

Foreign Exchange Regulation Act, 1973 [Repealed]

Section 42 - Encashment of Cheque, Draft, Etc.

(1) Where-

(i) an investigation is being made into alleged contravention of the provisions of section 13 or clause (a) of sub-section (1) of section 18¹[or section 18 A] or clause (a) of sub-section (1) of section 19, read with section 67; or

(ii) an investigation is being made into any alleged contravention of any other provision of this Act or of any rule, direction or order made thereunder; or

(iii) any proceeding in respect of any such contravention as is referred to in clause (i) or clause (ii) is pending before an officer of Customs or an officer of Enforcement or a court,

and any draft, cheque (including traveller's cheque) or other instrument being the subject-matter of such investigation or proceeding is in the custody of an officer of Customs or of an officer of Enforcement or of a court, then-

(a) where such draft, cheque (including traveller's cheque) or other instrument is in the custody of an officer of Customs, the Collector of Customs; or

(b) where such draft, cheque (including traveller's cheque) or other instrument is in the custody of an officer of Enforcement, the Director of Enforcement; or

(c) where such draft, cheque (including traveller's cheque) or other instrument is in the custody of a court, the court, on an application made to it in this behalf by the Collector of Customs or, as the case may be, by the Director of Enforcement,

may, by order, direct that the sum due under such draft, cheque (including traveller's cheque) or other instrument be encashed either through the Reserve Bank or such other agency as the Collector of Customs or the Director of Enforcement or the court, as the case may be, deems fit.

(2) Any proceeds realised in pursuance of a direction under sub-section (1) shall be kept in a separate account to be maintained by the prescribed authority in the prescribed manner.

(3) Where a direction is made under section 63, or an order has been made under the Customs Act, 1962 (52 of 1962) to confiscate any draft, cheque (including traveller's cheque) or other instrument the proceeds of which have been realised under sub-section(1), such proceeds shall vest in the Central Government and in all other cases such proceeds shall be paid to such person as may appear to the officer or the court, who or which made the direction under sub-section (1), to be entitled thereto in such currency and in such manner as he or it deems just together with interest at the rate of six per cent per annum from the date on which such draft, cheque (including traveller's cheque) or other instrument came into his or its custody till the date of payment):

Provided that nothing in this sub-section shall affect the liability of any person, who may receive the whole or any part of the proceeds to pay the same to the person lawfully entitled thereto.

1[(4) Where any foreign currency, being the subject-matter of any investigation or proceeding referred to in sub-section (1), is in the custody of an officer of Customs or of an officer of Enforcement or of a court, the Collector of Customs, the Director of Enforcement or, as the case may be, the court may, having regard to the security-risk involved in such custody, direct that the foreign currency be deposited in a bank in such manner as he or it may deem fit.

(5) Where any draft, cheque (including traveller's cheque) or other instrument is to be encashed under sub-section (1) or any foreign currency is to be deposited in a bank under sub-section (4), the Collector of Customs, the Director of Enforcement or, as the case may be, the court, may prepare or cause to be prepared an inventory of such draft, cheque or other instrument or foreign currency containing such details relating to its description, mark, numbers, country of origin and other particulars as may appear to be relevant to its identity in any proceeding under this Act and where the inventory is prepared or caused to be prepared by the Collector or the Director, the Collector or, as the case may be, the Director 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 draft, cheque, other instrument or foreign currency, and certifying such photographs as true.

(6) Where an application is made under sub-section (5), the Magistrate shall, as soon as may be, allow the application.]

1. Inserted by Act 29 of 1993, sec. 22 w.e.f. 8-1-1993.
