

CHAPTER XIII - Searches, seizure and arrest

SECTION 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.

SECTION 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 1[Principal Commissioner of Customs or Commissioner of Customs], has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

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

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

SECTION 102. Persons to be searched may require to be taken before gazetted officer of customs or magistrate. - (1) When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate.

(2) If such requisition is made, the officer of customs may detain the person making it until he can bring him before the gazetted officer of customs or the magistrate.

(3) The gazetted officer of customs or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) Before making a search under the provisions of section 100 or section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of

all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.

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

SECTION 103. Power to screen or X-ray bodies of suspected persons for detecting secreted

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

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

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

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

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

(6) Where on receipt of a report from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction:

Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

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

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

SECTION 104. Power to arrest. –2[(1) If an officer of customs empowered in this behalf by general or special order of the 3[Principal Commissioner of Customs or Commissioner of Customs] has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.]

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

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the 4Code of Criminal Procedure, 1898 (5 of 1898).

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence relating to — 5[(4)

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding fifty lakh rupees, shall be cognizable.

Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable. 5(5)

Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to — 6[(6) Notwithstanding anything contained in the Code of

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.] 7[(7)

SECTION 105. Power to search premises. - (1) If the 8[Assistant Commissioner of Customs or Deputy Commissioner of Customs], or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words 10[Principal Commissioner of Customs or Commissioner of Customs] were substituted.

SECTION 106. Power to stop and search conveyances. - (1) Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

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

(2) Where for the purposes of sub-section (1) -

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

11[SECTION 106A. Power to inspect. - Any proper officer authorised in this behalf by the 12[Principal Commissioner of Customs or Commissioner of Customs] may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IVA or Chapter IVB, as the case may be, and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for his inspection the accounts maintained under the said Chapter IVA or Chapter IVB, as the case may be, and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported.]

SECTION 107. Power to examine persons. - Any officer of customs empowered in this behalf by general or special order of the 12[Principal Commissioner of Customs or 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.

SECTION 108. Power to summon persons to give evidence and produce documents. –13[(1) Any Gazetted Officer of customs 14[***] shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.]

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

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

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

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

15[SECTION 108A. Penalty for failure to furnish information return. (1) Any person, being—

(a) a local authority or other public body or association; or

(b) any authority of the State Government responsible for the collection of value added tax or sales tax or any other tax relating to the goods or services; or

(c) an income-tax authority appointed under the provisions of the Income tax Act, 1961;

(d) a Banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or

(e) a co-operative bank within the meaning of clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961; or

(f) a financial institution within the meaning of clause (c), or a non-banking financial company within the meaning of clause (f), of section 45-I of the Reserve Bank of India Act, 1934; or

(g) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or

(h) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or

(i) a Registrar within the meaning of the Companies Act, 2013; or

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

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

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

(m) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
(n) the Post Master General within the meaning of clause (j) of section 2 of the Indian Post Office Act, 1898; or

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

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

(q) an officer of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934,

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

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

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

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

SECTION 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.

16[SECTION 109A. Power to undertake controlled delivery.- Notwithstanding anything contained in this Act, the proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods and in such manner as may be prescribed, to—

(a) any destination in India; or

(b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined.

Explanation.—For the purposes of this section “controlled delivery” means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.]

SECTION 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.

17[(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.]

17[(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.]

17[(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:

18 [Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

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

19[SECTION 110A. Provisional release of goods, documents and things seized pending adjudication. - Any goods, documents or things seized under section 110, may, pending the order of the 20[adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the 19[adjudicating authority] may require.]

1. Substituted by Act 25 of 2014, section 78, for “Commissioner of Customs” (w.e.f. 06.08.2014). Earlier the words “Commissioner of Customs” were substituted by Act 22 of 1995, section 50, for the words “Collector of Customs” (w.e.f. 26.05.1995).

2. Substituted by Act 29 of 2006, section 24, for sub-section (1) (w.e.f. 13.07.2006). Sub-section (1), before substitution, stood as under:

“(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.”

3. Substituted (w.e.f. 06.08.2014) for the words “Commissioner of Customs” by section 78 of the Finance (No. 2) Act, 2014 (25 of 2014).

4. Now see the Code of Criminal Procedure, 1973 (2 of 1974).

5. Substituted (w.e.f. 28.05.2012) by section 126 of the Finance Act, 2012 (23 of 2012). Before substitution, stood as under:

“(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence

under this Act shall not be cognizable.”

6. Substituted by Act 17 of 2013, section 75, for sub-section (6)(w.e.f. 10.05.2013). Earlier sub-section (6) was inserted by Act 23 of 2012, section 126 (w.e.f. 28.05.2012). Sub-section (6), before substitution, by Act 17 of 2013, stood as under:

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offences under this Act shall be bailable.”

7. Substituted by Act 17 of 2013, section 75, for sub-section (6)(w.e.f. 10.05.2013). Earlier sub-section (6) was inserted by Act 23 of 2012, section 126 (w.e.f. 28.05.2012). Sub-section (6), before substitution, by Act 17 of 2013, stood as under:

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offences under this Act shall be bailable.”

8. Substituted by Act 27 of 1999, section 100, for “Assistant Commissioner of Customs” (w.e.f. 11.05.1999). Earlier the words “Assistant Commissioner of Customs” were substituted by Act 22 of 1995, section 50, for the words “Assistant Collector of Customs” (w.e.f. 26.05.1995).

9. Now see the Code of Criminal Procedure, 1973 (2 of 1974).

10. Substituted by Act 25 of 2014, section 78, for “Commissioner of Customs” (w.e.f. 06.08.2014). Earlier the words “Commissioner of Customs” were substituted by Act 22 of 1995, section 50, for the words “Collector of Customs” (w.e.f. 26.05.1995).

11. Inserted by Act 12 of 1969, section 3 (w.e.f. 03.01.1969)

12. Substituted by Act 25 of 2014, section 78, for “Commissioner of Customs” (w.e.f. 06.08.2014). Earlier the words “Commissioner of Customs” were substituted by Act 22 of 1995, section 50, for the words “Collector of Customs” (w.e.f. 26.05.1995).

13. Substituted by Act 29 of 2006, section 25, for sub-section (1)(w.e.f. 13.07.2006). Sub-section, before substitution, stood as under:

“(1) Any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.”

14. The words “duly empowered by the Central Government in this behalf”, omitted by Act 18 of 2008, section 69 (w.e.f. 13.07.2006).

15. Inserted by Act 18 of 2017(w.e.f.04.05.2017)

16. Inserted by section 91 (w.e.f. 29-3-2018) of Finance Act, 2018 (13 of 2018).

17. Inserted by Act 80 of 1985, section 3 (w.e.f. 27.12.1985)

18. Substituted by section 77 (w.e.f. 29-3-2018) of Finance Act, 2018 (13 of 2018). Before substitution, the proviso stood as under:

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

Earlier the words "Principal Commissioner of Customs or Commissioner of Customs" were substituted by Act 25 of 2014, section 78, for "Commissioner of Customs" (w.e.f. 06.08.2014). Also the words "Commissioner of Customs" were substituted by Act 22 of 1995, section 50, for the words "Collector of Customs" (w.e.f. 26.05.1995).

19. Inserted by Act 29 of 2006, section 26 (w.e.f. 13.07.2006).

20. Substitution by Act 8 of 2011, section 47, for "adjudicating officer" (w.e.f. 08.04.2011).