the specified date, owns, possesses or controls, within a specified area, any specified goods of a market price exceeding fifteen thousand rupees, shall maintain (in such form and in such manner as may be specified by rules made in this behalf) a true and complete account of such goods and shall as often as he acquires or parts with any specified goods, make an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the person from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the specified goods to which such

accounts relate ;

Provided that it shall not be necessary to maintain separately accounts in the form and manner specified by rules made in this behalf in the case of a person who is already maintaining accounts which contain the particulars specified by the said rules.

(2) Every person who owns, possesses or controls any specified goods to which the provisions of sub-section (1) apply, and who uses any such goods for the manufacture of any other goods, shall maintain (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) a true and complete account of the specified goods so used by him and shall keep such account at the intimated place.

(3) If at any time, on a verification made by a proper officer, it is found that any specified goods owned, possessed or controlled by a person are lesser in quantity than the stock of such goods as shown, at the time of such verification, in the accounts referred to in sub-section (1), read with the accounts referred to in sub-section (2), it shall be presumed, unless the contrary is proved, that such goods, to the extent that they are lesser than the stock shown in the said accounts, have been illegally exported and that the person owning, possessing or controlling such goods has been concerned with the illegal export thereof.

11M. Steps to be taken by person selling or transferring any specified goods. :-

. Except where he receives payment by cheque drawn by the purchaser, every person who sells or otherwise transfers within any specified area, any specified goods, shall obtain, on his copy of the sale or transfer voucher, the signature and full postal address of the person to whom such sale or transfer is made and shall also take such other reasonable steps as may be specified by rules made in this behalf to satisfy himself as to the identity of the purchaser or the transferee, as the case may be, and if after an inquiry made by a proper officer, it is found that the purchaser or the transferee, as the case may be, is not either readily traceable or is a fictitious person, it shall be presumed, unless the contrary is proved, that such goods have been illegally exported and the person who had sold or otherwise transferred such goods had been concerned in such illegal export:

Provided that nothing in this section shall apply to petty sales of any specified goods if the aggregate market price obtained by such petty sales, made in the course of a day, does not exceed two thousand and five hundred rupees.

Explanation - In this section "petty sale" means a sale at a price which

does not exceed one thousand rupees.

CHAPTER 4C POWER TO EXEMPT FROM THE PROVISIONS OF CHAPTERS 4A AND 4B

11N. Power to exempt :-

If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally, either absolutely or subject to such conditions as may be specified in the notification, goods of any class or description from all or any of the provisions of Chapter IVA or Chapter IVB.

CHAPTER 5 LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

12. Dutiable goods :-

..

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

13. Duty on pilfered goods. :-

If any imported goods are pilfered after unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

14. Valuation of goods for purposes of assessment. :-

.

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of ¹["international trade, where

(a) the seller and the buyer have no interest in the business of each

other; or

(b) one of them has no interest in the business of the other, and the price is" the sole consideration for the sale or offer for sale"]

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46 , or a shipping bill or bill of export, as the case may be, is presented under section 50 .

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub- section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1), or sub-section (1A) if the ["Board"] is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this section

(a) "rate of exchange" means the rate of exchange

(i) determined by the ²"Board", or

(ii) ascertained in such manner as the ²"Board" may direct,

⁴ (b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)

1. In Section 14, sub-section (1) beginning the words "international trade" and ending with the word "offer for sale" the portion shall be substituted by Finance Act, 2002, (20 of 2002) Gazetta of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

2. In Section 14, sub-section (3) clause (a) the words "Central Government" shall be substituted by Finance Act, 2002, (20 of 2002) Gazetta of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

4. In Section 14, sub-section (3), clause (b) shall be substituted by Finance Act, 2002, (20 of 2002) Gazetta of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

15. Date for determination of rate of duty and tariff valuation of imported goods :-

..

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,

(a) in the case of goods entered for home consumption under section 46 , on the date on which a bill of entry in respect of such goods is

presented under that section;

(b) in the case of goods cleared from a warehouse under section 68 , on the date on which ¹[a bill of entry for home consumption in respect of such goods is presented under that section];

(c) in the case of any other goods, on the date of payment of duty :

² [Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.

1. Substituted for "the goods are actually removed from the warehouse " by the Finance Act, 2003.

2. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 28-9-1996.

16. Date for determination of rate of duty and tariff valuation of export goods :-

.

(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,

(a) in the case of goods entered for export under section 50 , on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51 ;

(b) in the case of any other goods, on the date of payment of duty.

(2) The provisions of this section shall not apply to baggage and goods exported by post.

17. Assessment of duty. :-

.

(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85 , be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, brokers note, policy of insurance, catalogue or

other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information

21 "(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

In the Customs Act, 1962 (hereafter referred to as the Customs Act), in section 17, after sub-section (4), the following sub-section shall be inserted, namely:- "(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be." by the Taxation Laws (Amendment) Act, 2006 .

18. Provisional assessment of duty. :-

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in section 46

(a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(b) where the proper officer deems it necessary to subject any

imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon ; or

(c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty ;

(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be ;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

22 (3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to-

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26 ;

(e) drawback of duty payable under sections 74 and 75."

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 18, after sub-section (2), the following sub-sections shall be inserted, namely:- "(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof. (4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount. (5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person; (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use; (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person; (d) the export duty as specified in section 26; (e) drawback of duty payable under sections 74 and 75.". by the Taxation Laws (Amendment) Act, 2006 .

19. Determination of duty where goods consist of articles liable to different rates of duty :-

. . Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows :

(a) articles liable to duty with reference to quantity shall be chargeable to that duty ;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates ;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b) :

Provided that,

(a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the

rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

20. Re-importation of goods. :-

. [If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

1 [* * *]]

1. Provisos and Explanation I and Explanation II omitted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier these were substituted by the Finance Act, 1994, w.e.f. 13-5-1994.

21. Goods derelict, wreck, etc. :-

. All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

22. Abatement of duty on damaged or deteriorated goods. :-

.

(1) Where it is shown to the satisfaction of the Assistant Commissioner of Customs **1** [or Deputy Commissioner of Customs]

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India ; or

(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17 , on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent, such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods

before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.

(3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

23. Remission of duty on lost, destroyed or abandoned goods :-

. .

(1) Without prejudice to the provisions of section 13 , where it is shown to the satisfaction of the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs ²⁵[or Deputy Commissioner of Customs] shall remit the duty on such goods.

²⁶[(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.]

²⁷ "Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

Substituted by the Finance Act, 1994, w.e.f. 13-5-1994.

In the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Customs Act), In the Section 23, in sub-section (2), the following proviso shall be inserted, namely: "Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force." by the Finance Act, 2006.

24. Power to make rules for denaturing or mutilation of goods

:-

. . The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

25. Power to grant exemption from duty :-

. .

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

¹"(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.";

²(2A)The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this

Explanation: "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

³[(4) Every notification issued under sub-section (1) ⁴[or sub-section (2A)] shall,

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.]

⁵ "(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees."

1. Substituted by The Finance Act, 2003

2. In Section 25, after sub-section (2), sub-section (2A), shall be inserted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

3. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

4. In Section 25, after the word sub-section (1) the word "or sub-section (1)", shall be inserted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

5. Inserted By The Finance Act, 2003

26. Refund of export duty in certain cases :-

. . Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if

(a) the goods are returned to such person otherwise than by way of resale ;

(b) the goods are re-imported within one year from the date of exportation ;

and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order

for the clearance of the goods.

27. Claim for refund of duty :-

. [.

(1) Any person claiming refund of any ¹[duty and interest, if any, paid on such duty]

(i) paid by him in pursuance of an order of assessment; or

(ii) borne by him, may make an application for refund of such ¹[duty and interest, if any, paid on such duty] to the Assistant Commissioner of Customs ³[or Deputy Commissioner of Customs]

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year ;

(b) in any other case, before the expiry of six months,

⁴[duty and interest, if any, paid on such duty], in such form ⁵[and manner] as may be specified in the regulations made in this behalf and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of ³[duty and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such ³[duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year or six months, as the case may be, shall not apply where any ³[duty and interest, if any, paid on such duty] has been paid under protest:

⁹[Provided also that in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25 , the limitation of one year or six months, as the case may be, shall be computed from the date of issue of such order.]

Explanation ¹⁰[I]. For the purposes of this sub-section, "the date of payment of ³[duty and interest, if any, paid on such duty]", in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

⁶[Explanation II. Where any duty is paid provisionally under section 18, the limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final

assessment thereof.]

(2) If, on receipt of any such application, the Assistant Commissioner of Customs ¹³[or Deputy Commissioner of Customs] is satisfied that the whole or any part of the ³[duty and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of ³[duty and interest, if any, paid on such duty] as determined by the Assistant Commissioner of Customs ⁷[or Deputy Commissioner of Customs] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to

(a) the ³[duty and interest, if any, paid on such duty] paid by the importer ¹⁸[or the exporter], if he had not passed on the incidence of such ³[duty and interest, if any, paid on such duty] to any other person;

(b) the ³[duty and interest, if any, paid on such duty] on imports made by an individual for his personal use ;

(c) the ³[duty and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such ³[duty and interest, if any, paid on such duty] to any other person ;

(d) the export duty as specified in section 26 ;

(e) drawback of duty payable under section 74 and section 75 ;

(f) the ³[duty and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of ³ [duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal "National Tax Tribunal" or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with

the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

1. Substituted for "duty" by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

3. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

4. Substituted for "duty" by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

5. Inserted by the Finance Act, 1995, w.e.f. 26-5-1995.

9. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 28-9-1996.

10. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

13. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

18. Inserted by "The Finance Act, 2003".

27A. Interest on delayed refunds :-

. [. If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below ¹five per cent and not exceeding thirty per cent per annum as is for the time being fixed ²[by the Central Government, by notification in the Official Gazette,] on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from

such date, till the date of refund of such duty.

Explanation. Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal "National Tax Tribunal" or any court against an order of the Assistant Commissioner of Customs³ [or Deputy Commissioner of Customs] under sub-section (2) of section 27 the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

1. Substituted for "ten" by the Finance Act, 2001.

2. Substituted for "by the Board" by the Finance Act, 2000, w.e.f. 12-5-2000.

3. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

28. Notice for payment of duties, interest, etc. :-

. [

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has 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 by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted :

1[****] **66**[****]

Explanation. Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or six months or five years, as the case may be.

67"(1A) When any duty has not been levied or has been short-levied

or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under the proviso to subsection (1) by the proper officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 28AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice."

(2) The proper officer, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), shall determine the amount of duty or interest due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

68"Provided that if such person has paid the duty in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub-section (1) shall, without prejudice to the provisions of sections 135, 135A and 140, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the proper officer shall determine the amount of duty or interest not being in excess of the amount partly due from such person."

69 [(2A) Where any notice has been served on a person under sub-section (1), the proper officer,

(i) in case any duty has not been levied or has been short-levied, or the interest has not been paid or has 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, where it is possible to do so, shall determine the amount of such duty or the interest, within a period of one year; and

(ii) in any other case, where it is possible to do so, shall determine the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable which has not been paid, part paid or erroneously refunded, within a period of six months, from the date of service of the notice on the person under sub-section (1).

(2B) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part paid or erroneously refunded, the person, chargeable with the duty or the interest, may pay the amount of duty or interest before service of notice on him under sub-section (1) in respect of the duty or the

interest, as the case may be, and inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the duty or the interest so paid:

Provided that the proper officer may determine the amount of short-payment of duty or interest, if any, which in his opinion has not been paid by such person and, then, the proper officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" or "six months" as the case may be, referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1. Nothing contained in this sub-section shall apply in a case where the duty was not levied or was not paid or the interest was not paid or was part paid or the duty or interest was erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter.

Explanation 2. For the removal of doubts, it is hereby declared that the interest under section 28AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the proper officer, but for this sub-section.

(2C) The provisions of sub-section (2B) shall not apply to any case where the duty or the interest had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.]

(3) For the purposes of sub-section (1), the expression "relevant date" means,

(a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of the goods;

(b) in a case where duty is provisionally assessed under section 18 , the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.]

Omitted by The Finance Act, 2003

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 28 , after sub-section (1), the following sub-section shall be inserted, namely:- "(1A) When any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts

by the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under the proviso to subsection (1) by the proper officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 28AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice."; by the Taxation Laws (Amendment) Act, 2006 .

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 28 , in sub-section (2), the following provisos shall be added, namely:- "Provided that if such person has paid the duty in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub-section (1) shall, without prejudice to the provisions of sections 135, 135A and 140, be deemed to be conclusive as to the matters stated therein: Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the proper officer shall determine the amount of duty or interest not being in excess of the amount partly due from such person." by the Taxation Laws (Amendment) Act, 2006 .

Sub-sections (2A) to (2C) inserted by the Finance Act, 2001.

28A. Power not to recover duties not levied or short-levied as a result of general practice :-

. .

(1) Notwithstanding anything contained in this Act, if the Central Government is satisfied

(a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from India; and

(b) that such goods were, or are, liable

(i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty than what was, or is being, levied, according to the said practice, then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

¹[(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such

goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 27 :

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Customs² [or Deputy Commissioner of Customs], in the form referred to in sub-section (1) of section 27 , before the expiry of six months from the date of issue of the said notification.

1. Substituted by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

2. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

28AA. Interest on delayed payment of duty. :-

. [

¹[(1)] ²[Subject to the provisions contained in section 28AB , where a person], chargeable with the duty determined under sub-section (2) of section 28 , fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest ³at such rate not below ⁴["ten per cent"] and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette,] on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty :

Provided that where a person, chargeable with duty determined under sub-section (2) of section 28 before the date on which the Finance Bill, 1995 receives the assent of the President, fails to pay such duty within three months from such date, then, such person shall be liable to pay interest under this section from the date immediately after three months from such date, till the date of payment of such duty.

Explanation 1: Where the duty determined to be payable is reduced by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be the date on which an amount of duty is first determined to be payable.

Explanation 2 : Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be,

(a) for the amount of duty first determined to be payable, the date on which the duty is so determined;

(b) for the amount of increased duty, the date of order by which the

increased amount of duty is first determined to be payable ;
(c) for the amount of further increase of duty, the date of order on which the duty is so further increased.]

5 [(2) The provisions of sub-section (1) shall not apply to cases where the duty or the interest becomes payable or ought to be paid on and after the date on which the Finance Bill, 2001 receives the assent of the President.]

1. Inserted by the Finance Act, 2001.

2. Substituted for "Where a person" by the Finance (No. 2) Act, 1996, w.e.f. 28-9-1996.

3. Substituted for "at such rate not below ten per cent and not exceeding thirty per cent per annum, as is for the time being fixed by the Board" by the Finance Act, 2000, w.e.f. 12-5-2000.

4. In Section 28AA and 28AB, sub-section (1) the words "eighteen per cent" shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

5. Inserted by the Finance Act, 2001.

28AB. Interest on delayed payment of duty in special cases. :-

. [

1[(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B), of section 28 , shall, in addition to the duty, be liable to pay interest at such rate not below [ten per cent] and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of section 28 , till the date of payment of such duty :

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 151A , and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already

paid.]

² [(2) The provisions of sub-section (1) shall not apply to cases where the duty or interest had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.]

Explanation 1. Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such reduced amount of duty.

Explanation 2. Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such increased or further increased amount of duty.]

1. Substituted by the Finance Act, 2001. Prior to its substitution, sub-section (1) read as under: "(1) Where any duty has not been levied or has been short levied or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty as determined under sub-section (2) of section 28, shall, in addition to the duty, be liable to pay interest at such rate not below eighteen per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2) of section 28, till the date of payment of such duty."

2. Substituted by the Finance Act, 2001. Prior to its substitution, sub-section (2) read as under: "(2) For the removal of doubts it is hereby declared that the provisions of sub-section (1) shall not apply to cases where the duty became payable before the date on which the Finance (No. 2) Bill, 1996 receives the assent of the President."

28B. Duties collected from the buyer to be deposited with the Central Government. :-

. [¹(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal "National Tax Tribunal" or any Court or in any other provision of this Act or the regulations made thereunder, ²[every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods] in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

³ [(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) and which has not been so

paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in sub-section (1).

(5) Where any surplus is left after the adjustment made under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 27 and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Customs for the refund of such surplus amount]

1. Inserted by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

2. Substituted for "every person who has collected any amount from the buyer of any goods" by the Finance Act, 2000, w.r.e.f. 20-9-1991.

3. Sub-sections (2) to (5) substituted for sub-section (2), *ibid.* Earlier sub-section (2), as amended by the Finance Act, 1999, w.e.f. 11-5-1999, read as under : "(2) The amount paid to the credit of the Central Government under sub-section (1) shall be adjusted against the duty payable by the person on finalisation of assessment and where any surplus is left after such adjustment, the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 27 and the application under that section in such cases shall be made before the expiry of six months from the date of the public notice to be issued by the Assistant Commissioner of Customs or Deputy Commissioner of Customs."

28BA. Provisional attachment to protect revenue in certain cases :-

(1) Where, during the pendency of any proceeding under 28 or 28B, the proper officer is of the opinion that for the purpose of protecting

the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub- (1) of 28 or sub- (2) of 28B, as the case may be, in accordance with the rules made in this behalf under 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub- (1) :

Provided that the Chief Commissioner of Customs may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

Provided further that where an application for settlement of case under 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub- (1) of 127C is made shall be excluded from the period specified in the preceding proviso.

CHAPTER 5A INDICATING AMOUNT OF DUTY IN THE PRICE OF GOODS, ETC., FOR PURPOSE OF REFUND

28C. Price of goods to indicate the amount of duty paid thereon. :-

. Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty on any goods, shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

28D. Presumption that incidence of duty has been passed on to the buyer :-

. . Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.]

CHAPTER 5B ADVANCE RULINGS

28E. Definitions :-

. . In this Chapter, unless the context otherwise requires,

(a) "activity" means import or export;

(b) "advance ruling" means the determination, by the Authority, of a question of law or fact specified in the application regarding the

liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant;

(c) "applicant" means

(i) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or

(ii) a resident setting up a joint venture in India in collaboration with a non-resident; or

(iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

(d) "application" means an application made to the Authority under sub-section (1) of section 28H ;

(e) "Authority" means the Authority for Advance Rulings constituted under section 28F ;

(f) "Chairperson" means the Chairperson of the Authority;

(g) "Member" means a Member of the Authority and includes the Chairperson;

and

(h) "non-resident", "Indian company" and "foreign company" have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961)..

28F. Authority for advance rulings :-

. .

(1) The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as "the Authority for Advance Rulings".

(2) The Authority shall consist of the following Members appointed by the Central Government, namely:

(a) a Chairperson, who is a retired Judge of the Supreme Court;

(b) an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;

(c) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as the Central Government may by rules determine.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Delhi.

28G. Vacancies, etc., not to invalidate proceedings :-

. . No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

28H. Application for advance ruling :-

. .

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of,

(a) classification of goods under the Customs Tariff Act, 1975 (51 of 1975);

(b) applicability of a notification issued under sub-section (1) of section 25 , having a bearing on the rate of duty;

(c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act.

¹ "(d) applicability of notifications issued in respect of duties under this Act, the Customs Tariff Act, 1975 (51 of 1975) and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act."

(3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(4) An applicant may withdraw his application within thirty days from the date of the application.

1. Inserted by The Finance Act, 2003

28I. Procedure on receipt of application :-

. .

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Customs and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Customs.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application :

Provided that the Authority shall not allow the application ¹ [****] where the question raised in the application is

(a) already pending in the applicants case before any officer of customs, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant. and to the Commissioner of Customs.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation. For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 146A.

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Customs, as soon as may be, after such pronouncement.

1. In Section 28I, sub-section (2) in the first proviso the words ["except in the case of a resident applicant"] shall be omitted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

28J. Applicability of advance ruling :-

..

(1) The advance ruling pronounced by the Authority under section rule 281 shall be binding only

(a) on the applicant who had sought it;

(b) in respect of any matter referred to in sub-section (2) of section 28H ;

(c) on the Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

28K. Advance ruling to be void in certain circumstances :-

. .

(1) Where the Authority finds, on a representation made to it by the Commissioner of Customs or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 28I has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Customs.

28L. Powers of Authority :-

. .

(1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228, and for the purpose of Section 196 of the Indian Penal Code, 1860 (45 of 1860).

28M. Procedure of Authority :-

. . The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.]

CHAPTER 6 PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORTED GOODS

29. Arrival of vessels and aircrafts in India :-

. .

(1) The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land

(a) for the first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

(2) The provisions of sub-section (1) shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft

(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;

(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and

(c) shall comply with any directions given by any such officer with respect to any such goods,

Provided that nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

30. Delivery of import manifest or import report :-

. . "

(1) The person-in-charge of

(i) a vessel;

(ii) an aircraft;

(iii) a vehicle,

(2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.

31. Imported goods not to be unloaded from vessel until entry inwards granted :-

. .

(1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

(2) No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

32. Imported goods not to be unloaded unless mentioned in import manifest or import report. :-

. No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

33. Unloading and loading of goods at approved places only :-

. . Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

34. Goods not to be unloaded or loaded except under supervision of customs officer :-

. . Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer :

Provided that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

35. Restrictions on goods being water-borne. :-

. No imported goods shall be water-borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form :

Provided that the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

36. Restrictions on unloading and loading of goods on holidays, etc :-

. . No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any :

Provided that no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

37. Power to board conveyances. :-

. The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.

38. Power to require production of documents and ask questions. :-

. For the purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions and thereupon such person shall produce such documents and answer such questions.

39. Export goods not to be loaded on vessel until entry-outwards granted. :-

. The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

40. Export goods not to be loaded unless duly passed by proper officer :-

. . The person-in-charge of a conveyance shall not permit the loading at a customs station

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may

be, duly passed by the proper officer, has been handed over to him by the exporter;

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

41. Delivery of export manifest or export report. :-

.

(1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form :

Provided that if the agent of the person-in-charge of the conveyance furnishes such security as the proper officer deems sufficient for duly delivering within seven days from the date of departure of the conveyance the export manifest or the export report, as the case may be, the proper officer may (subject to such rules as the Central Government may make in this behalf) accept such manifest or report within the aforesaid period.

(2) The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

42. No conveyance to leave without written order :-

..

(1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until

(a) the person-in-charge of the conveyance has answered the questions put to him under section 38 ;

(b) the provisions of section 41 have been complied with;

(c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;

(d) all duties leviable on any stores consumed in such conveyance, and

all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under i or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(d) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods,

(i) such goods have been unloaded, or

(ii) where the Assistant Commissioner of Customs¹ [or Deputy Commissioner of Customs] is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

43. Exemption of certain classes of conveyances from certain provisions of this Chapter. :-

.

(1) The provisions of section 30 , section 41 and section 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants.

(2) The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this Chapter

(a) conveyances belonging to the Government or any foreign Government;

(b) vessels and aircraft which temporarily enter India by reasons of any emergency.

CHAPTER 7 CLEARANCE OF IMPORTED GOODS AND EXPORT GOODS

44. Chapter not to apply to baggage and postal articles. :-

. The provisions of this Chapter shall not apply to (a) baggage, and (b) goods imported or to be exported by post.

45. Clearance of imported goods Restrictions on custody and removal of imported goods. :-

.

(1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer.

¹ [(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.]

1. Inserted by the Finance Act, 1995, w.e.f. 26-5-1995.

46. Entry of goods on importation. :-

.

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form :

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other

receipt given by the carrier to the consignor.

(3) A bill of entry under sub-section (1) may be presented at any time after the delivery of the import manifest or import report as the case may be :

Provided that the Commissioner of Customs may in any special circumstances permit a bill of entry to be presented before the delivery of such report:

¹ [Provided further that a bill of entry may be presented even before the delivery of such manifest if the vessel or the aircraft by which the goods have been shipped for importation into India is expected to arrive within thirty days from the date of such presentation.]

(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

1. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 28-9-1996.

47. Clearance of goods for home consumption. :-

.

¹[(1)] Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

¹[(2) Where the importer fails to pay the import duty under sub-section (1) ³[within ⁴["five days"], excluding holidays,] from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest ⁵[at such rate, not below ⁶["ten per cent"] and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette,] on such duty till the date of payment of the said duty :

Provided that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:]

⁷ [Provided further that if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.]

1. Inserted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

3. Substituted for "within seven days" by the Finance Act, 1999, w.e.f. 11-5-1999.

4. In Section 47, sub-section (2) the words ["two days"] shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

5. Substituted for "at such rate, not below ten per cent and not exceeding thirty percent per annum, as is for the time being fixed by the Board" by the Finance Act, 2000, w.e.f. 12-5-2000. Earlier the quoted words were amended by the Finance Act, 1995, w.e.f. 26-5-1995.

6. In Section 47, sub-section (2) the words ["eighteen per cent"] shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

7. Inserted by the Finance Act, 1995, w.e.f. 26-5-1995.

48. Procedure in ease of goods not cleared, warehoused, or transhipped within 5 after unloading. :-

. If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within ¹ [thirty days] from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof:

Provided that

(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;

(b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation. In this section, "arms" and "ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).

1. Substituted for "forty-five days", *ibid*.

49. Storage of imported goods in warehouse pending clearance. :-

. Where in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs ¹ [or Deputy Commissioner of Customs] is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a public warehouse, or in a private warehouse if facilities for deposit in a public warehouse are not available; but such goods shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

50. Clearance of export goods Entry of goods for exportation. :-

.

(1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

51. Clearance of goods for exportation :-

. Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.

CHAPTER 8 GOODS IN TRANSIT

52. Chapter not to apply to baggage, postal articles and stores :-

. . The provisions of this Chapter shall not apply to (a) baggage, (b) goods imported by post, and (c) stores.

53. Transit of certain goods without payment of duty :-

. [. Subject to the provisions of section 11 , any goods imported in a

conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or any customs station may be allowed to be so transited without payment of duty.

54. Transhipment of certain goods without payment of duty :-

. .

(1) Where any goods imported into a customs station are intended for transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form :

¹ [Provided that where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.]

(2) Subject to the provisions of section 11 , where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transhipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transhipment

(a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or

(b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transhipment to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transhipment is allowed.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

55. Liability of duty on goods transited under section 53 or transhipped under section 55 :-

. Where any goods are allowed to be transited under section 53 or transhipped under sub-section (3) of section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first

importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.]

56. Transport of certain classes of goods subject to prescribed conditions :-

. . Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

CHAPTER 9 WAREHOUSING

57. Appointing of public warehouses :-

. . At any warehousing station, the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] may appoint public warehouses wherein dutiable goods may be deposited ² [* * *].

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

2. Words "without payment of duty" omitted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

58. Licensing of private warehouses :-

. .

(1) At any warehousing station, the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] may licence private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited ² [* * *].

(2) The Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] may cancel a licence granted under sub-section (1)

(a) by giving one months notice in writing to the licensee; or

(b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence:

Provided that before any licence is cancelled under clause (b), the licensee shall be given a reasonable opportunity of being heard.

(3) Pending an enquiry whether a licence granted under sub-section (1) should be cancelled under clause (b) of sub-section (2), the Assistant Commissioner of Customs ¹ [or Deputy Commissioner of

Customs] may suspend the licence.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

2. Words "without payment of duty" omitted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

59. Warehousing bond. :-

.

¹[(1) The importer of any goods specified in ²[***] sub-section (1) of section 61, which have been entered for warehousing and assessed to duty under section 17 or section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand,

(i) all duties, and interest, if any, payable under sub-section (2) of section 61 ;

(ii) rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified ³[at such rate not below eighteen per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette]; and

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.]

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs ⁴[or Deputy Commissioner of Customs] may permit an importer to enter into a general bond in such amount as the Assistant Commissioner of Customs ⁴ [or Deputy Commissioner of Customs] may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse:

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

1. Substituted by the Custom (Amendment) Act, 1991, w.e.f. 23-12-1991.
2. Words "clause (a) of" omitted by the Finance Act, 1994, w.e.f. 13-5-1994.
3. Substituted for "at the rate of six per cent per annum or such other rate as is for the time being fixed by the Board" by the Finance Act, 2000, w.e.f. 12-5-2000.
4. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

59A. Conditions for warehousing of certain goods :-

. . ¹ [Omitted by the Finance Act, 1994, w.e.f. 13-5-1994.]

1. Earlier section 59A was inserted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

60. Permission for deposit of goods in a warehouse :-

. . When the provisions of section 59 ¹[* * *] have been complied with in respect of any goods, the proper officer may make an order permitting the deposit of the goods in a warehouse ² [* * *].

1. Words "or section 59A" omitted by the Finance Act, 1994, w.e.f. 13-5-1994. Earlier these words were inserted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.
2. Words "without payment of duty" omitted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

61. Period for which goods may remain warehoused :-

. [.

- (1) Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,
 - (a) in the case of capital goods intended for use in any hundred per cent export oriented undertaking, till the expiry of five years; ¹[***] ²(aa) in the case of goods other than capital goods intended for use in any hundred per cent, export-oriented undertaking, till the expiry of three years; and";
 - (b) in the case of any other goods, till the expiry of one year, after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse:

Provided that ³(i) in the case of any goods which are not likely to deteriorate, the period specified in ⁴[clause (a) or clause (aa) or clause

(b)] may, on sufficient cause being shown, be extended

(A) in the case of such goods intended for use in any hundred per cent export-oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit; and

(B) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit.

(ii) in the case of any goods referred to in clause (b), if they are likely to deteriorate, the aforesaid period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit:

Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home consumption or exportation.

(2) ⁵[Where any warehoused goods

(i) specified in ⁶[sub-clause (a) or sub-clause (aa)] of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of

(ii) specified in sub-clause (b) of sub-section (1), remain in a warehouse beyond a period of ⁷[ninety days], interest shall be payable at such rate or rates not exceeding the rate specified in section 47 , as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said ⁷ [ninety days] till the date of payment of duty on the warehoused goods:]

Provided that the Board may, if it considers it necessary so to do in the public interest, by order and under circumstances of an exceptional nature, to be specified in such order, waive the whole or part of any interest payable under this section in respect of any warehoused goods :

Provided further that the Board may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section.

Explanation. For the purposes of this section, "hundred per cent export oriented undertaking" has the same meaning as in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944).]

1. Omitted By the Finance Act, 2003.

2. Inserted By The Finance Act, 2003

3. In Section 61, sub-section (1), in the first proviso, clause (i) shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

4. Substituted for the words "clause (a) or clause (b) " by The Finance Act, 2003

5. Substituted for the opening paragraph beginning with the words "Where any warehoused goods" and ending with the words "payment of duty on the warehoused goods :" by the Finance Act, 1999, w.e.f. 11-5-1999. Prior to its substitution, the opening paragraph read as under : "Where any warehoused goods remain in a warehouse beyond the period specified in sub-section (1) by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods :"

6. Substituted by The Finance Act, 2003

7. Substituted for the words "Thirty Days" by The Finance Act, 2003.

62. Control over warehoused goods. :-

.

(1) All warehoused goods shall be subject to the control of the proper officer.

(2) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

(3) The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

(4) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

63. Payment of rent and warehouse charges :-

..

(1) The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.

(2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse-keeper may, after

notice to the owner of the warehoused goods and with the permission of the proper officer caused to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.

64. Owners right to deal with warehoused goods :-

. . With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same,

- (a) inspect the goods;
- (b) separate damaged or deteriorated goods from the rest;
- (c) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;
- (d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (e) show the goods for sale; or
- (f) take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

65. Manufacture and other operations in relation to goods in a warehouse. :-

(1) With the sanction of the Assistant Commissioner of Customs ¹ [or Deputy Commissioner of Customs] and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provision shall apply:

- (a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse, as has arisen from the operations carried on in relation to the goods exported: Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;
- (b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the

operations carried on in relation to the goods cleared for home consumption.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

66. Power to exempt imported materials used in the manufacture of goods in warehouse :-

. . If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

67. Removal of goods from one warehouse to another :-

. . The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, ¹ [* *] subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

1. Words "without payment of duty" omitted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

68. Clearance of warehoused goods for home consumption :-

. . The importer of any warehoused goods may clear them for home consumption, if

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

127"

Provided that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall

not be liable to pay duty thereon."

128 "Provided further that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

Inserted by The Finance act, 2003

In the Customs Act,(52 of 1962) (hereinafter referred to as the Customs Act), In Section 68 of after the proviso,the following proviso shall be inserted, namely: "Provided further that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.". by the Finance Act, 2006.

69. Clearance of warehoused goods for exportation :-

. .

(1) Any warehoused goods may be exported to a place outside India without payment of import duty if

(a) a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form;

(b) the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for exportation has been made by the proper officer.

(2) Notwithstanding anything contained in sub-section (1) if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restriction and conditions as may be specified in the notification.

70. Allowance in case of volatile goods :-

. .

(1) When any warehoused goods to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant Commissioner of Customs¹ [or Deputy Commissioner of Customs] may remit the duty on such deficiency.

(2) This section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette,

specify.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

71. Goods not to be taken out of warehouse except as provided by this Act :-

. . No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation, or for removal to another warehouse, or as otherwise provided by this Act.

72. Goods improperly removed from warehouse, etc :-

. .

(1) In any of the following cases, that is to say,

(a) where any warehoused goods are removed from a warehouse in contravention of section 71 ;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(c) where any warehoused goods have been taken under section 64 as samples without payment of duty;

(d) where any goods in respect of which a bond has been executed under section 59 ¹ [* * *] and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer, the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under sub-section (1) the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may select.

1. Words "or section 59A" omitted by the Finance Act, 1994, w.e.f. 13-5-1994. Earlier these words were inserted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

73. Cancellation and return of warehousing bond :-

. . When the whole of the goods covered by any bond executed under section 59 ¹ [* * *] have been cleared for home consumption or exported or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall

cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

1. Words "or section 59A" omitted by the Finance Act, 1994, w.e.f. 13-5-1994. Earlier these words were inserted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

CHAPTER 10 DRAWBACK

74. Drawback allowable on re-export of duty paid goods :-

..

(1) When any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation,

(i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51 ; or

(ii) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation ; or

(iii) are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation, ninety-eight per cent of such duty shall, except as otherwise hereinafter provided, be repaid as drawback, if

(a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] as the goods which were imported; and

(b) the goods are entered for export within two years from the date of payment of duty on the importation thereof :

Provided that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.

² [(3) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may

- (a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;
 - (b) specify the goods which shall be deemed to be not capable of being easily identified; and
 - (c) provide for the manner and the time within which a claim for payment of drawback is to be filed.]
- (4) For the purposes of this section
- (a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16 ;
 - (b) in the case of goods assessed to duty provisionally under section 18 , the date of payment of the provisional duty shall be deemed to be the date of payment of duty.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

2. Substituted by the Finance Act, 1995, w.e.f. 26-5-1995.

75. Drawback on imported materials used in the manufacture of goods which are exported :-

. .

(1) Whereas it appears to the Central Government that in respect of goods of any class or description ¹[manufactured, processed or on which any operation has been carried out in India], being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under section 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the ²[manufacture or processing of such goods or carrying out any operation on such goods], the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2):

³[Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is ⁴[manufacture or processing of such goods or carrying out any operation on such goods] or class of goods, or is not more than such percentage of the value of the imported

materials used in the ⁴[manufacture or processing of such goods or carrying out any operation on such goods] or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the ⁶["Foreign Exchange Management Act, 1999 (42 of 1999)"] such drawback shall be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.]

(1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods ¹[manufactured, processed or on which any operation has been carried out in India] and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.

(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide

⁸[(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest, if any, payable thereon;]

³[(aa) for specifying the goods in respect of which no drawback shall be allowed;

(ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) ¹⁰[or interest chargeable thereon];]

(b) for the production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;

(c) for requiring the ¹¹[manufacturer or the person carrying on any process or other operation] to give access to every part of his manufacturing to any officer of customs specially authorised in this

behalf by the Assistant Commissioner of Customs ¹²[or Deputy Commissioner of Customs] to enable such authorised officer to inspect the processes of ¹³[manufacture, process or any other operation carried out] and to verify by actual check or otherwise the statements made in support of the claim for drawback;

¹⁴[(d) for the manner and the time within which the claim for payment of drawback may be filed.]

¹¹ [(3) The power to make rules conferred by sub-section (2) shall include the power to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export goods.]

1. Substituted for "manufactured in India", *ibid*.

2. Substituted for "manufacture of such goods", *ibid*.

3. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

4. Substituted for "manufacture of such goods" by the Finance Act, 1995. w.e.f. 26-5-1995.

6. In Section 75, sub-section (1) in the second proviso for the words ["Foreign Exchange Regulation Act, 1973.(46 of 1973)"] shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

8. Substituted, *ibid*.

10. Inserted by the Finance Act, 1995, w.e.f. 26-5-1995.

11. Substituted for "manufacturer", by the Finance Act, 1995, w.e.f. 26-5-1995.

12. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

13. Substituted for "manufacture" by the Finance Act, 1995, w.e.f. 26-5-1995.

14. Inserted, *ibid*.

75A. Interest on drawback :-

. [.

(1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of ¹[one] months from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of ¹[one] months till the date of payment of such drawback:

3[* * *]

(2) Where any drawback has been paid to the claimant erroneously, the claimant shall, within a period of ¹[one] months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA from the date after the expiry of the said period of ¹ [one] months till the date of recovery of such drawback.]

1. Substituted for "two" by the Finance Act, 2003.

3. Omitted By The Finance Act, 2003

76. Prohibition and regulation of drawback in certain cases. :-

.

(1) Notwithstanding anything herein before contained, no drawback shall be allowed

(a) * *

(b) in respect of any goods the market price of which is less than the amount of drawback due thereon ;

(c) where the drawback due in respect of any goods is less than fifty rupees.

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

CHAPTER 10A SPECIAL PROVISIONS RELATING TO SPECIAL ECONOMIC ZONE

76A. Notification of special economic zone. :-

The Central Government may, by notification in the Official Gazette, specify special economic zones comprising specifically delineated areas where any goods admitted shall be regarded, insofar as duties of customs are concerned, as being outside the customs territory of India as provided in this Chapter.

76B. Application of provisions. :-

The provisions of this Chapter and other Chapters shall apply to goods admitted to a special economic zone, but in the event of conflict

between the provisions of this Chapter and other Chapters, the provisions of this Chapter shall prevail.

76C. Establishment and control. :-

(1) The Central Government may make rules specifying the requirements relating to goods or class of goods admissible to a special economic zone, the nature of operations to which such goods or class of goods may be subjected to, the conditions to be fulfilled and the procedures to be followed in this regard.

(2) The Board may specify, in the regulations made in this behalf, arrangements for customs control in a special economic zone.

(3) The proper officer shall have the right to carry out checks, at any time, on the goods kept or stored in a special economic zone.

76D. Admission of goods. :-

Subject to such conditions as may be specified in the rules made in this behalf, any goods imported directly from outside India or procured from within India shall be authorised for admission to a special economic zone.

76E. Exemption from duties of customs. :-

Without prejudice to the provisions of Sections 76-F, 76-G and 76-H, any goods admitted to a special economic zone shall be exempt from duties of customs.

76F. Levy of duties of customs. :-

Subject to the conditions as may be specified in the rules made in this behalf,

(a) any goods admitted to a special economic zone from the domestic tariff area shall be chargeable to export duties at such rates as are leviable on such goods when exported;

(b) any goods removed from a special economic zone for home consumption shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(c) the rate of duty and tariff valuation, if any, applicable to goods admitted to, or removed from, a special economic zone shall be the rate and tariff valuation in force as on the date of such admission or removal, as the case may be, and where such date is not

ascertainable, on the date of payment of the duty.

76G. Authorised operations. :-

All goods admitted to a special economic zone shall undergo such operations including processing or manufacturing as may be specified in the rules made in this behalf.

76H. Goods utilised within a special economic zone. :-

(1) The Central Government may make rules in this behalf to enumerate the cases in which goods to be utilised inside a special economic zone may be admitted free of duties of customs and lay down the requirements which shall be fulfilled.

(2) Goods utilised contrary to the provisions of rules made under subsection (1) shall be chargeable to duties of customs in the same manner as provided under clause (b) of Section 76-F as if they have been removed for home consumption.

76I. Drawback on goods admitted to a special economic zone.

:-

Any goods admitted to a special economic zone from the domestic tariff area for the purposes authorised under this Chapter shall be eligible for drawback under Section 75 as if such goods are export goods for the purposes of that section;

76J. Duration of stay. :-

Any goods admitted to a special economic zone shall not be allowed to remain within such zone beyond such time as may be specified in the rules made in this behalf

76K. Security. :-

Any goods admitted free of duty to a special economic zone or goods under transshipment to and from such zone without payment of duty shall be subject to execution of such bond and such surety or security as may be specified in the rules made in this behalf.

76L. Transfer of ownership. :-

Any goods admitted to, or produced or manufactured in, a special economic zone shall be allowed for transfer of ownership subject to such conditions as may be specified in the rules made in this behalf.

76M. Removal of goods. :-

Any goods admitted to, or produced or manufactured in, a special economic zone may be removed in accordance with such procedure as may be specified in the rules made in this behalf.

76N. Closure of a special economic zone. :-

In the event of closure of a special economic zone by the Central Government, by notification in the Official Gazette, the goods admitted to, or produced or manufactured in, such zone shall be removed within such time and in such manner as may be specified in the rules made in this behalf.

CHAPTER 11 SPECIAL PROVISIONS REGARDING BAGGAGE, GOODS IMPORTED OR EXPORTED BY POST, AND STORES

77. Baggage Declaration by owner of baggage. :-

. The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

78. Determination of rate of duty and tariff valuation in respect of baggage :-

. . The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77 .

79. Bona fide baggage exempted from duty. :-

- .
- (1) The proper officer may, subject to any rules made under subsection (2), pass free of duty
 - (a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules ;
 - (b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir :

Provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

- (2) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1) ;
 - (b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);
 - (c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.
- (3) Different rules may be made under sub-section (2) for different classes of persons.

80. Temporary detention of baggage. :-

. Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77 , the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India ¹ [and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name.]

1. Inserted by the Finance Act, 1995, w.e.f. 26-5-1995.

81. Regulations in respect of baggage. :-

- . The Board may make regulations,
- (a) providing for the manner of declaring the contents of any baggage ;
 - (b) providing for the custody, examination, assessment to duty and clearance of baggage;
 - (c) providing for the transit or transhipment of baggage from one customs station to another or to a place outside India.

82. Goods imported or exported by post Label or declaration accompanying goods to be treated as entry :-

. . In the case of goods imported or exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for import or export, as the case may be, for the purposes of this Act.

83. Rate of duty and tariff valuation in respect of goods imported or exported by post. :-

.

(1) The rate of duty and tariff value, if any, applicable to any goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon : Provided that if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.

(2) The rate of duty and tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

84. Regulations regarding goods imported or to be exported by post. :-

. The Board may make regulations providing for

(a) the form and manner in which an entry may be made in respect of any specified class of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof ;

(b) the examination, assessment to duty, and clearance of goods imported or to be exported by post;

(c) the transit or transshipment of goods imported by post, from one customs station to another or to a place outside India.

85. Stores may be allowed to be warehoused without assessment to duty. :-

. Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty under this Chapter, the proper officer may permit the goods to be warehoused without the goods being assessed to duty.

86. Transit and transshipment of stores :-

. .

(1) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India.

(2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87 or section

90 .

87. Imported stores may be consumed on board a foreign-going vessel or aircraft :-

. . Any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

88. Application of section 69 and Chapter X to stores. :-

. The provisions of section 69 and Chapter X shall apply to stores (other than those to which section 90 applies) as they apply to other goods, subject to the modifications that

(a) for the words "exported to any place outside India" or the word "exported", wherever they occur, the words "taken on board any foreign-going vessel or aircraft as stores" shall be substituted;

(b) in the case of drawback on fuel and lubricating oil taken on board any foreign-going aircraft as stores, sub-section (1) of section 74 shall have effect as if for the words "ninety-eight per cent", the words "the whole" were substituted.

89. Stores to be free of export duty. :-

. Goods produced or manufactured in India and required as stores on any foreign-going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.

90. Concessions in respect of imported stores for the Navy. :-

.

(1) Imported stores specified in sub-section (3) may without payment of duty be consumed on board a ship of the Indian Navy.

(2) The provisions of section 69 and Chapter X shall apply to stores specified in sub-section (3) as they apply to other goods, subject to the modification that

(a) for the words "exported to any place outside India", or the word "exported" wherever they occur, the words "taken on board a ship of the Indian Navy" shall be substituted;

(b) for the words "ninety-eight per cent" in sub-section (1) of section 74, the words "the whole" shall be substituted.

(3) The stores referred to in sub-sections (1) and (2) are the following :

- (a) stores for the use of a ship of the Indian Navy;
- (b) stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service.

CHAPTER 12I PROVISIONS RELATING TO COASTAL GOODS AND VESSELS CARRYING COASTAL GOODS

91. Chapter not to apply to baggage and stores :-

. . The provisions of this Chapter shall not apply to baggage and stores.

92. Entry of coastal goods :-

. .

(1) The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in the prescribed form.

(2) Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

93. Coastal goods not to be loaded until bill relating thereto is passed, etc. :-

. The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

94. Clearance of coastal goods at destination :-

. .

(1) The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port.

(2) Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him under sub-section (1).

95. Master of a coastal vessel to carry an advice book :-

. .

(1) The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book".

(2) The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port.

(3) The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection.

96. Loading and unloading of coastal goods at customs port or coastal port only :-

. . No coastal goods shall be loaded on, or unloaded from, any vessel at any port other than a customs port or a coastal port appointed under section 7 for the loading or unloading of such goods.

97. No coasting vessel to leave without written order :-

. .

(1) The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until

(a) the master of the vessel has answered the questions put to him under section 38 ;

(b) all charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(c) the master of the vessel has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

98. Application of certain provisions of this Act to coastal goods, etc :-

. .

(1) Section 33 , section 34 , and section 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods.

(2) Section 37 and section 38 shall, so far as may be, apply to vessels carrying coastal goods as they apply to vessels carrying imported goods or export goods.

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the other provisions of Chapter VI and the provisions of section 45 shall apply to coastal goods or vessels carrying coastal goods subject to such exceptions and modifications as may be specified in the notification.

98A. Power to relax :-

. [. If the Central Government is satisfied that it is necessary in the public interest so to do it may, by notification in the Official Gazette, exempt generally, either absolutely or subject to such conditions as may be specified in the notification, coastal goods or vessels carrying coastal goods from all or any of the provisions of this Chapter.]

99. Power to make rules in respect of coastal goods and coasting vessels :-

. . The Central Government may make rules for

(a) preventing the taking out of India of any coastal goods the export of which is dutiable or prohibited under this Act or any other law for the time being in force;

(b) preventing, in the case of a vessel carrying coastal goods as well as imported or export goods, the substitution of imported or export goods by coastal goods.

CHAPTER 13 SEARCHES, SEIZURE AND ARREST

100. Power to search suspected persons entering or leaving India, etc :-

. .

(1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

(2) This section applies to the following persons, namely :

(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, a vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clause (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area.

101. Power to search suspected persons in certain other cases

:-

..

(1) Without prejudice to the provisions of section 100 , if an officer of customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

(2) The goods referred to in sub-section (1) are the following :

(a) gold;

(b) diamonds;

(c) manufactures of gold or diamonds;

(d) watches;

(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

102. Persons to be searched may require to be taken before gazetted officer of customs or magistrate :-

..

(1) When any officer of customs is about to search any person under the provisions of section 100 or section 101 , the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate.

(2) 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.

(3) 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 but otherwise shall direct that search be made.

(4) Before making a search under the provisions of section 100 or section 101 , 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; and the search shall 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.

(5) No female shall be searched by any one excepting a female.

103. Powers to screen or X-ray bodies of suspected persons for detecting secreted goods :-

. .

(1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate.

(2) A magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

(3) Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

(4) Where a magistrate has made any order under sub-section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.

(5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay.

(6) Where on receipt of a report from a radiologist under sub-section (5) or otherwise, 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 : Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

(7) Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody

and for such period as he may direct.

(8) Nothing in this section shall apply to any person referred to in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bring out such goods.

Explanation: For the purposes of this section, the expression "registered medical practitioner" means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956).

104. Power to arrest :-

..

163 "(1) If an officer of customs empowered in this behalf by general or special order of the 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."

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), 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 (5 of 1898).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act shall not be cognizable.

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 104 , sub-section (1), shall be substituted, in place of :- "

(1) If an officer of customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under section 135, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest." by the Taxation Laws (Amendment) Act, 2006 .

105. Power to search premises :-

..

(1) If the Assistant Commissioner of Customs¹ [or Deputy Commissioner of Customs], or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this 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.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Commissioner of Customs" were substituted.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

106. Power to stop and search conveyances :-

. .

(1) 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 purposes of sub-section (1)

(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 recognized 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.

106A. Power to inspect :-

. . Any proper officer authorised in this behalf by the Commissioner of Customs may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IVA or Chapter IVB, as the case may be, 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 his inspection the accounts maintained under the said Chapter IVA or Chapter IVB, as the case may be, 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 are likely to be illegally exported.

107. Power to examine persons :-

. . Any officer of customs empowered in this behalf by general or special order of the 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.

108. Power to summon persons to give evidence and produce documents :-

.
165 "(1) Any gazetted officer of customs duly empowered by the Central Government in this behalf, 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 under this Act."

(2) 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.

(3) 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.

(4) 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).

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 108 , sub-section (1) shall be substituted, in place of :- "(1) Any gazetted officer of customs 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." by the Taxation Laws (Amendment) Act, 2006 .

109. Power to require production of order permitting clearance of goods imported by land. :-

. Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of 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:

Provided that nothing in this section shall 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 .

110. Seizure of goods, documents and things :-

. .

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :

Provided that where it is not practicable to seize any 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.

(1A) 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.

(1B) Where any goods, being goods specified under sub-section (1A), 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 proceeding 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.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized ;

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

(3) 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.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

110A. Provisional release of goods, documents and things seized pending adjudication :-

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

CHAPTER 14 CONFISCATION OF GOODS AND CONVEYANCES AND IMPOSITION OF PENALTIES

111. Confiscation of improperly imported goods, etc :-

. . 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 ¹ [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section

(1) of section 54];

(n) any dutiable or prohibited goods transited with or without transshipment 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.

1. Substituted for "in respect thereof" by the Finance Act, 1999, w.e.f. 11-5-1999.

112. Penalty for improper importation of goods, etc :-

. . Any person,

(a) who, in relation to any goods, does or omits to do any act which act or 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 ¹[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, to a penalty ²[not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

(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 ³[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 ⁴[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 (it) and (iii), to a

penalty ⁵ [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

1. Substituted for "not exceeding five times the value of the goods or one thousand rupees" by the Finance Act, 2001.

2. Substituted for "not exceeding five times the duty sought to be evaded on such goods or one thousand rupees", *ibid*.

3. Substituted for "not exceeding five times the difference between the declared value and the value thereof or one thousand rupees", *ibid*.

4. Substituted for "not exceeding five times the value of the goods or five times the difference between the declared value and the value thereof or one thousand rupees", *ibid*.

5. Substituted for "not exceeding five times the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or one thousand rupees", *ibid*.

113. Confiscation of goods attempted to be improperly exported, etc :-

. . The following export goods shall be liable to confiscation :

(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 ¹[**]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 ¹[***]goods found concealed in package which is brought within the limits of a customs area for the purpose of exportation;

(f) any ¹[***]goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34 ;

(g) any ¹[***]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 ¹[* **]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 ;

⁵"(i) any goods entered for exportation which do not 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;"

⁶[(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 ;]

(j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74 ;

(k) any goods cleared for exportation ⁷ [***] 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;

(l) 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.

1. Omitted By The Finance Act, 2003

5. Substituted by The Finance Act, 2003

6. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

7. Omitted by The Finance Act, 2003

114. Penalty for attempt to export goods improperly, etc :-

. . 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 abets 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 ¹[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, to a penalty ²[not exceeding the duty sought to be evaded or five thousand rupees], whichever is the greater;

3 "(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 the greater."

1. Substituted for "not exceeding the value of the goods or five thousand rupees " by the Finance Act, 2003.

2. Substituted for "not exceeding five times the duty sought to be evaded on such goods or one thousand rupees" by the Finance Act, 2001.

3. Substituted by The Finance Act, 2003

114A. Penalty for short-levy or non-levy of duty in certain cases :-

. [. Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has 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 :

1 [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 a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), 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.]]

1. Substituted for the first and second provisos by the Finance Act, 2000, w.e.f. 12-5-2000.

114AA. Penalty for use of false and incorrect material :-

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

115. Confiscation of conveyances :-

. .

(1) The following conveyances shall be liable to confiscation :

(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, stayed 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.

Explanation In this section, "market price" means market price at the date when the goods are seized.

116. Penalty for not accounting for goods :-

. . 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 Commissioner of Customs ¹ [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.

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

117. Penalties for contravention, etc., not expressly mentioned :-

. . Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision 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 ¹ [ten] thousand rupees.

1. Substituted for "one", by the Finance Act, 1999, w.e.f. 11-5-1999.

118. Confiscation of packages and their contents :-

. .

(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.

119. Confiscation of goods used for concealing smuggled goods :-

. . Any goods used for concealing smuggled goods shall also be liable to confiscation.

Explanation. In this section, "goods" does not include a conveyance used as a means of transport.

120. Confiscation of smuggled goods notwithstanding any change in form, etc :-

. .

(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.

121. Confiscation of sale-proceeds of smuggled goods. :-

. 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.

122. Adjudication of confiscations and penalties :-

. . In every case under this Chapter 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 Commissioner of Customs or a ¹[Joint] Commissioner of Customs;

(b) where the value of the goods liable to confiscation does not exceed ²[two lakh] rupees by an Assistant Commissioner of Customs ³[or Deputy Commissioner of Customs];

(c) where the value of the goods liable to confiscation does not exceed ⁴[ten thousand] rupees, by a Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs ⁵ [or Deputy Commissioner of Customs].

1. Substituted for "Deputy", ibid.

2. Substituted for the words [fifty thousand] by the Finance Act, 2003

3. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

4. Substituted for the words "two thousand five hundred" by Finance Act, 2003

5. Chapter XIV-A, consisting sections 127A to 127N, inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

122A. Adjudication Procedure :-

(1) 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.

(2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub- (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing :

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

123. Burden of proof in certain cases :-

. .

(1) 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.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

124. Issue of show-cause notice before confiscation of goods, etc :-

. . 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 ¹⁹⁴ "writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing" him of the grounds on which it is proposed to confiscate the goods or to 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.

In the Customs Act, In section 124, in clause (a), for the words "writing informing", the words "writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing" shall be substituted, by the Taxation Laws (Amendment) Act, 2006.

125. Option to pay fine in lieu of confiscation :-

. .

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under 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.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

126. On confiscation, property to vest in Central Government

:-

. .

(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.

127. Award of confiscation or penalty by customs officers not to interfere with other punishments. :-

. 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 of this Act or under any other law.

CHAPTER 14A SETTLEMENT OF CASES

127A. Definitions :-

. . In this Chapter, unless the context otherwise requires,

(a) "Bench" means a Bench of the Settlement Commission;

(b) "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a proper officer or the Central Government on the date on which an application under sub-section (1) of section 127B is made :

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;

(c) "Chairman" means the Chairman of the Settlement Commission;

(d) "Commissioner (Investigation)" means an officer of the customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes, of this Chapter;

(e) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(f) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under Section 32 of the Central Excise Act, 1944 (1 of 1944); and

(g) "Vice-chairman" means a Vice-chairman of the Settlement Commission.

127B. Application for settlement of cases :-

..

(1) Any importer, exporter or any other person (hereafter referred to as the applicant in this Chapter) may, at any stage of a case relating to him, make an application in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been dis-

Provided that no such application shall be made unless

(a) the applicant has filed a bill of entry, or a shipping bill, in respect of import or export of goods, ¹ [as the case may be, and in relation to such bill of entry or shipping bill,] a show-cause notice has been issued to him by the proper officer;

(b) the additional amount of duty accepted by the applicant in his application exceeds two lakh rupees :

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending in the Appellate Tribunal or any Court:

Provided also that no application under this sub-section shall be made in relation to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) has been committed:

Provided also that no application under this sub-section shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975 (51 of 1975).

(2) Where any dutiable goods, books of account, other documents or any sale proceeds of the goods have been seized under section 110 , the applicant shall not be entitled to make an application under sub-section (1) before the expiry of one hundred and eighty days from the date of the seizure.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be specified by rules.

(4) An application made under sub-section (1) shall not be allowed to

be withdrawn by the applicant.

1. Inserted by the Finance Act, 2000, w.e.f. 12-5-2000.

127C. Procedure on receipt of application under section 127B

:-

..

(1) On receipt of an application under section 127B , the Settlement Commission shall call for a report from the Commissioner of Customs having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application: Provided that an application shall not be rejected under this sub-section, unless an opportunity has been given to the applicant of being heard : Provided further that the Commissioner of Customs shall furnish such report within a period of one month of the receipt of the communication from the Settlement Commission, failing which it shall be presumed that the Commissioner of Customs has no objection to such application; but he may raise objections at the time of Substituted for "as the case may be, or" by the Finance Act, 2000, w.e.f. 12-5-2000. hearing fixed by the Settlement Commission for admission of the application and the date of such hearing shall be communicated by the Settlement Commission to the applicant and the Commissioner of Customs within a period not exceeding two months from the date of receipt of such application, unless the presiding officer of the Bench extends the said period of two months, after recording the reasons in writing.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner of Customs having jurisdiction.

(3) Subject to the provisions of sub-section (4), the applicant shall, within thirty days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the amount of additional duty admitted by him as payable and shall furnish proof of such payment to the Settlement Commission.

(4) If the Settlement Commission is satisfied, on an application made under sub- section (1) that the applicant is unable for good and sufficient reasons to pay the amount referred to in sub-section (3), within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments, if the applicant furnishes adequate security for the payment thereof.

(5) Where the additional amount of customs duty referred to in sub-

section (3) is not paid by the applicant within the time specified or extended period, as the case may be, the Settlement Commission may direct that the amount which remains unpaid, together with simple interest at the rate of eighteen per cent per annum or at the rate notified by the Board from time to time on the amount remaining unpaid, be recovered as the sum due to the Central Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of section 142 .

(6) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner of Customs having jurisdiction and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner (Investigation) to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(7) After examination of the records and the report of the Commissioner of Customs received under sub-section (1), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (6), and after giving an opportunity to the applicant and to the Commissioner of Customs having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Customs or the Commissioner (Investigation) under sub-section (1) or sub-section (6).

(8) Subject to the provisions of Section 32A of the Central Excise Act, 1944 (1 of 1944), the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (7) and, in relation to the passing of such order, the provisions of Section 32D of the Central Excise Act, 1944 (1 of 1944) shall apply.

(9) Every order passed under sub-section (7) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts.

(10) Where any duty payable in pursuance of an order under sub-

section (7) is not paid by the applicant within thirty days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such duty or has allowed payment thereof by instalments, the applicant shall be liable to pay simple interest at the rate of eighteen per cent per annum or at such other rate as notified by the Board on the amount remaining unpaid from the date of expiry of the period of thirty days aforesaid.

(11) Where a settlement becomes void as provided under sub-section (9) the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and proper officer may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

127D. Power of Settlement Commission to order provisional attachment to protect revenue. :-

(1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in such manner as may be specified by rules.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

127E. Power of Settlement Commission to reopen completed proceedings :-

. . If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 127B was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also: Provided that no proceeding shall be reopened by the Settlement

Commission under this section after the expiry of five years from the date of application under sub-section (1) of section 127B .

127F. Power and procedure of Settlement Commission :-

. .

(1) In addition to the powers conferred on the Settlement Commission under Chapter 5 of the Central Excise Act, 1944 (1 of 1944), it shall have all the powers which are vested in an officer of the customs under this Act or the rules made thereunder.

(2) Where an application made under section 127B has been allowed to be proceeded with under section 127C , the Settlement Commission shall, until an order is passed under sub-section (7) of section 127C , have, subject to the provisions of sub-section (6) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs or Central Excise Officer as the case may be, under this Act or in the Central Excise Act, 1944 (1 of 1944), as the case may be, in relation to the case.

(3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matter other than those before the Settlement Commission.

(4) The Settlement Commission shall, subject to the provisions of Central Excise Act, 1944 (1 of 1944) and this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

127G. Inspection etc., of reports :-

. . No person shall be entitled to inspect, or obtain copies of, any report made by any officer of the Customs to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of such fee as may be specified by rules : Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment by such person of such fees as may be specified by rules, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

127H. Power of Settlement Commission to grant immunity from prosecution and penalty :-

. .

(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 127B has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code, 1860 (45 of 1860) or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest under this Act, with respect to the case covered by the settlement: Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 127B .

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-section (7) of section 127C within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other conditions subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars, material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

127I. Power of Settlement Commission to send a case back to the proper officer :-

. .

(1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 127B has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the proper officer who shall thereupon dispose of the case in accordance with the provisions of this Act as if

no application under section 127B had been made.

(2) For the purpose of sub-section (1), the proper officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such proper officer or held or recorded by him in the course of the proceedings before him.

(3) For the purposes of the time limit under section 28 and for the purposes of interest under section 28AA , in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 127B and ending with the date of receipt by the officer of customs of the order of the Settlement Commission sending the case back to the officer of customs shall be excluded.

127J. Order of settlement to be conclusive :-

. . Every order of settlement passed under sub-section (7) of section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

127K. Recovery of sums due under order of settlement :-

. . Any sum specified in an order of settlement passed under sub-section (7) of section 127C may, subject to such conditions, if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions of section 142 , by the proper officer having jurisdiction over the applicant.

127L. Bar on subsequent application for settlement in certain cases :-

. . Where

(i) an order of settlement passed under sub-section (7) of section 127C provides for the imposition of a penalty on the applicant under section 127B for settlement, on the ground of concealment of particulars of his duty liability; or

(ii) after the passing of an order of settlement under said sub-section (7) in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the proper officer by the Settlement Commission under section 127I , then such person shall not be entitled to apply for settlement under section 127B in relation to any other matter.

127M. Proceedings before Settlement Commission to be judicial proceedings :-

. . Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228, and for the purposes of Section 196 of the Indian Penal Code, 1860 (45 of 1860).

127MA. Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement Commission :-

. [.

(1) Notwithstanding anything contained in this Chapter, any person who has filed an appeal to the Appellate Tribunal under this Act, on or before the 29th day of February, 2000 and which is pending, shall, on withdrawal of such appeal from the Appellate Tribunal, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter : Provided that no such person shall be entitled to make an application under this section in a case where the Commissioner of Customs or any officer on his behalf has, on or before the date on which the Finance Act, 2000 receives the assent of the President, applied to the Appellate Tribunal for the determination of such points arising out of the decision or order specified by the Board in its order under sub- section (1) of section 129D or filed an appeal under sub-section (2) of section 129A , as the case may be.

(2) Any person referred to in sub-section (1) may make an application to the Appellate Tribunal for permission to withdraw the appeal.

(3) On receipt of an application under sub-section (2), the Appellate Tribunal shall grant permission to withdraw the appeal.

(4) Upon withdrawal of the appeal, the proceedings in appeal immediately before such withdrawal shall, for the purposes of this Chapter, be deemed to be a proceeding pending before a proper officer.

(5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the Appellate Tribunal permitting the withdrawal of the appeal is communicated to the person.

(6) An application made to the Settlement Commission under this

section shall be deemed to be an application made under sub-section (1) of section 127B and the provisions of this Chapter, except sub-section (11) of section 127C , shall apply accordingly.

(7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then, the appeal shall be deemed to have been revived before the Appellate Tribunal and the provisions contained in section 129A , section 129B and section 129C shall, so far as may be, apply accordingly.]

127N. Application of certain provisions of Central Excise Act :-

.. The provisions of Chapter V of the Central Excise Act, 1944 (1 of 1944), in so far as it is not inconsistent with the provisions of this Chapter shall apply in relation to proceedings before the Settlement Commission under this Chapter.]

CHAPTER 15 APPEALS AND REVISION

128. Appeals to Commissioner (Appeals). :-

.

(1) Any person aggrieved by any decision/or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) ¹[within sixty days] from the date of the communication to him of such decision or order : ² [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

1. Substituted for "within three months" by the Finance Act, 2001.

2. Substituted, ibid. Prior to its substitution, proviso read as under : "Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months."

128A. Procedure in appeal. :-

.

(1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard if he so desires.

(2) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) ¹[The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against :] Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order : Provided further that where the Commissioner (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time- limit specified in section 28 to show cause against the proposed order.

(4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

² [(4A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.]

(5) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Commissioner of Customs.

1. Substituted for the following portion by the Finance Act, 2001 :
"The Commissioner (Appeals) may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary :"

2. Inserted by the Finance Act, 2001.

129. Appellate Tribunal. :-

(1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and ¹[Service Tax] Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to

exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the ²[Indian Legal Service] and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

Explanation. For the purposes of this sub-section,

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

³[(3) The Central Government shall appoint

(a) a person who is or has been a Judge of a High Court; or

(b) one of the members of the Appellate Tribunal, to be the President thereof.]

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.

(4A) ⁴[* * * *]

(5) ⁵ A Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

1. Substituted for the words "Gold (Control)" by the Finance Act, 2003

2. Substituted for the words "Central Legal Service" by The Finance Act, 2003

3. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 28-9-1996.

4. Omitted by The Finance Act, 2003

5. Substituted for the words "The Senior Vice-President or a Vice-President by Finance Act, 2003

129A. Appeals to the Appellate Tribunal :-

. .

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order

(a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under section 128A ;

(c) an order passed by the Board or the Appellate Commissioner of Customs under section 128 , as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under section 130 , as it stood immediately before that day :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India; or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at their destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder : Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125 ;or

(ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty determined by such order, does not exceed ¹[fifty] thousand rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of S. 40 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central

Government shall deal with such appeal or matter under section 129DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(2) The Commissioner of Customs may, if he is of opinion that an order passed by the Appellate Commissioner of Customs under section 128 , as it stood immediately before the appointed day, or by the Commissioner (Appeals) under section 128A , is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Customs, or as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty- five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub- section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

² [(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, in the case of an appeal made on or after the 1st day of June, 1993, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,

(a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;

(b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than one lakh rupees, one thousand rupees : Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).]

1. Substituted for "ten" by the Finance Act, 1993, w.e.f. 13-5-1993.

2. Substituted by the Finance Act, 1993, w.e.f. 13-5-1993.

129B. Orders of Appellate Tribunal :-

..

(1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, at any time within ¹["six months"] from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Customs or the other party to the appeal: Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

² (2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of Section 129-A, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Customs and the other party to the appeal.

(4) Save as otherwise provided in section 130 or section 130E , order passed by the Appellate Tribunal on appeal shall be final.

1. In Section 129B, sub-section (2) the words "four years" shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

2. In Section 129B, after sub-section (2), sub-section (2A) shall be inserted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra,

129C. Procedure of Appellate Tribunal :-

..

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in ¹[sub-section (4)], a Bench shall consist of one judicial member and one technical member.

(3) [Omitted by the Finance Act, 1995, w.e.f. 26-5-1995.]

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125 ; or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine or penalty involved, does not exceed ²[ten lakh] rupees.

³ [(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of those members of the Appellate Tribunal who have heard the case, including those who first heard it.]

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

(8) Any proceedings before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 and for the purpose of Section 196 of the Indian Penal Code, 1860 (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Code of Criminal Procedure, 1973 (2 of 1974).

1. Substituted for "sub-sections (3) and (4)" by the Finance Act, 1995, w.e.f. 26-5-1995.

2. Substituted for "one lakh" by the Finance (No. 2) Act, 1996, w.e.f. 28-9-1996. Earlier "one lakh" was substituted for "fifty thousand" by the Finance Act, 1993, w.e.f. 13-5-1993.

3. Substituted by the Finance Act, 1990, w.e.f. 31-5-1990.

129D. Powers of Board or Commissioner of Customs to pass certain orders. :-

.

(1) The Board may, of its own motion, call for and examine the record of any proceedings in which a Commissioner of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner **214**[or any other Commissioner] to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

(2) The Commissioner of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct **215**"such authority or any officer of customs subordinate to him" to apply to the Commissioner(Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.

216 (3) The Board or the Commissioner of Customs, as the case may be, shall, where it is possible to do so, make order under sub-section

(1) or sub-section (2), within a period of six months, but not beyond a period of one year, from the date of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Commissioner of Customs, makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 129A shall, so far as may be, apply to such application.

(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation. For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 (51 of 1975), or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.

Inserted by the Finance Act, 2001.

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 129D, in sub-section (2), for the words "such authority", the

words "such authority or any officer of customs subordinate to him" shall be substituted, by the Taxation Laws (Amendment) Act, 2006.

In Section 129D, sub-section (3) shall be substituted by Finance Act, 2002, (20 of 2002) Gazette of India, Extra, Part II, Section 1, dated May 13, 2002, No.23.

129DA. Powers of revision of Board or Commissioner of Customs in certain cases. :-

(1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Commissioner of Customs has passed any decision or order [not being a decision or order passed under sub-section (2) of this section] of the nature referred to in sub-section (5) of section 129D for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

(2) The Commissioner of Customs may, of his own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of section 129D for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3)

(a) No decision or order under this section shall be made so as to prejudicially affect any person unless such person is given a reasonable opportunity of making representation and if, he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Commissioner of Customs is of the opinion that any duty has not been levied or has been short-levied or short-paid or erroneously refunded, no order requiring the affected person to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed under this section unless such person is given notice within the time limit specified in section 28 to show cause against the proposed order.

(4) No proceedings shall be initiated under sub-section (1) or sub-section (2) in respect of any decision or order after the expiry of a period of six months from the date of communication of such decision or order : Provided that in respect of any decision or order passed before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1988, the provisions of this sub-section shall have

effect as if for the words "six months", the words "one year" were substituted.

(5) Any person aggrieved by any decision or order passed under sub-section (1) or sub-section (2) may appeal to the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986), against such decision or order.

129DD. Revision by Central Government :-

..

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order: ¹[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]

Explanation : For the purposes of this sub-section, "order passed under section 128A" includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

²[(1A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.]

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made : Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

³ [(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of,

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case

to which the application relates is more than one lakh rupees: Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).]

(4) The Central Government may, of its own motion annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,

(a) in any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28 .

1. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

2. Inserted, *ibid*.

3. Substituted, *ibid*. Prior to its substitution, sub-section (3) read as under : "(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of two hundred rupees."

129E. Deposit, pending appeal, of duty [and interest] demanded or penalty levied. :-

. Wherein any appeal under this Chapter, the decision or order appealed against relates to any duty ¹[and interest] demanded in respect of goods, which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty ¹[and interest] demanded or the penalty levied : Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty ¹[and interest] demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue : ⁴ [Provided further that

where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.]

1. Inserted by the Customs (Amendment) Act, 1991, w.e.f. 23-12-1991.

4. Second proviso inserted by the Finance Act, 2001.

130. Appeal to High Court :-

. Omitted.

130A. Application to High Court :-

. [Omitted.

130B. Power of High Court or Supreme Court to require statement to be amended :-

. . Omitted.

130C. Case before High Court to be heard by not less than two judges :-

. Omitted.

130D. Decision of High Court or Supreme Court on the case stated :-

. . Omitted.

130E. Appeal to Supreme Court :-

. . An appeal shall lie to the Supreme Court from ¹ "(a) any judgment of the High Court delivered

(i) in an appeal made under section 130; or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 130A,

(b) any order passed "before the establishment of the National Tax Tribunal" by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.

1. Substituted By The Finance Act, 2003

130F. Hearing before Supreme Court :-

. .

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 130E as they apply in the case of appeals from decrees of a High Court: Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 130D or section 131 .

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 130D in the case of a judgment of the High Court.

131. Sums due to be paid notwithstanding reference, etc. :-

. Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court,"under this Act before the commencement of the National Tax Tribunal Act, 2005" sums due to the Government as a result of an order passed under sub-section (1) of section 129B shall be payable in accordance with the order so passed.

131A. Exclusion of time taken for copy. :-

. In computing the period of limitation, specified for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

131B. Transfer of certain pending proceedings and transitional provisions. :-

.

(1) Every appeal which is pending immediately before the appointed day before the Board under section 128 , as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with

such appeal or matter from the stage at which it was on that day : Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

(2) Every proceeding which is pending immediately before the appointed day before the Central Government under section 131 , as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it: Provided that if any such proceeding or matter relates to an order where

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125 ; or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 131 has not been substituted: Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Customs under section 130 , as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Customs, as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in section 146A , have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

131C. Definitions. :-

. In this Chapter

(a) "appointed day" means the date of coming into force of the amendments to this Act specified in Part I of the Fifth Schedule of the

Finance (No. 2) Act, 1980 (44 of 1980);

Omitted.(b)

(c) "President" means the President of the Appellate Tribunal.

CHAPTER 16 OFFENCES AND PROSECUTIONS

132. False declaration, false documents, etc :-

. . . Whoever 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 **231** "two years", or with fine, or with both.

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 132 , for the words "six months", the words "two years" shall be substituted, by the Taxation Laws (Amendment) Act, 2006.

133. Obstruction of officer of customs. :-

. If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to **232** "two years", or with fine, or with both.

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 133 , for the words "six months", the words "two years" shall be substituted, by the Taxation Laws (Amendment) Act, 2006.

134. Refusal to be X-rayed. :-

. 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.

135. Evasion of duty or prohibitions :-

..

(1) Without prejudice to any action that may be taken under this 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], he shall be punishable,

(i) in the case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine : 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 ;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine, or with both.

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113

(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 : 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 one year.

(3) For the purposes of sub-sections (1) and (2), 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 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 principle 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.

135A. Preparation. :-

. If a person makes preparation to export any goods in contravention of the provisions of this 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.

135B. Power of court to publish name, place of business, etc., of persons convicted under the Act :-

..

(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.

136. Offences by officers of customs :-

..

(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 document secreted about his 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 authorizes any other officer of customs to search any place without having reasons 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.

137. Cognizance of offences. :-

(1) No court shall take cognizance of any offence under section 132 , section 133 , section 134 or ²"section 135 or section 135A", 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 ²³⁸[or Deputy 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 Commissioner of Customs ²³⁹[or Deputy Commissioner of Customs], except with the previous sanction of the Commissioner of Customs.

In the Customs Act, 1962 (hereafter referred to as the Customs Act), In section 137 , in sub-section (1), for the word and figures "section 135", the words, figures and letter "section 135 or section 135A" shall be substituted, by the Taxation Laws (Amendment) Act, 2006.

Substituted for "Where any duty demanded from any person or any amount of drawback to be recovered from any person or any penalty payable by any person" by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier these words were amended by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

138. Offences to be tried summarily. :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Chapter other than

an offence punishable under clause (i) of sub-section (1) of section 135 or under sub-section (2) of that section may be tried summarily by a Magistrate.

138A. Presumption of culpable mental state. :-

(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 believe 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.

138B. Relevancy of statements under certain circumstances. :-

(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, the 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 proceeding before a court, as they apply in relation to a proceeding before a court.

138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. :-

.

(1) Notwithstanding anything contained in any other law for the time being in force,

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely :

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents ; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether

(a) by a combination of computers operating over that period ; or

(b) by different computers operating in succession over that period ;
or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this

section, a certificate doing any of the following things, that is to say,

- (a) identifying the document containing the statement and describing the manner in which it was produced ;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub- section (2) relate,

(5) For the purposes of this section,

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities ;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation : For the purposes of this section,

- (a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and
- (b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

139. Presumption as to documents in certain cases. :-

. Where any document

- (i) is produced by any person or has been seized from the custody of 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 or 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 persons 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.

140. Offences by companies. :-

.

(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 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 shall also 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.

140A. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.

:-

.

(1) Nothing contained in S.562 of Code of Criminal Procedure, 1973 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this 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 .

CHAPTER 17 MISCELLANEOUS

141. Conveyances and goods in a customs area subject to control of officers of cus- toms. :-

. All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.

142. Recovery of sums due to Government. :-

.
(1) ¹[Where any sum payable by any person] under this Act ²[including the amount required to be paid to the credit of the Central Government under section 28B] is not paid,

(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper-officer or such other officer of customs; or

(b) the Assistant Commissioner of Customs -[or Deputy Commissioner of Customs] may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Commissioner of Customs [or Deputy Commissioner of Customs] or such other officer of customs; or

[(c) if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b)

(i) the Assistant Commissioner of Customs [or Deputy Commissioner of Customs] may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue ; or

(ii) the proper officer may, on an authorisation by a Commissioner of Customs and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid;

and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus, if any, to such person.]

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

1. Substituted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier section 159 was amended by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

2. Inserted by the Finance Act, 2001, w.r.e.f. 1-2-1963.

143. Power to allow import or export on execution of bonds in certain cases. :-

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the Assistant Commissioner of Customs ¹[or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating

to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs¹ [or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

1. Substituted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier section 159 was amended by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

143A. Duty deferment. :-

(1) When any material is imported under an import licence belonging to the category of Advance Licence granted under the Imports and Exports (Control) Act, 1947 (18 of 1947), subject to an obligation to export the goods as are specified in the said Licence within the period specified therein, the Assistant Commissioner of Customs¹[or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act, permit clearance of such material without payment of duty leviable thereon.

(2) The permission for clearance without payment of duty under sub-section (1) shall be subject to the following conditions, that is to say

(a) the duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act or under any other law for the time being in force on the export of goods specified in the said Advance Licence; and

(b) where the duty is not so adjusted either for the reason that the goods are not exported within the period specified in the said Advance Licence, or within such extended period not exceeding six months as the Assistant Commissioner of Customs¹[or Deputy Commissioner of Customs] may, on sufficient cause being shown, allow, or for any other sufficient reason, the importer shall, notwithstanding anything contained in section 28 , be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

(3) While permitting clearance under sub-section (1), the Assistant Commissioner of Customs¹ [or Deputy Commissioner of Customs] may require the importer to execute a bond with such surety or security as he thinks fit for complying with the conditions specified in sub-section (2).

1. Substituted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier section 159 was amended by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

144. Power to take samples. :-

(1) The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

(2) After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within three months of the date on which the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.

(3) No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, if such duty amounts to five rupees or more.

145. Owner, etc., to perform operations incidental to compliance with customs law. :-

All operations necessary for making any goods available for examinations by the proper officer or for facilitating such examination shall be performed by, or at the expense of, the owner, importer or exporter of the goods, as the case may be.

146. Customs house agents to be licensed. :-

(1) No person shall carry on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs- station unless such person holds a licence granted in this behalf in accordance with the regulations.

(2) The Board may make regulations, for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for

(a) the authority by which a licence may be granted under this section and the period of validity of any such licence ;

(b) the form of the licence and the fees payable therefor;

(c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in

his work as an agent;

(d) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted ;

(e) the circumstances in which a licence may be suspended or revoked ; and

(f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed.

146A. Appearance by authorised representative. :-

.

(1) Any person who is entitled or required to appear before an officer of customs or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under section 108 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being

(a) his relative or regular employee ; or

(b) a customs house agent licensed under section 146 ; or

(c) any legal practitioner who is entitled to practise in any civil court in India; or

(d) any person who has acquired such qualifications as the Central Government, may specify by rules made in this behalf.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service - Group A and has retired or resigned from such service after having served for not less than three years in any capacity in that service shall be entitled to appear as an authorised representative in any proceedings before an officer of customs for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person,

(a) who has been dismissed or removed from Government service ; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Central Excise Act, 1944 (1 of 1944), or the Gold (Control) Act, 1968 (45 of 1968); or

(c) who has become an insolvent, Central Excise Act, 1944 or the Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person,

(a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before an officer of customs or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by such authority as may be specified by rules made in this behalf, that authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely :

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard ;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled ; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

147. Liability of principal and agent. :-

.

(1) Where this Act requires anything to be done by the owner, importer or exporter of any goods, it may be done on his behalf by his agent.

(2) Any such thing done by an agent of the owner, importer or exporter of any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner, importer or exporter, so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.

(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter, be deemed to be the owner, importer or exporter of such goods for such purposes : Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any wilful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of Assistant

Commissioner of Customs ¹ [or Deputy Commissioner of Customs] the same cannot be recovered from the owner, importer or exporter.

1. Substituted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier section 159 was amended by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

148. Liability of agent appointed by the person in charge of a conveyance. :-

.

(1) Where this Act requires anything to be done by the person in charge of a conveyance, it may be done on his behalf by his agent.

(

2) An agent appointed by the person in charge of a conveyance and any person who represents himself to any officer of customs as an agent of any such person in charge, and is accepted as such by that officer, shall be liable for the fulfilment in respect of the matter in question of all obligations imposed on such person in charge by or under this Act or any law for the time being in force, and to penalties and confiscations which may be incurred in respect of that matter.

149. Amendment of documents. :-

. Save as otherwise provided in section 30 and section 41 , the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended : Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.

150. Procedure for sale of goods and application of sale proceeds. :-

.

(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any,

payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,
(c) next to the payment of the duty, if any, on the goods sold,
(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,
(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs,
and the balance, if any, shall be paid to the owner of the goods.

151. Certain officers required to assist officers of customs. :-

. The following officers are hereby empowered and required to assist officers of customs in the execution of this Act, namely :

- (a) officers of the Central Excise Department;
- (b) officers of the Navy ;
- (c) officers of the Police ;
- (d) officers of the Central or State Governments employed at any port or airport;
- (e) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

151A. Instructions to officers of customs. :-

. The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board : Provided that no such orders, instructions or directions shall be issued

- (a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or
- (b) so as to interfere with discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.

152. Delegation of powers. :-

. The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification

- (a) any power exercisable by the Board under this Act shall be exercisable also by a Chief Commissioner of Customs or a

Commissioner of Customs empowered in this behalf by the Central Government;

(b) any power exercisable by a Commissioner of Customs under this Act may be exercisable also by a ¹[Joint] Commissioner of Customs or an Assistant Commissioner of Customs ²[or Deputy Commissioner of Customs] empowered in this behalf by the Central Government ;

(c) any power exercisable by a ¹[Joint] Commissioner of Customs under this Act may be exercisable also by an Assistant Commissioner of Customs ²[or Deputy Commissioner of Customs] empowered in this behalf by the Central Government ;

(d) any power exercisable by an Assistant Commissioner of Customs ² [or Deputy Commissioner of Customs] under this Act may be exercisable also be a gazetted officer of customs empowered in this behalf by the Board.

1. Substituted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier section 159 was amended by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

2. Inserted by the Finance Act, 2001, w.r.e.f. 1-2-1963.

153. Service of order, decision, etc. :-

. Any order or decision passed or any summons or notice issued under this Act, shall be served

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

154. Correction of clerical errors, etc. :-

. Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

154A. Rounding off of duty, etc. :-

. [The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund, drawback or any other sum due,

under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.]

154B. Publication of information respecting persons in certain cases :-

(1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under this Act in respect of such person, it may cause to be published such names and particulars in such manners as it thinks fit.

(2) No publication under this shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Commissioner (Appeals) under 128 or the Appellate Tribunal under 129A, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposal of.

Explanation. – In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.

155. Protection of action taken under the Act. :-

.

(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a months previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.

156. General power to make rules. :-

.

(1) Without prejudice to apply power to make rules contained

elsewhere in this Act, the Central Government may make rules consistent with this Act generally to carry out the purposes of this Act.

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

(a) the manner of determining the price of imported goods under subsection (1A) of section 14 ;

(b) the conditions subject to which accessories of, and spare parts and maintenance and repairing implements for, any article shall be chargeable at the same rate of duty as that article ;

(c) * *

(d) the detention and confiscation of goods the importation of which is prohibited and the conditions, if any, to be fulfilled before such detention and confiscation and the information, notices and security to be given and the evidence requisite for the purposes of such detention or confiscation and the mode of verification of such evidence ;

(e) the reimbursement by an informant to any public officer of all expenses and damages incurred in respect of any detention of any goods made on his information and of any proceedings consequent on such detention ;

(f) the information required in respect of any goods mentioned in a shipping bill or bill of export which are not exported or which are exported and are afterwards re-landed;

(g) the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules.

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 transshipment ¹[, declaration for transshipment], boat note and bill of coastal goods ;

² [(aa) the form [and manner] in which an application for refund shall be made under section 27 ;]

(b) the conditions subject to which the transshipment 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 .

1. Substituted by the Finance Act, 1995, w.e.f. 26-5-1995. Earlier section 159 was amended by the Central Excises and Customs Laws (Amendment) Act, 1991, w.e.f. 20-9-1991.

2. Inserted by the Finance Act, 2001, w.r.e.f. 1-2-1963.

158. Provisions with respect to rules and regulations. :-

.

(1) All rules and regulations made under this Act shall be published in the Official Gazette.

(2) Any rule or regulation which the Central Government or the Board is empowered to make under this Act may provide

(i) for the levy of fees in respect of applications, amendment of documents, furnishing of duplicates of documents, issue of certificates, and supply of statistics, and for rendering of any services by officers of customs under this Act;

(ii) that any person who contravenes any provision of a rule or regulation or abets such contravention or any person who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable,

(a) in the case of contravention of failure to comply with a rule, to a penalty which may extend to five hundred rupees ;

(b) in the case of contravention or failure to comply with a regulation, to a penalty which may extend to two hundred rupees.

159. Rules, certain notifications and orders to be laid before Parliament :-

. [. Every rule or regulation made under this Act, every notification issued under section 11 , section 11B , section 11H , section 11I , section 11K , section 11N, section 14 , section 25 , section 28A , section 43 , section 66 , section 69 , section 70 , section 74 , section 75 , section 76 , section 98 , section 98A , section 101 and section 123 and every order made under sub-section (2) of section 25 , other than an order relating to goods of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total

period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or notification or order, or both Houses agree that the rule or regulation should not be made or notification or order should not be issued or made, the rule or regulation or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification or order.]

159A. Effect of amendments, etc., of rules, regulations, notifications or orders. :-

. [Where any rule, regulation, notification or order made or issued under this Act or any notification or order issued under such rule or regulation, is amended, repealed, superseded or rescinded, then, unless a different intention appears. such amendment, repeal, supersession or rescinding shall not

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.]

160. Repeal and savings. :-

.

(1) The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

(2) In the Tariff Act, 1934 (32 of 1934)

(a) for section 2 , the following section shall be substituted, namely :
"2. Duties specified in the Schedule to be levied. The rates at which duties of customs shall be levied under the Customs Act, 1962 , are specified in the First and Second Schedules.";

(b) section 5 and section 6 shall stand repealed.

(3) Notwithstanding the repeal of any enactment by this section,

(a) any notification, rule, regulation, order or notice issued or any appointment or declaration made or any licence, permission or exemption granted for any assessment made, confiscation adjudged or any duty levied or any penalty or fine imposed or any forfeiture, cancellation or discharge of any bond ordered or any other thing done or any other action taken under any repealed enactment shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act;

(b) any document referring to any enactment hereby repealed shall be construed as referring to this Act or to the corresponding provision of this Act.

(4) This Act shall apply to all goods which are subject to the control of customs at the commencement of this Act notwithstanding that the goods were imported before such commencement.

(5) Where the period prescribed for any application, appeal, revision or other proceeding under any repealed enactment had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal or revision to be made or a proceeding to be instituted under this Act by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority.

(6) The provisions of section 65 shall apply to goods warehoused before the commencement of this Act if the operations permissible under that section were carried on after such commencement.

(7) Any duty or penalty payable under any repealed enactment may be recovered in a manner provided under this Act but without prejudice to any action already taken for the recovery of such duty or penalty under the repealed enactment.

(8) The mention of particular matters in sub-sections (4), (5), (6) and (7) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

(9) Nothing in this Act shall effect any law for the time being in force relating to the constitution and powers of any port authority in a major

port as defined in the Ports Act, 1908 (15 of 1908).

161. Removal of difficulties. :-

. If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to be necessary or expedient for the purpose of removing the difficulty.

SCHEDULE 1

SCHEDULE

- [See section 160] Repeals

Year	\	No.	\	Short	title.	\	Extent	of	repeal
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(1)	\	(2)	\	(3)	\	(4)
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1878 \ 8 \The Sea Customs Act \ \ \The whole	1896 \ 8 \The InlandBoned \ \ \The
whole \ \ \Warehouses Act 1924 \ 19 \The Land CustomsAct \ \ \The whole	1934 \ 22
\The Aircraft Act \ \ \Section	16
