

CHAPTER XIV - CONFISCATION OF GOODS AND CONVEYANCES AND IMPOSITION OF PENALTIES

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;
- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;
- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) ¹[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 ²[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];
- (n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;
- ³[(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.]

SECTION 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 ⁴[not exceeding the value of the goods or five thousand rupees], whichever is the greater;
 - ⁵[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined.;

⁶[(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 ⁷[not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater.;

⁸[(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty ⁹[not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.;

⁸[(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty ¹⁰[not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

SECTION 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 ¹¹[***] goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any ¹¹[***] goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any ¹¹[***] goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any ¹¹[***] 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 ¹²[***] 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;

¹³[(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.;

¹⁴[(ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75.;

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

(k) any goods cleared for exportation ¹⁵[***] which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;

¹⁶[(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.]

SECTION 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 ¹⁷¹⁸[not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;

¹⁹[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;]

²⁰[(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.]

²¹**[SECTION 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 ²²[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:]

²³**Provided** that where such duty or interest, as the case may be, as determined under ²²[sub-section (8) of section 28], and the interest payable thereon under section ²⁴[28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

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

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

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section ²⁵[28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

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

Explanation. - For the removal of doubts, it is hereby declared that -

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date* on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

²⁶**[SECTION 114AA. Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

SECTION 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 ²⁷[***]:

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

Explanation. - In this section, "market price" means market price at the date when the goods are seized.

SECTION 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 ²⁸[Assistant Commissioner of Customs or Deputy Commissioner of Customs], the person-in-charge of the conveyance shall be liable, -

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

(b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

SECTION 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 ²⁹[one lakh rupees].

SECTION 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.

SECTION 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.

SECTION 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.

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

SECTION 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 ³⁰[Principal Commissioner of Customs or Commissioner of Customs] or a ³¹[Joint Commissioner of Customs];

³²(b) where the value of the goods liable to confiscation does not exceed ³³[five lakh] rupees, by an ³⁴[Assistant Commissioner of Customs or Deputy Commissioner of Customs];

³⁵(c) where the value of the goods liable to confiscation does not exceed, ³⁶[fifty thousand] rupees, by a Gazetted Officer of Customs lower in rank than an ³⁴[Assistant Commissioner of Customs or Deputy Commissioner of Customs].]

³⁷[**SECTION 122A. Adjudication Procedure.** - (1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]

SECTION 123. Burden of proof in certain cases. ³⁸[(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

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

(2) This section shall apply to gold, ³⁹[and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

SECTION 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 ⁴⁰[writing with the prior approval of the officer of Customs not below the rank of ⁴¹[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter :

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

SECTION 125. Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods ⁴²[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.

⁴³[(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.]

SECTION 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.

SECTION 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.

1. Substituted by Act 36 of 1973, section 2, for certain words (w.e.f. 01.09.1973).
2. Substituted by Act 27 of 1999, section 108, for in respect of; (w.e.f. 11.05.1999).
3. Inserted by Act 12 of 1969, section 4 (w.r.e.f. 03.01.1969).
4. Substituted by Act 14 of 2001, section 107(a), for certain words (w.e.f. 11.05.2001).

5. Substituted by Act 20 of 2015, section 83, for sub-clause (ii) (w.e.f. 14.05.2015). Earlier sub-clause (ii) was amended by Act 14 of 2001, section 107(b) (w.e.f. 11.05.2001). Sub-clause (ii) before substitution by Act 20 of 2015, stood as under:

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

1. Substituted by Act 36 of 1973, section 3, (w.e.f. 01.09.1973).
2. Substituted by Act 14 of 2001, section 107(c), for certain words (w.e.f. 11.05.2001).
3. Substituted by Act 36 of 1973, section 3, (w.e.f. 01.09.1973).
4. Substituted by Act 14 of 2001, section 107(d), for certain words (w.e.f. 11.05.2001).

10. Substituted by Act 14 of 2001, section 107(e), for certain words (w.e.f. 11.05.2001).
11. The words dutiable or prohibited omitted by Act 32 of 2003, section 116(a)(w.e.f.14.05.2003).
12. The words dutiable or prohibited omitted by Act 32 of 2003, section 116(a)(w.e.f.14.05.2003).
13. Substituted by Act 32 of 2003, section 116(b), for clause (i) (w.e.f. 14.05.2003). Earlier clause (i) was amended by Act 25 of 1978; section 11 (w.e.f. 01.07.1978).
14. Inserted by Act 49 of 1991, section 120(2) (w.e.f. 27.09.1991)
15. The words under a claim for drawback omitted by Act 32 of 2003, section 116(c)(w.e.f.14.05.2003).
16. Inserted by Act 12 of 1969, section 120 (w.r.e.f. 03.01.1969)
17. Substituted by Act 14 of 2001, section 108(a), for not exceeding five times the value of the goods or one thousand rupees (w.e.f. 11.05.2001).
18. Substituted by Act 32 of 2003, section 117 (a), for not exceeding the value of the goods or five thousand rupees (w.e.f. 14.05.2003).
19. Substituted by Act 20 of 2015, section 84, for clause (ii) (w.e.f. 14.05.2015). Earlier clause (ii) was amended by Act 14 of 2001, section 108(b) (w.e.f. 11.05.2001). Clause (ii) before substitution by Act 20 of 2015, stood as under:

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

20. Substituted by Act 32 of 2003, section 117 (b), for clause (iii) (w.e.f. 14.05.2003). Earlier clause (iii) was amended by Act 14 of 2001, section 108(c) (w.e.f. 11.05.2001).
21. Inserted by Act 33 of 1996, section 64 (w.e.f. 28.09.1996).
22. Substituted by Act 8 of 2011, section 48 (a), for sub-section (2) of section 28 (w.e.f. 08.04.2001).
23. Substituted by Act 10 of 2000, section 85, for the first and second provisos (w.e.f. 12.05.2000).
24. Substituted by Act 8 of 2011, section 48 (b), for 28AB (w.e.f. 08.04.2001).
25. Substituted by Act 8 of 2011, section 48 (b), for 28AB (w.e.f. 08.04.2001).

*12th May, 2000

26. Inserted by Act 29 of 2006, section 27(w.e.f. 13.07.2006).
27. Certain words omitted by Act 26 of 1988, section 79 (w.e.f.13.05.1988).
28. 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).
29. Substituted by Act 18 of 2008, section 70, for ten thousand rupees (w.e.f. 10.05.2008). Earlier the words ten thousand rupees were substituted by Act 14 of 1999, section 109, for the words one thousand rupees (w.e.f. 11.05.1999).
30. 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).
31. Substituted by Act 27 of 1999, section 100 (w.e.f. 11.05.1999).
32. Substituted by Act 25 of 1978, section 12 for clause (b) (w.e.f. 01.07.1978).
33. Substituted by Act 23 of 2012, section 127(i), for two lakh (w.e.f. 28.05.2012). Earlier the words fifty thousand were substituted by Act 18 of 1992, section 109(3), for the words twenty five thousand (w.e.f.

14.05.1992) and the words two lakh were substituted by the Act 32 of 2003, section 118(a), for the words fifty thousand (w.e.f.14.05.2003).

34. 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).

35. Substituted by Act 25 of 1978, section 12 for clause (c) (w.e.f. 01.07.1978).

36. Substituted by Act 23 of 2012, section 127(ii), for ten thousand (w.e.f. 28.05.2012). Earlier the words ten thousand were substituted by Act 32 of 2003, section 118(b), for the words two thousand five hundred rupees (w.e.f.14.05.2003).

37. Inserted by Act 23 of 2004, section 67(w.e.f. 10.09.2004).

38. Substituted by Act 36 of 1973, section 4, for sub-section (1) (w.e.f. 01.09.1973).

39. Substituted by Act 40 of 1989, section 2, for, diamonds, manufactures of gold or diamonds (w.e.f. 26.10.1989).

40. Substituted by Act 29 of 2006, section 28, for writing informing (w.e.f.13.07.2006).

41. Substituted by Act 8 of 2011, section 49, for a Deputy Commissioner of Customs (w.e.f. 08.04.2011).

42. Inserted by Act 80 of 1985, section 9(a) (w.e.f. 27.12.1985).

43. Substituted by Act 80 of 1985, section 9(b), for sub-section (2) (w.e.f. 27.12.1985).