

THE CUSTOMS ACT, 1962

(Act 52 of 1962)

(13th December, 1962)

An Act to consolidate and amend the law relating to customs.

Chapter I: 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, Commissioner (Appeals) or Appellate Tribunal;
- (IA) "aircraft" has the same meaning as in the Aircraft Act, 1934 (22 of 1934);
- (IB) "Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129;
- (2) "assessment" includes provisional assessment, re-assessment 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 (45 of 1963);
- (7) "coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another;
- (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 {Budget Speech} 28.2.99 Assistant Commissioner of Customs Assistant Commissioner of Customs or Deputy 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 be 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 exercise;

(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;

(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 section 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 whole-sale price of the goods in the ordinary course of trade in India;

(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.

Chapter II: 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)
- (d) Deputy Commissioners of Customs
- (e) Assistant Commissioners of Customs
- (f) such other class of officers of customs as may be appointed for the purposes of this Act.

4. Appointment of officers of customs:

- (1) The Central Government 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 Deputy or Assistant Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

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 XV and section 108.

6. Entrustment of functions of Board and customs officers to 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 local authority any functions of the Board or any officer of customs under this Act.

Chapter III:

Appointment of Customs Ports, Imports, Warehousing Stations, etc.

7. Appointment of Customs ports, airports, etc.: The Central Government may, by notification in the Official Gazette, appointment,-

(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.

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 IV:

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; and
- (v) any other purpose conducive to the interests of the general public

Chapter IV-A:

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 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 a 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 sections 11C, 11E and 11F shall apply to any notified goods which are-

- (a) in personal use of the person by whom they are owned, possessed or controlled, or
- (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 IV-B:

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 11-I 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 there of.

11M. Steps to be taken by persons 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 IV-C: Power to Exempt from the Provisions of Chapters IVA and IV

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 V:

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 the 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 where under 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 international trade, where the seller and the buyer have no interest in the business of each 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 exchanges 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 Central Government 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 Central Government, or

(ii) ascertained in such manner as the Central Government may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973 (46 of 1973).

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 is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse;

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

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.

16. Date for determination of the 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:

Provided that if the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards.

(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 of 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 office may require the importer, exporter or any other person to produce any contract, broker's 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 subsequent on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

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 purposes 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;

the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

(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 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.

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 referent 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.

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-

(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.

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 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 shall remit the duty on such goods.

(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.

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.

(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.

(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 sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty

Explanation:

"Form or method", in relation to a rare 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.

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 re-sale;
- (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 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 duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs-
- (a) in the case of any import made by any individual for his personal use or by Government or by any education, research or charitable institution or hospital, before the expiry of one year;
 - (b) in any other case, before the expiry of six months, from the date of payment of duty and interest, if any, paid on such duty, in such form 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 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 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 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 duty and interest, if any, paid on such duty has been paid under protest:

Explanation I

For the purpose of this sub-section, "the date of payment of 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.

- (2) If, on receipt of any such application, the Assistant Commissioner of Customs is satisfied that the whole or any part of the 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 duty and interest, if any, paid on such duty as determined by the Assistant 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 duty and interest, if any, paid on such duty paid by importer, 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;
- (f) the 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 than no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of 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 judgement, decree, order or decision of the Appellate 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 at 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.

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 ten percent and not exceeding thirty percent. per annum as is for the time being fixed by the Board, 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 applicant 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 refund of such duty.

Explanation:

Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of 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.

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 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 reasons 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, 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.

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.

(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.

(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 of interest.

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 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.

(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 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.

28AA. Interest on delayed payment of duty:

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 at such rate not below ten percent and not exceeding thirty percent. per annum, as is for the time being fixed by the Board, 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.

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

(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 ten percent and not exceeding thirty percent per annum, as is for the time being fixed by the Board, 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) 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.

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.

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

(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the regulations made thereunder, every person who has collected any amount from the buyer of any goods in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

(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.

Chapter-VA:

Indicating Amount of Duty in the Price of Goods, etc, for Purposes 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 had 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 VI:

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 anytime while it is carrying passengers or cargo brought in that vessel or aircraft;

at any place other than a customs port or customs airport, as the case may be.

(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,

and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft:

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 a conveyance carrying imported goods shall, within twenty-four hours after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft, an import manifest, and in the case of a vehicle, an import report, in the prescribed form:

Provided that-

(a) in the case of a vessel any such manifest may be delivered to the proper officer before the arrival of the vessel;

(b) if the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof within twenty-four hours after the arrival of the conveyance, he may accept it any time thereafter.

(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 stations until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until-

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

(b) he 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 than 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;

(f) 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 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.

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

(1) The provisions of sections 30, 41 and 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 aircrafts which temporarily enter India by reason of any emergency.

Chapter VII:

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.

Clearance of imported goods

45. 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 persons 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.

(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.

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

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 not fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing *or vice versa*.

47. Clearance of goods for home consumption:

(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.

(2) Where the importer fails to pay the import duty under sub-section (1) within seven days from the date on which the bill of entry is returned to him for payment of duty he shall pay interest at such rate, not below ten percent. and not exceeding thirty percent per annum, as is for the time being fixed by the Board, 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:

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.

48. Procedure in case of goods not cleared, warehoused, or transhipped within thirty days after unloading: If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within 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 of 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).

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 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.

Clearance of Export Goods

50. 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 VIII:

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 goods in same vessel or air

Subject to the provisions of section 11, any goods imported in a vessel or aircraft and mentioned in the import manifest as for transit in the same vessel or aircraft to any port or airport outside India or any customs port or customs airport may be allowed to be so transited without payment of duty.

54. Transshipment of goods without payment of duty:

(1) Where any goods imported into a customs port or customs airport are intended for transshipment, a bill of transshipment, shall be presented to the proper officer in the prescribed form.

(2) Subject to the provisions of section 11(a),-

where any goods imported into a customs port are mentioned in the import manifest, as for transshipment to any port outside India, or where any goods imported into a customs airport are mentioned in the import manifest as for transshipment to any airport outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs port or airport are mentioned in the import manifest, as for transshipment-

(a) to any major port as defined in the Indian Ports Act, 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

(c) to any other customs port or customs airport, and the proper officer is satisfied that the goods are *bona fide* intended for transshipment to such customs port or airport, 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 transshipment is allowed.

55. Entry, etc. of transited or transhipped goods on arrival at customs port or customs airport: Where any goods are allowed to be transited under Section 53 or transhipped under sub section (3) of section 54. to any customs port or customs airport, they shall, on their arrival at such port or airport, 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 IX:
Warehousing

57. Appointment of public warehouses: At any warehousing station, the Assistant Commissioner of Customs may appoint public warehouses wherein dutiable goods may be deposited.

58. Licensing of private warehouses

(1) At any warehousing station, the Assistant 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) The Assistant Commissioner of Customs may cancel a licence granted under sub-section (1) -

(a) by giving one month's 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 may suspend the licence.

59. Warehousing bond

(1) The importer of any goods specified in 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 at the rate of six percent per annum or such other rate as is for the time being fixed by the Board; 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 or may permit an importer to enter into a general bond in such amount as the Assistant 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.

59A. * Deleted *

60. Permission for deposit of goods in a warehouse: When the provisions of section 59 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.

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 percent Export Oriented Undertaking, till the expiry of five 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-

(i) in the case of any goods which are not likely to deteriorate, the period specified in sub-section (1) may, on sufficient cause being shown, be extended 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 than 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) 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 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; 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.

For the purposes of this section, "Hundred percent Export Oriented Undertaking" has the same meaning as in Explanation: 2 to sub-section (1) of section 3 of the Central Excises Act, 1944 (1 of 1944).

Explanation:

For the purposes of this section, "Hundred percent Export Oriented Undertaking" has the same meaning as in Explanation: 2 to sub-section (1) of section 3 of the Central Excises Act, 1944 (1 of 1944).

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 cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.

64. Owner's 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) takes 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 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 provisions 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.

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, 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, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

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.

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 the 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 restrictions and conditions as may be specified in the notification.

70. Allowances 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 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.

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 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.

73. Cancellation and return of warehousing bond:

When the whole of the goods covered by any bond executed under section 59 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.

Chapter X:

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 percent of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if-

(a) the goods are identified to the satisfaction of the Assistant 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.

(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) provided 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.

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

(1) Where it appears to the Central Government that in respect of goods of any class or description 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 5 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 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)..

(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 manufactured, 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-

(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture of 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;

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

(ab) for specifying the procedure for recovery of adjustment of the amount of any drawback which had been allowed under sub-section (1) 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 manufacturer or the person carrying on any process or other operation to give access to every part of his manufactory to any officer of customs especially authorised in this behalf by the Assistant Commissioner of Customs to enable such authorised officer to inspect the process of manufacture, process or operations carried out and to verify by actual check or otherwise the statements made in support of the claim for drawback;

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

(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.

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 three 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 three months till the date of payment of such drawback:

Provided that where any drawback, ordered to be paid under section 74 or section 75 in respect of a claim under any of the said sections filed 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 refund of such drawback.

(2) Where any drawback has been paid to the claimant erroneously, the claimant shall, within a period of three 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 three months till the date of recovery of such drawback.

76. Prohibition and regulation of drawback in certain cases:

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

(a) *Omitted*

(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 XI:

Special Provisions Regarding Baggage, goods imported or exported by post and stores
Baggage

77. 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 sub-section (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 rule.

(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 class

80. Temporary Detention of Baggages of persons. Where the baggage of the 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 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.

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 transshipment of baggage from one customs station to another or to a place outside India.

Goods Imported Or Exported By Post

82. 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. Regulation 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.

Stores

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 transhipment 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 provision 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 percent", 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 aircrafts 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 modifications 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 percent" 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 XII:

Provisions relating to Coastal Goods and vessels carrying Coastal Goods

91. Chapter not to apply to baggage and stores: The provision 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 coasting vessel to carry on 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) Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods.

(2) Sections 37 and 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:

(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 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 XIII:

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 clauses (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) manufacturers of gold or diamond;
- (d) watches;
- (e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify

102. Person 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 persons 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. Power to screen on 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, taken 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 on X-raying the body of such person, forwards 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 persons 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 bringing 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:

(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.

(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 his Act shall not be cognizable.

105. Power to search premises:

(1) If the Assistant Commissioner of Customs 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.

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 aircrafts 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 reasonably 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 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:

(1) Any gazetted officer of customs shall 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.

(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).

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 proceedings under this Act and shall make an application to a Magistrate for the purpose of-

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

(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 taken extracts therefrom in the presence of an officer of customs.

Chapter XIV:

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 a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof;

(n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted 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

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 omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding five times the duty sought to be evaded on such goods or one 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 not exceeding five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 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, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 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, whichever is the highest.

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 dutiable or prohibited 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, contracted 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 a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any dutiable or prohibited goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any dutiable or prohibited 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 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;

(i) any dutiable or prohibited goods or goods entered for exportation under a claim for drawback which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof;

(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 under a claim for drawback which are not loaded for exportation on account of any willful 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.

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 not exceeding five times the value of the goods or one thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding five times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater;

(iii) in the case of goods under claim for drawback, to a penalty not exceeding five times the amount of drawback claimed or one thousand rupees, whichever is the greater.

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 :

Provided 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 purpose of this section, the duty or interest as reduced or increased, as the case may be shall be taken into account :

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

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, staved or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause;

(d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

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

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu to 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, 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.

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 one thousand rupees.

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 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 Deputy Commissioner of Customs;

(b)where the value of the goods liable to confiscation does not exceed fifty thousand rupees, by an Assistant Commissioner of Customs;

(c)where the value of the goods liable to confiscation does not exceeds two thousand five hundred rupees, by a gazetted officer of customs lower in rank than an Assistant Commissioner of Customs.

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 seizures 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 writing 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.

125.Option to pay fine in lieu of confiscation:

(1)Whenever confiscation of 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.

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 XV:

Appeals

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) within three months from the date of communication to him of such decision or order: 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.

(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.

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) 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:

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.

(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 .

129. Appellate Tribunal:

(1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Gold (Control) 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 Central 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 an 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)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) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.

(5) The Senior Vice-President or 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.

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 128;

(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 that 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 issues, the difference in duty involved or the duty involved; or

(iii)the amount of fine or penalty determined by such order, does not exceed 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 section 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 Collector of Customs under section 128 as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 128A, is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal Act,1986, against such order. 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 the 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.

(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 the 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 in 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).

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 four years 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 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.

(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, orders passed by the Appellate Tribunal on appeal shall be final.

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 sub-section (4), a Bench shall consist of one judicial member and one technical member.

(3)*Omitted*

(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 ten lakh rupees.

(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 these members of the Appellate Tribunal who have heard the case, including those who first heard it.

Provided that where the members of a Special Bench are equally divided, the point or points on which they differ shall be decided by the President.

(6)Subject to the provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercises 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 commission.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVII of the Code of Criminal Procedure, 1973 (2 of 1974).

129D. Powers and Board or Commissioner of Customs to pass certain orders:

(1) The Board may, of its own motion, call and examine the record of any proceeding 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 to apply to the Appellate Tribunal or as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Sec.3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, 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 such authority 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.

(3) No order shall be made under sub-section (1) or sub-section (2) after the expiry 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 as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Sec.3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 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 as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Sec.3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 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 or as the case may be, the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986 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 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, or that any goods are 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.

129DA. Power 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 an 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 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.

(3)(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, 1987, 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.

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) 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) 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.

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-sec.(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.

129E. Deposit, pending appeal, of duty demanded or penalty levied: Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control 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 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 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.

130. Statement of case to High Court:

(1) The Commissioner of Customs or the other party may, within sixty days of the date upon which he is served with notice of an order under section 129B (not being an order 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), by application in such form as may be specified by rules made in this behalf, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such an application, 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 in relation to which an application for reference has been made and such

memorandum shall be disposed of by the Appellate Tribunal as if it were an application presented within the time specified in sub-section (1).

(3) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the Commissioner of Customs, or, as the case may be, the other party may, within six months from the date on which he is served with notice of such refusal, apply to the High Court and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(4) Where in the exercise of its powers under sub-section (3), the Appellate Tribunal refuses to state a case which it has been required by an applicant to state, the applicant may, within thirty days from the date on which he receives notice of such refusal, withdraw his application and, if he does so, the fee, if any, paid by him shall be refunded.

130A. Statement of case to Supreme Court in certain cases: If, on an application made under section 130, the Appellate Tribunal is of opinion that, on account of conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through the President direct to the Supreme Court.

130B. Power of High Court or Supreme Court to require statement to be amended: If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

130C. Case before High Court to be heard by not less than two judges:

(1) When any case has been referred to the High Court under section 130 or section 130A, it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

130D. Decision of High Court or Supreme Court on the case stated:

(1) The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein, and shall deliver its judgement thereon containing the grounds on which such decision is founded and a copy of the judgement shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgement.

(2)The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

130E. Appeal to Supreme Court:

An appeal shall lie to the Supreme Court from-

(a)any judgement of the High Court delivered on a reference made under section 130 in any case which, on its own motion or on or oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgement, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b)any order passed 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.

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 judgement 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 judgement 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, 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 of 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 to the Finance (No. 2) Act, 1980;

(b) "*High Court*" means,-

- (i) in relation to any State, the Court for that State;
- (ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

(iii) in relation to the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay;

(iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

(c) "*President*" means the President of the Appellate Tribunal.

Chapter XVI:

Offences and Prosecutions

132. False déclaration, 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 documents is false in any material particular, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

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 six months, or with fine, or with both.

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 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,

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 judgement 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.

(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 judgement of the court such imprisonment shall not be for less than one year.

(3) For the purposes of sub-section (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 the accused has been convicted for the first time for an offence under this Act.

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.

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 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 authorises any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in section 105 are secreted in that place;

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

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

137. Cognizance of offences:

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

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

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

(b)where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs, except with the previous sanction of the Commissioner of Customs .

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 belief in, or reason to believe, a fact.

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

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 a 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 out 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,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(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, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(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,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

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

the prosecution in evidence against him or any other person who is tried jointly with him, the court shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

Explanation:

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

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 section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under 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 XVII:

Miscellaneous

141. Conveyance and goods in a customs area subject to control of officers of customs:

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) Where any sum payable by any person under this Act 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 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 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 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 or receipt of such certificate shall proceed to recover from the said 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 provision of that sub-section.

143.Power to allow import or export or 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 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 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 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 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 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.

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 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 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 percent 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 Customs may require the importer to execute a bond with such surety or security as he thinks fit for the complying with the conditions specified in sub-section (2).

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 examination 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 custom house agent licensed under section 146; or
- (c) any legal practitioner who is entitled to practice 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, shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Commissioner of Customs or the competent authority under the Central Excise Act, 1944, or the Gold (Control) Act, 1968, as the case may be, 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) or 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 the same cannot be recovered from the owner, importer or exporter.

148. Liability of agent appointed by the person in charge of 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 sections 30 and 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 the 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 Police;

(d) officers of the Central or State Governments employed at any port or airport;

(e) such other officers of the Central or State Governments 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 the 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, 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 Deputy Commissioner of Customs or an Assistant Commissioner of Customs empowered in this behalf by the Central Government;

(c)any power exercisable by a Deputy Commissioner of Customs under this Act may be exercisable also by an Assistant Commissioner of Customs empowered in this behalf by the Central Government;

(d)any power exercisable by an Assistant Commissioner of Customs under this Act may be exercisable also by a gazetted officer of customs empowered in this behalf by the Board.

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.

155.Protection of action taken under the Act:

(1)No suit, prosecution or other legal proceeding shall lie against the Central Government or any other 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 month's 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 any 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 sub-section (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) *Omitted*

(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 purpose 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, declaration for transshipment, boat note and bill of coastal goods;

(aa)the form 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.

158.Provisions with respect of 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 or 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 sections 11, 11B, 11H, 11I, 11K, 11N, 14, 25, 28A, 43, 66, 69, 70, 74, 75, 76, 98, 98A, 101 and 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 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.

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 Indian Tariff Act, 1934 (32 of 1934) -

(a) for section 2, the following section shall be substituted, namely:-2. Duties specified in the Schedules 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 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 or 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 Central Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

(9)Nothing in this Act shall affect any law for the time being in force relating to the constitution and power of any Port authority in a major port as defined in the Indian 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.

THE SCHEDULE (See 0)

Repeals

Year 1	No. 2	Short Title 3	Extent of Repeal 4
1978	8	The Sea Customs Act	The Whole
1896	8	The Indian Bonded Warehouses Act	The Whole
1924	19	Land Customs Act	The Whole
1934	22	The Aircraft Act	Sec.16