After studying this chapter, you would be able to:

- understand the provisions relating to recovery of sums due to Government.
- identify the persons who can act as authorized representative.
- determine the liability of Principal and agent.
- comprehend the procedure for sale of goods and application of sale proceeds.
- understand the manner in which service of order, decision etc. is made.
- pinpoint the difference between rules and regulations and general power to make rules and regulations.
1. **CONVEYANCE AND GOODS IN A CUSTOMS AREA SUBJECT TO CONTROL OF OFFICERS OF CUSTOMS [SECTION 141]**

As per sub-section (1), all the conveyances and goods in a customs area shall be subject to the control of officers of customs, for the purpose of enforcing the provisions of this Act.

As per sub-section (2), the imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.

2. **RECOVERY OF SUMS DUE TO GOVERNMENT [SECTION 142]**

The recovery procedures of any sums due under this Act, is covered under this section. The need to recover sums due to Government normally arises in two situations:

(a) on confirmation of demand for short levy of duty; and

(b) on imposition of fine or penalty in an adjudication proceedings.

**Recovery by deducting the amount payable from the money owing to the defaulter or by detaining/selling goods of the defaulter:** Two methods of recovery are provided for in this section. Either of the methods can be followed to recover the dues.

<table>
<thead>
<tr>
<th>Sl No.</th>
<th>Recovery procedure</th>
<th>Power given to</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>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 [Section 142(1)(a)].</td>
<td>Proper officer himself or any other officer of customs</td>
</tr>
</tbody>
</table>
### MISCELLANEOUS PROVISIONS

**14.3**

By detaining and selling any goods belonging to such person which are under the control of the Asst or Deputy Commissioner of Customs or such other officer of customs [Section 142(1)(b)].

Assistant Commissioner of Customs or Deputy Commissioner of Customs; or

The above authorities may require any other officer of customs to recover the amount due

---

Recovery as arrears of land revenue or by distraining and detaining movable/immovable property of the defaulter: If the amount cannot be recovered from such person in the manner provided in sl. nos 1 and 2 above, recovery is made in the manner given below. Here again, either of the procedures can be followed to recover the dues.

<table>
<thead>
<tr>
<th>Sl No.</th>
<th>Recovery procedure</th>
<th>Power given to</th>
</tr>
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<tbody>
<tr>
<td>01</td>
<td>Prepare a Certificate signed by Assistant or Deputy Commissioner of Customs, 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. Thereon the said collector shall recover the dues as if it were an arrears of land revenue [Section 142(1)(c)(i)].</td>
<td>Assistant Commissioner of Customs or Deputy Commissioner of Customs</td>
</tr>
<tr>
<td>02</td>
<td>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. In case, any part of the said amount or the cost of distress or keeping of the property remains unpaid for 30 days, the proper officer on any authorisation by a Principal Commissioner/Commissioner of Customs and in accordance with the rules made in this behalf.</td>
<td>The proper officer on any authorisation by a Principal Commissioner/Commissioner of Customs and in accordance with the rules made in this behalf</td>
</tr>
</tbody>
</table>
days next after such distress, may cause the said property to be sold and satisfy the amount payable and the costs including cost of sale remaining unpaid from the sale proceeds. The surplus if any, shall be paid back to such person [Section 142(1)(c)(ii)].

The proviso to section 142(1) states that if a person from whom some recoveries are due, transfers his business in whole or in part to another person, then all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the possession of the transferee can be attached and sold for recovery. An officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Principal Commissioner/Commissioner of Customs, can make such recovery.

Recovery from a person other than from whom money is due - Garnishee Proceedings [Section 142(1)(d)]: If the amount cannot be recovered in any of the manner discussed above, the Proper Officer can recover the monies due to the Government from any person other than from whom money is due, if that other person holds money for/on account of the first person. The procedure for the same is as under:-

(i) Issue of notice: The Proper Officer may issue a written recovery notice to the following persons:

- any person from whom money is due to such person
- any person from whom money may become due to such person
- any person who holds money for or on account of such person
- any person who may subsequently hold money for or on account of such person.

The noticee would be required to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

The money would be paid either forthwith upon the same becoming due or being held, or at or within the time specified in the notice. However, in no
MISCELLANEOUS PROVISIONS

14.5

Case the money would be required to be paid before the same becomes due or is held.

(ii) **Noticee bound to comply with the notice:** Every person to whom a notice is issued under this sub-section shall be bound to comply with such notice. In case any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(iii) **Consequences of default in payment by noticee:** In a case where the person to whom a notice under this sub-section has been issued, fails to make the payment, he shall be deemed to be a defaulter in respect of the amount specified in the notice. Therefore, all the consequences prescribed for assessee in default would apply for such other person as well.

Sub section (2) of section 142 provides that, 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.

Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 was notified vide Notification No. 31/95-Cus.(N.T) dt 26-5-1995 amended by Notification No. 67/97-Cus.(N.T) dt 11-12-1997. These rules were framed by the Central Government in exercise of the powers conferred by section 156 read with section 142 of the Customs Act. The rules give procedure for attachment of property, for sale of property and also special provisions in respect of sale of immovable property.

**Illustration**

What are the different ways prescribed under section 142 of the Customs Act, 1962 in which the sums due to the Government can be recovered from any person?

**Answer**

The sums due to the Government can be recovered from any person in any of the following two ways:

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a. Deducting the amount payable from any money owing to the defaulter which may be under the control of any Customs Officer.

b. Detaining and selling goods belonging to such person, which are under the control of customs authorities;

If amount cannot be recovered from such person in the manner provided in clause (a) and (b) above, recovery can be made in either of the following ways:-

c. Issuing a certificate to District Collector in whose district any property of the person is situated or where he resides or carries on his business.

d. Distraining and detaining any property (movable/immovable) belonging to the person and selling the same.

e. Recovering from successor by attaching and selling goods, materials, machinery, plant etc. transferred to successor in trade or business.

f. Recovering from a person other than from whom money is due, if that other person holds money for/on account of the first person.

3. LIABILITY UNDER THE CUSTOMS ACT, 1962 TO BE FIRST CHARGE [SECTION 142A]

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.

4. POWER TO ALLOW IMPORT OR EXPORT ON EXECUTION OF BONDS IN CERTAIN CASES [SECTION 143]

If the importer or exporter is unable to fulfil the conditions for import/export, the Assistant or the Deputy Commissioner of Customs can permit clearance of
imported goods/or export, subject to the following:

(a) The Assistant or Deputy Commissioner of Customs can grant leave for such import/or export or clearance of goods only if he is satisfied that having regard to the circumstances of the case the leave can be granted.

(b) A bond in such amount, with such surety or security and subject to such conditions as the Asst or Deputy Commissioner approves.

On fulfillment of conditions within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

If the conditions are not fulfilled within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

5. POWER TO TAKE SAMPLES [SECTION 144]

This section provides the necessary power to the customs authorities to draw adequate samples of such goods in the presence of the owner of the goods.

The proper officer of the customs can take the samples for:
- examination or testing, or
- ascertaining the value thereof, or
- any other purpose of this Act.

Samples may be taken on
- the entry; or
- clearance of any goods; or
- at any time while such goods are being passed through the customs area.

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 3 months of the date on which the sample was taken, it may be disposed of in such manner as Principal Commissioner/Commissioner of Customs may direct.
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.

6. CUSTOMS BROKERS TO BE LICENSED
[SECTION 146]

All importers/exporters cannot be expected to have detailed working knowledge of the procedures for clearance of imported or export goods. Further, it may not be possible for the importer/exporter to come to the custom house every time and attend to the clearance formalities personally, as it would involve time and expenditure. An institution of Customs Brokers (CB) has thus arisen out of necessity. At the same time, it is necessary to ensure that such agents are knowledgeable, efficient, loyal both to the parties and Government.

Section 146 stipulates that no person shall carry on the business as customs broker 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. [Sub-section (1)]

Sub-section (2) empowers the Board to 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 a customs broker;

(d) the manner of conducting the examination;

(e) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;

(f) the circumstances in which a licence may be suspended or revoked; and

(g) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals may be filed.
In exercise of the above powers, the Central Board of Excise & Customs made Customs Brokers Licensing Regulations, 2013 vide Notification No. 65/2013 Cus(NT) dated 21.6.2013.

7. APPEARANCE BY AUTHORISED REPRESENTATIVE [SECTION 146A]

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. [Sub-section (1)]

2. For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being -

   (a) his relative or regular employee; or
   (b) a customs broker licensed under section 146; or
   (c) any legal practitioner who is entitled to practise in any civil court in India; or
   (d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf. [Sub-section (2)]

3. The following persons shall be disqualified to represent any person under sub-section (1)–

   (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, or the Gold (Control) Act, 1968; or the Finance Act, 1994; or
   (c) who has become an insolvent,

   for such time as the Principal Commissioner/Commissioner of Customs or the competent authority under the Central Excise Act, 1944, or the Gold (Control) Act, 1968, or the Finance Act, 1994, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period
during which the insolvency continues in the case of a person referred to in clause (c). [Sub-section (4)]

4. 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 henceforth be disqualified to represent any person under sub-section (1). [Sub-section (5)]

5. Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely: -
   (a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;
   (b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and
   (c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal. [Sub-section (6)]

It would be worthwhile to note that Chartered Accountants are also authorised to appear by virtue of being notified by the Government as persons who have acquired the necessary qualifications.

8. LIABILITY OF PRINCIPAL AND AGENT
   [SECTION 147]

Section 147 stipulates that anything required to be done by the owner/importer/exporter of any goods can be done by his agent [Sub-section 1]. However, the owner/importer/exporter shall be liable for all the acts of his agent [Sub-section 2].
Further, such authorized agent will, without prejudice to the liability of the owner/importer/exporter be deemed to be the owner/importer/exporter of such goods for such purposes including liability therefor under this Act [Sub-section 3].

However, where any duty is not/short levied or erroneously refunded on account of reasons not involving any wilful act, negligence or default of the agent, such duty will not be recovered from the agent unless the same cannot be recovered from the owner/importer/exporter.

9. PROCEDURE FOR SALE OF GOODS AND APPLICATION OF SALE PROCEEDS [SECTION 150]

There are two situations when the customs authorities can sell the goods of the importer or the exporter.

(1) When the goods are confiscated, in which case the goods become the absolute property of the Government. When such goods are sold, the entire sale proceeds accrue to the Government.

(2) Second, when the goods are not confiscated being the following circumstances:

- Imported goods, which are not cleared either for home consumption or for warehousing within the prescribed period of 30 days and such goods, are ordered to be sold under section 48 of the Act.

- Goods belonging to any defaulter of sums due to the Government under the control of an officer of customs ordered to be attached and thereafter sold under section 142 (1)(b) of the Act for the satisfaction of the above dues.

- Where a Principal Commissioner/Commissioner of Customs order distraining any movable or immovable belonging to a defaulter of customs dues under the control of an officer of customs and if needed, authorising the sale of such property, if the dues are not paid within date of such distraintment for the satisfaction of the above dues. [Refer Section 142(1)(c)(ii)]
Section 150 covers a situation where the goods are not confiscated (i.e., circumstances which are stated in (2) above).

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 [Sub-section(1)].

The following conditions are to be fulfilled for selling the goods under this section:

1. The goods should not have been confiscated.
2. The provisions of the Act should allow sale of such goods.
3. Notice should be given to the owner before such sale.
4. Goods can be sold in the following manner:
   - by public auction; or
   - by tender; or
   - in any other manner with the consent of the owner.

Sub-section (2) deals with application of sale proceeds. Such sale proceeds can be applied as below:

1. First, to the payment of the expenses of the sale;
2. 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;
3. Next, to the payment of the duty, if any, on the goods sold;
4. Next, to the payment of the charges in respect of the goods sold due to the person having the custody of the goods;
5. 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.

The balance, if any, shall be paid to the owner of the goods.

Where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of 6 months from the date of sale of such goods (or such further period as the Principal Commissioner/Commissioner of...
Customs may allow), such balance of sale proceeds shall be paid to the Central Government [Proviso to section 150(1)].

An interesting feature of this section is that the legitimate dues of other persons such as auctioneer or carrier takes precedence over the duty payable under the Act.

The Board has issued instructions about the modalities of disposal of gold, which is seized or confiscated and ripe for disposal. The Board has nominated Branches of SBI at Mumbai, Delhi, Ahmedabad, Calcutta and Chennai. Under these instructions, the Customs department is responsible for delivery of gold of requisite purity along with assaying certificate, duly packed as per the trade practice. SBI is entitled to deduct its out of pocket expenses, sales tax and other taxes. But, no commission is to be paid to SBI for selling gold on behalf of Customs department. [CBEC Circular No. 16/2001-Cus, dated 9.3.2001]

Illustration

An importer imports goods from USA, but does not clear such goods from the port within the prescribed period of 30 days. Resultantly, the imported goods are sold under the Customs Act, 1962 and sale proceeds applied for specified purposes as per section 150 of the Customs Act. Explain how will the balance of sale proceeds (left after being applied for the specified purposes) be disposed?

Answer

The balance sale proceeds left after being applied for the purposes specified under section 150(2) shall be paid to the owner of the goods. However, where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Principal Commissioner of Customs or Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

10. CERTAIN OFFICERS REQUIRED TO ASSIST OFFICERS OF CUSTOMS [SECTION 151]

The following officers are empowered and required to assist officers of customs in the execution of the Act:

(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.

In exercise of the powers conferred on the Central Government, the following notifications are issued:

<table>
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<tr>
<th>Sl No.</th>
<th>Notification Number</th>
<th>Notification Date</th>
<th>Officers specified</th>
</tr>
</thead>
</table>
| 01    | 77-Cus              | 23.05.1964       | The following officers of Enforcement Directorate:  
- Deputy Directors;  
- Assistant Directors,  
- Chief Enforcement officers,  
- Enforcement officers,  
- Assistant Enforcement officers. |
| 02    | 47-Cus              | 09.05.1970       | Central Reserve Police Force |
| 03    | 18-Cus              | 22.01.1972       | Officers of Indian Railways and Railway Protection Force in the following places:  
- Within 50 KM width from the border separating India from Nepal;  
- at New Jalpaiguri,  
- Howrah R.S.,  
- Barauni R.S.,  
- Garhara Transhipment Yard;  
- Katihar R.S.,  
- Lucknow R.S., and  
- Bareilly R.S. |
11. INSTRUCTIONS TO OFFICERS OF CUSTOMS
[SECTION 151A]

In the exercise of their quasi-judicial functions, the adjudicating authorities under the Customs Act are required to act independently without any bias.

In practice it has been found necessary to issue some guidelines to all adjudicating and assessing authorities to ensure uniformity in decisions and practice. It has been found difficult to maintain such instruction legally, and therefore, as specific provision has been inserted by Customs (Amendment) Act 1985, whereby the CBEC has been empowered to issue such orders, instructions and directions to officers of custom in order to ensure

- uniformity in the classification of goods; or
- with respect to the levy of duty thereon
- the implementation of any other provisions of the Customs Act or of any other law for the time being in force, in so far as they relate to any prohibition, restriction or procedure for import or export of goods.

Such orders, instructions and directions may be issued to officers of customs as the board may deem fit and such officers of customs and all other persons employed in the execution of the Act shall observe and follow such orders, instructions and directions of the Board.

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.

The relevant Case laws are given below:

(a) When the board has issued instruction regarding classification of goods in a particular manner such instructions are binding on them, even though the circular may not recite that it has been issued in exercise of power under section 37B. This case is pari material with Sec. 151A. [Ranadey Micronutrients vs. CCE, 1996 (66) ECR 638 SC: 1996 (87) ELT 19 (SC)]
(b) A public notice issued by one Custom House will bind all Customs authorities. If the department considers that a public notice is erroneous, it must be withdrawn. [SAIL vs. CC, 2000 (115) ELT 42 (SC)]

(c) Also refer a leading decision under the Income Tax Act, 1961, K.P. Varghese vs. ITO AIR 1980 SC 1922: 1981 (131) ITR 597 (SC). In this case, binding nature of the circulars has been discussed far more elaborately than under case laws under the Central Excise or Customs Laws.

12. DELEGATION OF POWERS [SECTION 152]

It may not always be possible to have the particular level of officer who is empowered to exercise a particular function at a particular place. For example, the Principal Commissioner/Commissioner of Customs are stationed at the head quarters of Commissionerate. The other subordinate officers may be stationed at other points. When necessity arises to exercise the power of Principal Commissioner/Commissioner at these other points, practical difficulties arise. Depending upon the volume of such problems, and the exigencies, it is desirable to empower the subordinate officer already available at the particular station to exercise the powers of his immediate superior officer. Section 152 envisages delegation of the powers to the next immediately subordinate authority.

The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification -

(a) any power exercisable by the Board under this Act shall be exercisable also by a Principal Chief Commissioner/Chief Commissioner of Customs or a Principal Commissioner/Commissioner of Customs empowered in this behalf by the Central Government;

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

(c) any power exercisable by a Joint Commissioner of Customs under this Act may be exercisable also by an Assistant Commissioner of Customs or Deputy Commissioner of Customs empowered in this behalf by the Central Government;
(d) any power exercisable by an Assistant Commissioner of Customs or Deputy Commissioner of Customs under this Act may be exercisable also by a Gazetted Officer of Customs empowered in this behalf by the Board.

Some of the major notifications are given below:

1. The power of CBEC u/s 105(1) i.e. power to search premises, may be exercised by Principal Commissioner/Commissioner of Central Excise who are Principal Commissioners/Commissioners of Customs by virtue of Notification issued in this regard [M.F. (D.R.) Notification No.22-Cus, dt 6-2-1965 as amended by Notification No.54-Cus. dt 24-5-1965].

2. Board’s powers under section 109 is delegated to certain Principal Commissioners/Commissioners in respect of goods imported by land [M.F. (D.R.& I.) Notification No.121-Cus. dt 18-6-1966]

3. Every Principal Commissioner/Commissioner of Customs authorised to exercise Board’s powers under clause (ii) of the first proviso to section 61 subject to conditions laid out in the notification. [M.F. (D.R. & I.) Notification No.100-Cus. dt 5-12-1975 as amended by Notification No.144-Cus. dt 24-7-1978].

13. SERVICE OF ORDER, DECISION, ETC.
[SECTION 153]

The date of service of an order or a communication containing a decision is of vital importance, in case the aggrieved party desires to file an appeal. The time limit allowed for appeal normally runs from the date of receipt of the communication containing the impugned decision by the aggrieved person. There are circumstances where it is not effectively possible to ensure that such communications are received by the concerned party. There are other circumstances where disputes arise about the actual date of the receipt of communication. These two problems have necessitated a uniform procedure for dispatch and service of orders, decisions, summons and other communications issued under the Customs Act. Section 153 provides the specific mode of service in this regard which is reproduced below.

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 or by such courier as may be approved by the Principal Commissioner/Commissioner of Customs; 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.

Section 153 indicates that in giving notice under the Act, receipt by the addressee is not relevant. What is relevant is issuing of notice in any one of the manners provided in this section.

14. Rounding Off of Duty, Etc. [Section 154A]

This section provides for the rounding off of the duty or any other sum payable under this Act. This provision is invariably found in all tax laws. The section is reproduced below:

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.

15. Information in Respect of Persons in Certain Cases to be Published [Section 154B]

(1) The Central Government may publish name of any person and any other particulars relating to any proceedings in respect of such person if it is of the opinion that it is necessary or expedient in the public interest to do so. The Government can do the publication in such manner as it thinks fit.

(2) The publication shall be made in relation to any penalty only after the time for presenting an appeal to the Commissioner (Appeals) or the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.
(3) In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.

16. GENERAL POWER TO MAKE RULES
[SECTION 156]

The Central Government is empowered to make rules consistent with this Act generally to carry out the purposes of this Act. In particular, such rules may provide for all or any of the following matters, namely:

(a) the manner of determining the transaction value of the imported goods and export 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) the due date and the manner of making deferred payment of duties, taxes, cesses or any other charges under sections 47 and 51.

(d) the detention and confiscation of goods the importation of which is prohibited and the conditions, if any, to be fulfilled before such detention and confiscation and the information, notices and security to be given and the evidence requisite for the purposes of such detention or confiscation and the mode of verification of such evidence;

(e) the reimbursement by an informant to any public officer of all expenses and damages incurred in respect of any detention of any goods made on his information and of any proceedings consequent on such detention;

(f) the information required in respect of any goods mentioned in a shipping bill or bill of export which are not exported or which are exported and are afterwards re-landed;

(g) the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules.

(h) the amount to be paid for compounding and the manner of compounding under sub-section (3) of section 137.
17. GENERAL POWER TO MAKE REGULATIONS
[SECTION 157]

This section empowers the Board to make regulations consistent with this Act and the rules, generally to carry out the purposes of this Act. In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

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

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

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

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

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

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

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

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

Illustration

Write short note on "Rules & Regulations" with reference to Customs Act, 1962.
Answer

According to section 2(36) of the Act, “rules” means the rules made by the Central Government under any provision of this Act. Section 156 of the Act gives the Central Government the general power to make rules.

As per section 2(35) of the Customs Act, 1962, “regulations” means the regulations made by the Central Board of Excise and Customs (CBEC) under any provision of this Act. The Board gets the authority to make regulations under section 157 of the Customs Act, 1962.

While the rules are to be framed in consistence with the provisions of the Act, the regulations are subject to an additional limitation, i.e. they should not be contrary to the rules also.

Rules have to be placed before the Parliament, while regulations framed by CBEC are not required to be placed before the Parliament. However, both are “subordinate legislations” and are legally valid and enforceable.

18. PROVISIONS WITH RESPECT TO RULES AND REGULATIONS [SECTION 158]

All rules and regulations made under this Act shall be published in the Official Gazette.

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 who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable to a penalty which may extend to ₹ 50,000.
19. TEST YOUR KNOWLEDGE

1. Explain briefly the provisions of the Customs Act, 1962 relating to the powers vested in the customs officers to take samples.

2. Explain the provisions relating to “service of order etc.” under section 153 of the Customs Act.

3. Briefly explain the provisions relating to creation of first charge on the property of the assessee, as provided under section 142A of the Customs Act, 1962.

4. State the provisions in the Customs Act, 1962, which govern the appearance by an authorised representative and the qualifications for such a person.

5. When can the information in respect of certain persons be published? Discuss with reference to section 154B of the Customs Act, 1962?

6. Differentiate between rules and regulations.

7. Briefly explain the provisions of Section 147 of the Customs Act, 1962 relating to liability of principal and agent.

20. ANSWERS/HINTS

1. As per the provisions of section 144 of the Customs Act, 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:

   (a) examination or testing or,
   (b) ascertaining the value thereof, or
   (c) any other purposes of this Act

   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 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Principal Commissioner of Customs or Commissioner of Customs may direct. 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.
The purpose of taking samples is to determine correct classification of product and also to determine whether it is freely importable under Foreign Trade Policy or whether authorization is required for importing those goods.

2. According to section 153 of the Customs Act 1962, any order or decision passed or any summons or notice issued under the Customs Act, shall be served by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Principal Commissioner of Customs or Commissioner of Customs. If this is not possible, the order, decision, summons or notice shall be affixed on the notice board of the customs house.

3. Section 142A of the Customs Act, 1962 provides that any amount of duty, penalty, interest or any other sum payable under the Customs Act has a first charge on the property of the assessee or the person in default, save as otherwise provided in the following:-

   (i) Any sum payable under section 529A of the Companies Act, 1956.

   (ii) Any sum payable under Recovery of Debts Due to Banks and the Financial Institutions Act, 1993

SIGNIFICANT SELECT CASES

1. Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?

_Vishnu M Harlalka v. Union of India 2013 (294) ELT 5 (Bom)_

_Facts of the Case:_ In the instant case, the Settlement Commission ordered to release the seized goods of the assessee on payment of a specified amount of fine and penalty adjudicated by it. However, since the seized goods had already been auctioned by the Department, the Commission directed the Revenue to refund to the assessee, the amount remaining in balance after adjustment of expenses and charges as payable in terms of section 150 of the Customs Act, 1962 and further adjustment of fine and penalty as adjudicated by it. The refund was however, not granted despite several representations. The response to the RTI query showed that refund was sanctioned but it was not paid till filing of this writ petition.

During the pendency of this writ petition, the principal amount of the sale proceeds was paid to the assessee but the interest on the same was not paid. It was the contention of the Department that the amount paid to the assessee represented the balance of sale proceeds of the goods auctioned or disposed of after adjustments under section 150 of the Act. Since the amount paid did not represent the amount of duty or interest, the provisions of sections 27 and 27A of the Customs Act relating to claim for refund of duty and interest on delayed refunds respectively would not be applicable.

_High Court’s Observations:_ The High Court observed that though no period was stipulated in the order of the Settlement Commission for the grant of refund, the entire exercise ought to have been carried out within a reasonable period of time. All statutory powers have to be exercised within a reasonable period even when no specific period is prescribed by the provision of law. The High Court noted that there was absolutely no reason or justification for the delay in payment of balance sale proceeds.

_High Court’s Decision:_ The High Court held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed
MISCELLANEOUS PROVISIONS

14.25

to be paid by the Settlement Commission. The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund, the Department can wait for an inordinately long period to grant the refund. The High Court directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.

**Note:** Section 27(1) inter alia provides that a person claiming refund of duty and interest, if any, paid or borne by him may make an application for such refund before the expiry of one year from the date of payment of such duty or interest. Section 27(2) inter alia requires an order to be passed on the receipt of such application, subject to the satisfaction of the Assistant/Deputy Commissioner of Customs, that the whole or part of the duty or interest paid by the applicant is refundable. Section 27A stipulates that if any duty ordered to be refunded under section 27(2) to an applicant is not refunded within three months from the receipt of the application under section 27(1), interest shall be paid at such rate not below 5% and not exceeding 30% p.a. as fixed by the Central Government. Currently, the notified rate of interest on delayed refunds is 6%.

Where any goods, not being confiscated goods, are sold under the provisions of the Act, the manner of application of sale proceeds thereof is provided under section 150(2). The proceeds have to be applied for the payment of (i) expenses of sale, (ii) freight and other charges to the carrier, (iii) duty, if any; (iv) charges to the person having custody of the goods; and (v) any amount due to the Central Government from the owner of the goods, under the provisions of the Act or under any law relating to customs. The balance is to be paid to the owner of the goods.

2. **Can a former director of a company be held liable for the recovery of the customs dues of such company?**

*Anita Grover v. CCE* 2013 (288) ELT 63 (Del.)

**Facts of the Case:** A demand notice was raised against the petitioner in respect of the customs duty payable by a company of which she was a former director. She had resigned from the Board of the company long time back. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues of the company. The petitioner contended that the action of the Department was not justified as the said properties belonged to her and not to the company.
Revenue contended that as director, the petitioner could not distance herself from the company’s acts and omissions; she had to shoulder its liabilities. It was in furtherance of such obligation that the authorities acted within their jurisdiction in issuing the impugned notice.

**High Court’s Observations:** Considering the provisions of section 142 of the Customs Act, 1962 and the relevant rules*, the High Court elucidated that it was only the defaulter against whom steps might be taken for the recovery of the dues. In the present case, it was the company who was the defaulter.

**High Court’s Decision:** The Court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax Act, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.

**Notes:**

1. As per the provisions of section 179 of the Income-tax Act, 1961 and section 18 of the Central Sales Tax, 1956, in case of a private company in liquidation, where any tax dues of the company under the relevant statutes cannot be recovered, every person who was a director of the said company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. Thus, Revenue authorities are empowered to proceed against the directors of the company for recovery of dues from the company under the said statutes.


*Note - Case laws given in this Chapter are solely for the understanding of miscellaneous provisions.*