

## Chapter XVI - Offences and prosecutions

**SECTION 132. False declaration, false documents, etc.** - Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to <sup>1</sup>[two years], or with fine, or with both.

**SECTION 133. Obstruction of officer of customs.** - If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to <sup>2</sup>[two years], or with fine, or with both.

**SECTION 134. Refusal to be X-rayed.** - If any person -

(a) resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a Magistrate under section 103, or

(b) resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in section 103,

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

**SECTION 135. Evasion of duty or prohibitions.** <sup>3</sup>[(1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,

he shall be punishable, -

(i) in the case of an offence relating to, -

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding <sup>4</sup>[fifty lakh] of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds <sup>4</sup>[fifty lakh] of rupees,

with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.]

<sup>5</sup>[(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

**Provided** that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than <sup>6</sup>[one year].

<sup>5</sup>[(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than <sup>6</sup>[one year], namely :-

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

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

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

(iv) the age of the accused.]

**SECTION 7[135A. Preparation.** - If a person makes preparation to export any goods in contravention of the provisions of this Act, and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

**7[SECTION 135B. Power of court to publish name, place of business, etc., of persons convicted under the Act.** - (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court.]

**SECTION 136. Offences by officers of customs.** - (1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or <sup>8</sup>[connives at any act or thing, whereby any fraudulent export is effected or] any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to <sup>9</sup>[three years], or with fine, or with both.

(2) If any officer of customs, -

(a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or document secreted about his person; or

(b) arrests any person without having reason to believe that he has been guilty of an offence punishable under section 135; or

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

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

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

**SECTION 137. Cognizance of offences.** - (1) No court shall take cognizance of any offence under section 132, section 133, section 134 or <sup>10</sup>[section 135 or section 135A], except with the previous sanction of the <sup>11</sup>[Principal Commissioner of Custom or Commissioner of Customs].

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

(a) where the offence is alleged to have been committed by an officer of customs not lower in rank than <sup>12</sup>[Assistant Commissioner of Customs or Deputy Commissioner of Customs], except with the previous sanction of the Central Government;

(b) where the offence is alleged to have been committed by an officer of customs lower in rank than <sup>12</sup>[Assistant Commissioner of Customs or Deputy Commissioner of Customs] except with the previous sanction of the <sup>11</sup>[Principal Commissioner of Customs or Commissioner of Customs].

<sup>13</sup>(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the <sup>14</sup>[Principal Chief Commissioner of Customs or Chief Commissioner of Customs] on payment, by the person accused of the offence to the Central Government, of <sup>15</sup>[such compounding amount and in such manner of compounding] as may be specified by rules.]

<sup>16</sup> [Provided that nothing contained in this sub-section shall apply to-

(a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;

(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:-

(i) the Narcotic Drugs and Psychotropic Substances Act, 1985(61 of 1985);

- (ii) the Chemical Weapons Convention Act, 2000 (34 of 2000);
- (iii) the Arms Act, 1959 (54 of 1959);
- (iv) the Wild Life (Protection) Act, 1972 (53 of 1972);

(c) a person involved in smuggling of goods falling under any of the following, namely:-

(i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(e) a person who has been convicted under this Act on or after the 30th day of December, 2005.]

**SECTION 138. Offences to be tried summarily.** - Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Chapter other than an offence punishable <sup>17</sup>[under clause (i) of sub-section (1) of section 135 or under sub-section (2) of that section] may be tried summarily by a Magistrate.

**<sup>18</sup>SECTION 138A. Presumption of culpable mental state.** - (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

**Explanation.** - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

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

**<sup>19</sup>SECTION 138B. Relevancy of statements under certain circumstances.** - (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.

**<sup>19</sup>SECTION 138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.** - (1) Notwithstanding anything contained in any other law for the time being in force, -

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

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

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely :-

- (a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- (b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and
- (d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

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

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

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

(5) For the purposes of this section, -

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

**Explanation.** - For the purposes of this section, -

- (a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and
- (b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.]

**<sup>20</sup>[SECTION 139. Presumption as to documents in certain cases.** - Where any document -

- (i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or
- (ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act, and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the court shall -
  - (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have

been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

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

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

<sup>21</sup>[**Explanation.** - For the purposes of this section, "document" includes inventories, photographs and lists certified by a Magistrate under sub-section (1C) of section 110.]

**SECTION 140. Offences by companies.** - (1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

**Provided** that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.** - For the purposes of this section, -

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

<sup>22</sup>[**SECTION 140A. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.** -

(1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 135.]

1. Substituted by Act 29 of 2006, sec. 30, for six months (w.e.f. 13.07.2006).
2. Substituted by Act 29 of 2006, sec. 31, for six months (w.e.f. 13.07.2006).
3. Substituted by Act 22 of 2007, sec. 112, for sub-section (1) (w.e.f. 11.5.2007). Earlier section 135 was renumbered as sub-section (1) thereof by Act 36 of 1973, sec. 5 and amended by sec. 5(i) (w.e.f. 1.9.1973) and was amended by Act 25 of 1978, sec. 16 (w.e.f. 1.7.1978), by Act 40 of 1989, sec. 3 (w.e.f. 26.10.1989) and by Act 32 of 2003, sec. 124 (w.e.f. 14.5.2003). Sub-section (1), before substitution by Act 22 of 2007, stood as under:

(1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be, or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113,

shall be punishable, -

(i) in the case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than three years;

(ii) in any other case with imprisonment for a term which may extend to three years, or with fine, or with both.

1. Substituted by Act 17 of 2013, sec. 78, for thirty lakh (w.e.f. 10.05.2013).
  2. Ins. by Act 36 of 1973, sec. 5(ii) (w.e.f. 1.9.1973).
  3. Sub. by Act 25 of 1978, sec. 16, for six months (w.e.f. 1.7.1978).
  4. Ins. by Act 36 of 1973, sec. 6 (w.e.f. 1.9.1973).
  5. Sub. by Act 32 of 2003, sec. 125, for connives at any act or thing whereby (w.e.f. 14.5.2003).
  6. Subs. by Act 36 of 1973, sec. 7, for two years (w.e.f. 1.9.1973).
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10. Sub. by Act 29 of 2006, sec. 32 for section 135 (w.e.f. 13.7.2006).
  11. Sub. by Act 25 of 2014, sec. 78 for Commissioner of Customs (w.e.f. 6.8.2014). Earlier the words Commissioner of Customs were substituted by Act 22 of 1995, sec. 50, for the words Collector of Customs .
  12. Sub. by Act 22 of 1995, sec. 50, for Assistant Collector of Customs (w.e.f. 26.5.1995) and again subs. By Act 27 of 1999, sec. 100, for Assistant Commissioner of Customs (w.e.f. 11.5.1999).
  13. Ins. by Act 23 of 2004, sec. 71 (w.e.f. 10.9.2004).
  14. Sub. by Act 25 of 2014, sec. 78, for Chief Commissioner of Customs (w.e.f. 6.8.2014).
  15. Sub. by Act 33 of 2009, sec. 89(i), for such compounding amount (w.e.f. 19.8.2009).
  16. Ins. by Act 33 of 2009, sec. 89(ii) (w.e.f. 19.8.2009).
  17. Sub. by Act 36 of 1973, sec. 8, for under clause (i) of section 135 (w.e.f. 1.9.1973).
  18. Ins by Act 36 of 1973, sec. 9 (w.e.f. 1.9.1973).
  19. Ins. by Act 29 of 1988, sec. 6 (w.e.f. 1.7.1988).
  20. Sub. by Act 36 of 1973, sec. 10, for section 139 (w.e.f. 1.9.1973).
  21. Ins. by Act 80 of 1985, sec. 11 (w.e.f. 27.12.1985).
  22. Ins. by Act 36 of 1973, sec. 11 (w.e.f. 1.9.1973).