

## Customs Act, 1962

### Chapter 13 - Searches, Seizure and Arrest

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(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 clause (a), (b) or (c) who has entered or is about to leave India;
  - (e) any person in a customs area.
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#### Section 101 - Power to search suspected persons in certain other cases

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(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<sup>1</sup>[ 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.
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1. Substituted by Act 22 of 1995, section 50, for "Collector of Customs" (w.e.f. 26-5-1995).

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#### Section 102 - Persons to be searched may require to be taken before gazetted officer of customs or magistrate

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(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.

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#### Section 103 - Powers to screen or X-ray bodies of suspected persons for detecting secreted goods

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(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 bring 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).

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## Section 104 - Power to arrest

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<sup>3</sup>(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 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<sup>2</sup>Code of Criminal Procedure, 1898 (5 of 1898).

(4) Notwithstanding anything contained in the<sup>2</sup>Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act shall not be cognizable.

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1. Substituted by Act 22 of 1995, section 50, for "Collector of Customs" (w.e.f. 26-5-1995).

2. See now the Code of Criminal Procedure, 1973 (2 of 1974).

3. Substituted by the Taxation Laws (Amendment) Act, 2006 for the following " (1) If an officer of customs empowered in this behalf by general or special order of the <sup>1</sup>[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."

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## Section 105 - Power to search premises

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(1) If the<sup>1</sup>[ 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<sup>2</sup>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<sup>3</sup>[ "Commissioner of Customs" ] were substituted.

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1. Substituted by Act 22 of 1995, section 50, for "Assistant Collector of Customs" (w.e.f. 26-5-1995) and again substituted by Act 27 of 1999, section 100, for "Assistant Commissioner of Customs" (w.e.f. 11-5-1999).

2. See now the Code of Criminal Procedure, 1973 (2 of 1974).

3. Substituted by Act 22 of 1995, section 50, for "Collector of Customs" (w.e.f. 26-5-1995).

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## Section 106 - Power to stop and search conveyances

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(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.

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## Section 106A - Power to inspect

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### <sup>1</sup>[ 106A. Power to inspect

Any proper officer authorised in this behalf by the<sup>2</sup>[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. ]

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1. Inserted by Act 12 of 1969, section 3 (w.e.f. 3-1-1969).

2. Substituted by Act 22 of 1995, section 50, for "Collector of Customs" (w.e.f. 26-5-1995).

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## Section 107 - Power to examine persons

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Any officer of customs empowered in this behalf by general or special order of the<sup>1</sup>[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.

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1. Substituted by Act 22 of 1995, section 50, for "Collector of Customs" (w.e.f. 26-5-1995).

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## Section 108 - Power to summon persons to give evidence and produce documents

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<sup>1</sup>[(1) Any gazetted officer of customs <sup>2</sup>[\*\*\*] 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 (45 of 1860).

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1. Substituted by the Taxation Laws ( Amendment ) Act, 2006 for the following:-

"(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."

2. Omitted by the Finance Act, 2008 w.e.f. 13th July, 2006 for the words duly empowered by the Central Government in this

behalf.

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### **Section 109 - Power to require production of order permitting clearance of goods imported by land**

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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.

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### **Section 110 - Seizure of goods, documents and things**

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(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.

<sup>1</sup>[ (1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of --

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application. ]

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause ( a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the<sup>2</sup>[ Commissioner of Customs ] for a period not exceeding six months.

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

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

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1. Inserted by Act 80 of 1985, section 8 (w.e.f. 27-12-1985).

2. Substituted by Act 22 of 1995, section 50, for "Collector of Customs" (w.e.f. 26-5-1995).

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### **Section 110A - Provisional release of goods, documents and things seized pending adjudication**

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<sup>1</sup>[Section 110 A - 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 adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.]

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1. Inserted by the Taxation Laws ( Amendment ) Act, 2006.

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