

VOLUME – II

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**Volume II : Chapter-I**  
**INTELLIGENCE**

**PRELIMINARY**

**II.1.1** The object of the Customs Act is to regulate the Import and Export and earn revenue for the Union Government. However, the main object is not merely earning revenue for the country but also to safeguard other interests of the Nation. Parallely, the main aim of the Customs Act, 1962, is to maintain security of India, public order and standards of morality, prevention of smuggling, conservation of foreign exchange, protection of domestic industry, cultural heritage, human, animal or plant life or health etc. For this purpose, the Central Government, issues notifications under section 11 of the Act prohibiting either absolutely or subject to certain conditions, import or export of goods of any specified description.

**II.1.2** The prohibited/restricted goods by their very nature attract lucrative premium, which prompts anti- social elements to indulge in bringing and take out of India, such goods. In such a situation, strict enforcement of Customs and Allied Acts is very important. The Customs officer is required to shoulder the burden and enforce the prohibitions / restrictions effectively. In order to discharge this heavy responsibility, the Customs officer is empowered with wide ranging powers of search, seizure, arrest, launching prosecution & confiscation of goods, etc. To effectively combat the menace of smuggling, the officers must obtain first and knowledge about smuggling rackets, their modus operandi, market trends regarding demand supply of sensitive goods etc. In order to obtain such information, each Commissionerate / formation has its own intelligence network. It is indisputable that even wars can be won if intelligence net work is very effective and one up above the opponent.

**II.1.3** Every Custom House has its own identity which may evolve its own intelligence culture and develop its formations depending upon the parameters like network of intelligence, market forces, financial aspects, culture of informers and their background, environmental forces, etc. Though every Custom House has its own evolution, the actual formation/formalities go beyond the basic framework of the Customs Act, 1962, and the allied Acts. The central framework is, and should be common in all the Custom Houses. The broader aspects and basic necessities can be and should be as follows:-

1. The cultivation of informers

- Collection of information
- Compilation of Intelligence Reports.
- Conducting investigations, making direct enquiry.
- Carrying out searches and seizures; rummaging of vessels/conveyances/aircraft, and various other duties connected with the intelligence work.

**II.1.4** Till early 1990s heavy reliance was placed on orthodox way of getting information in crime, i.e. through informers and mostly human sources were used to collect and disseminate information on crime.

**II.1.5** However, in view of the various changes in the policy and economic liberalization since early 1990s, the scenario in economic crime has undergone a sea change. There has been a decisive shift from commodity smuggling to trade related commercial frauds necessitating a drastic reordering of priorities. Perennials, such as drug trafficking, currency smuggling, FICN, Trade related money laundering and sensitive issues like smuggling of Ozone Depleting Substances also constantly see new modus operandi, new routes and new players and consequently demand new responses. The dynamics of the situation requires the Government agencies to continuously evolve and develop new and enhanced strategies. The key to effectiveness in this rapidly evolving environment is to move beyond traditional informant system to targeted intelligence led analysis which means creation of extensive data banks, development of sophisticated analysis tools, etc.

**II.1.6** In the present scenario collection of information can be split into two broad categories :

1. Outright smuggling of commodities
2. Commercial frauds

**II.1.6.1.** The following commodities largely fall under the category of outright smuggling

- i) Narcotic Drugs & Psychotropic substances

- ii) Fake Indian Currency Notes ( FICN) [ Ref. Notification No. 43/2008Cus(NT) dated 13.05.2008 ]
- iii) Arms and Ammunition
- iv) Indian & Foreign Currency
- v) Flora & Fauna
- vi) Wild life
- vii) Ozone Depleting Substances ( Ref. ODS Rules 2002 and policy Circulars]
- viii) Cigarettes
- ix) Misc. consumer goods

## **II.1.6.2. COMMERCIAL FRAUDS**

**II.1.6.2.1.** Commercial fraud in the context of Customs broadly covers acts of commission or omission in contravention of statutory or regulatory provisions governing import and export with the intent to (a) evade or attempt to evade payment of duties; or (b) circumvent any prohibitions or restrictions; or (c) to receive or attempt to receive or attempt to obtain ineligible export incentives.

**II.1.6.2.2.** The scope and range of Customs Commercial Fraud is extremely dynamic in character being predicated upon factors such as policy provisions, tariffs, incentives and special and concessional duty regimes. In India's earlier high tariff regime under-invoicing and mis declaration of imported goods accounted for a major percentage of duty evasion related violations. With the rationalization and reduction of tariffs, the incentive to mis-declare description in order to misclassify goods has declined substantially. However, mis-declaration of description, often in conjunction with mis-declaration of country of origin, is still resorted to evade levies such as anti-dumping duties. There has also been no let up in the under valuation of goods to evade duty.

**II.1.6.2.3.** While the evasion of import duties remain an area of concern, export related frauds have, in a sense, come to occupy centre stage in recent years. The obvious motive is to corner ineligible export benefits through a variety of modus operandi. These range from the creation of entirely fictitious transactions to the misdeclaration of value, quantity, specifications, destinations, etc. Running parallel to these are large scale Hawala transfers. Frauds of this nature consequently involve the convergence of Customs offences and exchange control violations and also constitute a potential for large scale money laundering.

**II.1.6.2.4.** Other categories of Commercial Fraud which are acquiring an increasing salience are the misdeclaration of country of origin/ value addition in the context of preferential and Free Trade Agreements or in order to avoid anti-dumping duties. The Indo – Sri Lanka Free Trade Agreement has been misused on a significant scale with regard particularly to imports of copper ingots and products, cloves and areca nuts, while anti-dumping duties on certain imports from China have been attempted to be evaded by misdeclaring the description of the goods or the country of origin.

**II.1.6.2.5.** The following are major types of commercial frauds :

- i) Undervaluation
- ii) Misdeclaration (in description/quantity)
- iii) Misuse of DEPB/Drawback Scheme
- iv) Misuse of DFIA Scheme/EPCG Scheme
- v) Misuse of EOU/SEZ schemes
- vi) Misuse of end use notifications
- vii) Misuse of Free Trade Agreements / Preferential Trade Agreements

**II.1.6.6.** The field formations should put in their best of efforts to obtain first hand knowledge about smuggling / evasion in the above fields. In respect of commercial frauds, the field formations must update their knowledge about the changes made from time to time in the Exim policy and also the conditional notifications issued by

Customs so as to keep vigil on misuse of policy facilitations / violation of restrictions imposed.

There of electronic data, data exchange and inter agency cooperation are important source of intelligence.

## **II.1.2. SET-UP AND FUNCTIONS OF INTELLIGENCE UNITS IN THE CUSTOM HOUSE**

**II.1.2.1. (A) SET – UP** -The Intelligence Division may comprise of one or more units, depending on the size of the Customs formation and volume of work. Generally, the Division consists of the following units: --

1. Intelligence Unit.
2. Narcotics Unit
3. Rummaging Unit.
4. Docks Intelligence Unit.
5. Air Intelligence Unit.
6. Index Unit.
7. Investigation Unit.
8. Prosecution and Legal Unit.
9. COFEPOSA Unit
10. Adjudication Unit
11. Disposal Unit.
12. Reward Unit.

### **II.1.2.2. (B ) FUNCTIONS:**

#### **II.1.2.2.1. Intelligence Unit:**

**(a)** Cultivation of informers and gathering useful information from them regarding smuggling.

**(b)** Registration, scrutiny, collection and dissemination of all information reports received from the field staff and giving necessary instructions regarding actions to be taken. Analysis of trends in smuggling and scrutiny of various data through sites like Indian Customs Valuation Database Project ( NIDB ), ICEGATE, etc., and creations of data base.

**(c)** Co-ordination and maintenance of close liaison with D.R.I., other Custom Houses, Commissionerates of Central Excise, Police Department, Enforcement Directorate and Income-tax Department, etc.

**(d)** Study and scrutiny of modus operandi Circulars issued by D.R.I. and other field formations.

**(e)** Compilation and interpretation of statistics with regard to Intelligence received and seizures effected.

**(f)** Preparation and issue of the periodical intelligence bulletins for the guidance of the Intelligence staff about the trend, volume in smuggling, the areas of operation and names of smugglers and their modus operandi.

**(g)** Conducting searches in town on the basis of intelligence / information for seizure of contraband in accordance with provisions of law.

**(h)** Surveillance in town, observations at check posts and barriers, vigil on suspect premises, aerial survey by choppers, etc.

**(i)** Conducting enquiries based on intelligence reports and references received from other Custom Houses, Commissionerates, D.R.I., etc.

**(j)** Study of changes in EXIM policy and Notifications issued by Customs imposing conditions etc., so as to study trends in Commercial frauds and detection of evasions of duty.

**II.1.2.2.2. Narcotics Unit:**

To deal with all matters regarding dangerous drugs such as receipt of information, follow-up action, seizure, further enquiry & investigations, etc.

**II.1.2.2.3. Rummaging Unit:**

- (a) Collection of Intelligence regarding suspect vessels and their crew.
- (b) Search of suspect vessels.
- (c) Maintaining guard or watch on suspect vessels.
- (d) Processing of files in cases of all seizures effected by the section.
- (e) Patrols and surveillance at sea and on land as required and liaison with Coast Guard whenever required.

**II.1.2.2.4. Dock Intelligence Unit:**

- (a) Collection of Intelligence regarding smuggling activities in the docks / bunders and from the ships.
- (b) Follow-up of the information and effecting seizures
- (c) Updating of changes in EXIM policy and Notifications issued by Customs imposing conditions etc., so as to study trends in Commercial frauds and detection of evasions of duty.
- (d) Patrol the Docks area.

**II.1.2.2.5. Air Intelligence Unit:**

- (a) To collect intelligence about the smuggling activities by Air Passengers, aircrew and other personnel working at the Airport.
- (b) To work out information regarding smuggling at the Airport.
- (c) To rummage the suspected Aircraft / Vehicles.
- (d) Maintain guard / watch on suspect aircraft / vehicles and personnel.
- (e) Keeping watch on suspect passengers and their baggage, other operators at Airport.
- (f) Effecting seizures on the basis of Intelligence / Observation and follow-up action.



- (g) Patrolling in the Customs Area (Airport).
- (h) Lookout for suspect persons about whom alerts have been received from various other agencies.

**II.1.2.2.6. Index Unit:**

- (a) Maintenance of indexing system / data bank for facilitating cross-references on the antecedents of suspects and preparation of dossiers on suspects and habitual offenders.
- (b) Keeping custody of seized documents / passports etc.
- (c) Creations of data bank on cases booked right from the stage of detections to subsequent stages of investigations, SCN, adjudications, appeal, settlement, prosecution, and final closer.
- (d) Updating of DRIPS.

**II.1.2.2.7. Investigation Unit:**

Follow-up action on the basis of information received. Seizure, Investigations and / or enquiries and issuance of Show Cause Notices.

**II.1.2.2.8. Prosecution and Legal Action Unit:**

Attending to all court matters relating to remands and prosecutions of persons arrested, writ-petitions against Department, adjudication and other orders. Preferring appeals/review against lower court judgements wherever necessary.

**II.1.2.2.9. COFEPOSA Unit:**

- (a) Prepare the material for detention of persons arrested in connection with the smuggling activities under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
- (b) Place the proposals before the Screening Committee.
- (c) After approval by the Screening Committee, submit the proposal to State / Central Governments for issue of Detention Orders, under COFEPOSA.
- (d) Assist the detaining authority in the execution of Detention Orders.

- (e) Attend the Advisory Board (Constituted by the State Government) Meetings with relevant documents etc. for perusal of the Advisory Board.
- (f) Attend the court on COFEPOSA matters.
- (g) Tracing of absconders and initiating action under Smugglers and Foreign Exchange Manipulation (Forfeiture of property) Act, 1976.

#### **II.1.2.2.10. Adjudication Unit:**

To attend to post Show Cause Notice matters such as processing replies to the defence / notice, adjudication procedures and issue of Orders- in -Original. Also to attend to appeals arising out of such cases.

#### **II.1.2.2.11. Disposal Unit:**

- (a) Receipt & custody of seized & confiscated goods.
- (b) Disposal of confiscated goods / seized goods (where action under section 110 (a) of the Customs Act,1962, has been completed) as per existing orders.

#### **II.1.2.2.12. Reward Unit:**

Processing case files for submitting recommendations for sanction of rewards to informants as well as to the staff.

### **II.1.3. INFORMANTS**

**II.1.3.1. Definition of Informer and Informant** : Anyone who provides information of an investigative nature to law enforcement agencies is called an informant whereas any person acting as an undercover/secret agent for any law enforcing agency/investigator may be termed as an Informer.

#### **II.1.3.2. Protection of informant's identity**

**II.1.3.2.1.** Every investigator has a professional and ethical obligation to safeguard the identity of informants. Failure to fulfill this obligation may result in death, injury or intimidation of the informer and / or his /her family. Reprisals against an informant

due to improper investigator technique weigh heavily on the investigator's conscience and undermines the total law enforcement effort. As a general rule, an investigator should not place an informant in a situation where the informant's identity is likely be exposed unless the investigator has previously explained to the informant that this is a likely result of his / her cooperation.

**II.1.3.2.2.** In addition to the individual investigator's professional obligation to protect the informant's identity, many judicial systems have adopted the informer privilege. This doctrine allows the government to withhold the identity of the informant under most circumstances. The rationale for this privilege is twofold; (1) to insure a constant and continuing flow of information regarding illegal activities to law enforcement authorities and (2) to protect the source of information from reprisals or revenge.

#### **II.1.4. RECORDING OF INFORMATION**

**II.1.4.1.** (i) All information given by informer or any other persons should invariably be recorded in writing.

**II.1.4.2.** (ii) The officer recording the information must take care to see that it is informative as far as possible on the following points namely:

- (a) The identity of the smuggler or smugglers.
- (b) The nature quantity and value of the goods to be smuggled.
- (c) Modus operandi followed.
- (d) Manner of transport to be used.
- (e) Names and particulars of carriers to be employed.
- (f) The routes to be followed by the smugglers and the place where the smuggled goods are to be landed or are to be loaded for being smuggled.
- (g) The approximate date and time when the smuggling is scheduled to take place.
- (h) Where any premises are required to be searched the full details of the premises including plan lay-out and it's location.

**II.1.4.3.** Recording an information in writing is a precautionary measures against unscrupulous person/ persons out of enmity, hatred or malice giving a false information to a Revenue Officer with a view to harass an innocent member of the public or the officer himself. Unless the officer can prove to the satisfaction in a court

of law that he made any search, seizure or detention in pursuance of a secret information received, by him, the consequences can be serious. Should such necessity arise the only manner in which he can convince a court, that he did not vexatiously do the search or arrest is by producing the original information recorded in writing. An informer who gives false information to any public servant with an intention to cause injury or annoyance to any person is punishable under Section 182 of the Indian Penal Code, 1860.

#### **II.1.4.4. Registration of Informers and Information Reports**

**II.1.4.4.1.** As already indicated all Intelligence Officers should develop their own sources of information through informers cultivated by them, after proper screening. After he is satisfied with the bonafides, his name should be got registered with the Assistant Commissioner in the form (App. A). The Assistant Commissioner will then enter personally the name and other details in the Register of informers (App. B) and allot code number to such informers. The Assistant Commissioner will be personally responsible for the custody to the register. The code number allotted to the informers will be on the basis of a code letter allotted to the Intelligence Officers in running serial numbers.

**II.1.4.4.2.** When an Intelligence Officer is transferred, his informers should be made over to another only with his written approval. Where the officer is not willing to make over to another, the Assistant Commissioner should check up with the informer whether they would like to work with another officer. The Assistant Commissioner shall remove the names of those who are not so willing from the Register.

**II.1.4.4.3.** The names of those informers who have not furnished any useful information for a period of 12 months shall also be deleted under intimation to the officer concerned.

**II.1.4.4.4.** In case of casual informers who have only specific information to give and who do not wish to be regular, the Intelligence Officer shall prepare an index and submit to Assistant Commissioner in a sealed cover together with information report. The Assistant Commissioner shall also maintain a Register of such casual informers also.

**II.1.4.4.5.** As soon as the information is received, it should be recorded, in the form DRI-I in the handwriting of the informer or the Intelligence Officer. It must be in the form of informer's statement in first person. In the information report, the informer's name will not be mentioned but only his code number if any, will be given. In case the informer is not registered, his name and full address (in the prescribed format) will be submitted in a sealed cover along with the information report. In case this is not done, the information shall not be treated as from an informer. As soon as the information report is ready, it should be registered and the same sent to the Assistant Commissioner and issue necessary instructions for its follow-up after scrutiny. The information report should also be immediately registered in the Register of Information. The Register should be prepared commodity wise. Cross-references should be given under other commodities mentioned in the information report. The information report itself should be filed in a separate guard file. Only such orders as are necessary to follow-up and such information will be conveyed to the concerned officer for further investigation or enquiry. The information report should be sent to the Directorate of Revenue Intelligence within 24 hours of its receipt by the Assistant Commissioner and where the information is of interest to more than one Commissionerate and / or Custom House, such Custom Houses and the Commissionerates should also be informed.

**II.1.4.4.6.** In those rare cases, where there may not be enough time to record the information in writing before taking action, the Assistant Commissioner concerned and in his absence the Superintendent / Intelligence officer in the Custom House should be informed of the receipt of the information by telephone and of the action proposed to be taken.

**II.1.4.4.7.** A separate Register shall be maintained commodity wise for information received from other than informers such as from D.R.I., other Commissionerates / Departments. Anonymous or pseudonymous information may also be recorded in the Register.

**II.1.4.4.8.** At the end of each month an analysis of the information reports should be prepared to show (I) the information reports received during the month, including those pending from the previous Month, if any (ii) disposals and (iii) pendency. The analysis should be submitted for information and orders to the Assistant Commissioner and Additional Commissioner of Customs

[ DRI Letter F. No.POL./1/60 OF  
12.12.1960 ]

**II.1.4.5. The Standing Order issued by Mumbai Preventive Commissionerate with regard to recording of information till its final disposal i.e. disbursal of reward is reproduced below. The same will be useful in laying down procedures and instructions by other Custom Houses on this issue.**

**II.1.4.5.1.** The orthodox and also the most effective method of collection of intelligence is of course through informers. The importance of this source of information for purposes of actual detection of cases of smuggling is incalculable because of its usual accuracy and precise nature. Protecting the identity of the informer is therefore of utmost importance.

**II.1.4.5.2.** In order to protect the identity of the informer, the Officer collecting information should immediately keep in a sealed envelope the information recorded with the informer's identifying particulars including his left hand thumb impression and signature (where possible) and hand over the sealed cover to CA-I within 24 hours of recording of the information. In case the recording of the information is on holidays the sealed covers should be handed over to the controlling Asstt. Commissioner within 24 hours who in turn will hand over the same to CA-I on the next working day. It is advisable that he may not keep it at his residence but keep it in the office with adequate safety measures.

**II.1.4.5.3.** Officer recording information from Preventive Commissionerate, Mumbai ((R & I Div. & M & P wing) will hand over DRI-I to CA-I immediately after recording of information. The CA-I will maintain 4 Registers for receiving DRI-I. These Registers will be titled differently for different Commodities as follows:

- |      |                              |   |   |
|------|------------------------------|---|---|
| i.   | Gold & silver                | : | A |
| II.  | Narcotics                    | : | D |
| III. | Currency (Indian / Foreign): |   | B |
| iv.  | Dutiable goods               | : | H |

**II.1.4.5.4.** These Registers indicate the serial nos. of the concerned DRI-I, date and time of the information, name of the recording Officer, File No. and gist of information. The CA-I will put up the DRI-I for information of AC/Adm. Immediately after the same is entered in the Register.

**II.1.4.5.5.** The sealed cover containing the information is then entered by CA-I in a Register of sealed covers, which would indicate Serial no. Date on which it is

received., the corresponding register no. of DRI-I Register, File No. and Officer recording the information. This cover duly sealed by the Officer recording the information will then be kept in specially meant cupboards, which are under the seal and signature of CA-I.

**II.1.4.5.6.** After effecting seizure, if the value of the goods seized is more than RS. 10 lakhs, a telex / fax should be issued on behalf of the CC(P) to Member, Anti-Smuggling and D.G. DRI (within 24 hours) after approval from Chief Commissioner of Customs. The Seizing unit will also issue DRI-II within 48 hours of seizure detailing part played by each and every staff member who has participated in the seizure.

**II.1.4.5.7.** After Reward is sanctioned, the Reward cell will send the intimation to the concerned Officer. The said Officer should seek the appointment of disbursing Officer and inform the CA-I the date and time fixed for disbursement of Reward amount. The CA-I will then put up the file to Supervising AC and take his permission for withdrawing the sealed cover. He should keep it ready on the appointed date and time for handing it over to the Disbursing Officer. The concerned Officer will then withdraw the money for disbursement. The CA-I will personally hand over the cover to the Disbursing Office in the presence of the Seizing Officer and collect it back personally. Once the sealed cover is in the possession of CA-I, it will not be handed over to anyone except the Disbursing Officer.

**II.1.4.5.8.** On the appointed date and time the concerned Officer will report to CA-I after making necessary entry in the Register and after taking the signature of the concerned Officer and his signature will take out the sealed cover from the cupboard and hand it over to the disbursing Officer in the presence of the Seizing Officer for further necessary action.

**II.1.4.5.9.** After the reward is disbursed the said sealed cover will be kept in another cover duly signed by the Disbursing Officer and the Officer who had originally recorded the information. This cover will give the details as per the original seal cover. It will be the duty of the CA-I to keep this new cover ready at the time of disbursement. This second cover duly sealed will be re-deposited by at the CA-I in the cupboard after making the necessary entry in the Register again.

**II.1.4.5.10.** The present practice of each division i.e R & I and M & P handling their own sealed envelopes will continue keeping in mind the nature and norms of receipt of information and its timely execution. However in all such cases the Commissioner

of Customs (Preventive) and the concerned joint Commissioner (Preventive) must be immediately informed.

[ S.O. No.7468/99 dt.22.07.099. issued by Mumbai Preventive Commissionerate ]

#### **II.1.4.6. Information received / recorded from casual informers**

**II.1.4.6.1.** Attention is also invited to the instructions contained in the Customs Preventive Manual relating to "Recording of Information" and the precautions to be taken in pursuance of receipt of information especially when the information is emanating from casual informants, which clearly provide that:-

".....a higher degree of caution is required in the case of casual informants. The status and antecedents of the informants, his relationship, if any, or equation with those against whom information has been furnished, his motive in volunteering information, results achieved on the basis of previous information, all these factors need to be carefully considered before it is decided to act. The officer concerned should obtain from the informant as detailed and precise information as possible. Details and clues furnished in the information need to be processed and worked out. If searches of premises are involved, premises together with a discreet watch and surveillance should ordinarily be undertaken in an effort to verify the veracity of the information. If this type of verification and working out of the information discloses that the same is reliable, it could then be acted upon".

**II.1.4.6.2.** Board desires that while making search / follow up action, as stated above, should be scrupulously followed, in letter and spirit, so that infructuous searches and harassment to affected persons is avoided. Extreme care should be taken in cases of information received / recorded from the casual informants / anonymous / pseudonymous sources, (specially in the cases where ladies are involved) and the information recorded should be properly verified / checked before deciding strike action. The senior officers authorizing such searches will have to be held responsible if any casual approach is noticed in future in ordering searches of individuals / premises etc. leading to grievances of the type mentioned above.

[ M.F.,D.R.,F.No.394/72/99-Cus. dated 29.04.99 ]



## **II.1.5. PRECAUTIONS TO BE TAKEN WHILE RECORDING INFORMATION**

**II.1.5.1.** At the time when an informer furnishes any information or documents, an undertaking should be taken from the informer that he/she is aware that the extent of the reward depends on the precision of the information furnished by him/her: that the provisions of Section 82 of the Indian Penal Code have been read by and/or explained to him/her: that he /she is aware that if the information furnished by him/her is found to be false, he/she would be liable to prosecution; that he/she accepts that the Govt. is under no obligation to enter into any correspondence regarding the details of seizures made etc., if any, and that the payment of reward is ex-gratia in the absolute discretion of the authority competent to grant reward. It may also be made specifically clear to the informer that the Govt. is under no obligation to grant/sanction the maximum admissible reward upto 20% of the net sale proceeds of the seized / confiscated goods, (if any) and/or the amount of additional duty / penalty / redemption fine recovered and that the amount of reward to be sanctioned to the informer, will purely depend on the specificity & accuracy of the information & other dependent factors, as indicated in para 5.0 of reward guidelines. [F.NO. R-13011/6/2001-Cus(AS) the 20<sup>th</sup> June, 2001]

## **II.1.6. ACTION IN PURSUANCE OF INFORMATION**

### **II.1.6.1. Precautions**

Irrespective of the nature and extent of reliability of the information, certain basic precautions should be taken before action is initiated thereon.

#### **(i) Source reports from the Directorate of Revenue Intelligence**

Source reports emanating from the D.R.I. are received after preliminary scrutiny and verification. The column "special Directions" should be scrupulously observed and action should ordinarily be taken to the extent indicated. Results of action taken should be immediately communicated to the D.R.I. so that any further instructions as necessary may be issued without delay.

#### **(ii) Source report from other Customs Houses / Commissionerates:**

The forwarding formation shall as a rule, carry out a preliminary scrutiny before forwarding the information to the other field formations. To the extent possible, the reliability of the source and the extent to which it can be acted upon should be indicated to facilitate the task of officers at the receiving end. If for any reason it has not been possible or practicable for the forwarding formation to carry out any scrutiny or verification of the information received and the same is desired to be conducted at the receiving end, a very clear mention must be made in the communication. The receiving formation will then take appropriate action on the information furnished in the source report.

**(iii) Information emanating from Registered informants.**

Informants are given a "Registered" status after they have proved their worth and at least furnished two or three or more informations which have turned out to be correct. Accordingly, information emanating from such sources could be relied upon after the necessary preliminary processing including verification of facts, if possible.

**(iv) Information emanating from casual informants.**

In the case of casual informants a higher degree of cautions indicated. The status and antecedents of the informants, his relationship, if any, or equation with those against whom information has been furnished, his motive in volunteering information, results achieved on the basis of previous information all these factors need to be carefully considered before it is decided to act. The officer concerned should obtain from the informant as detailed and precise information as possible. Details and clues furnished in the information need to be processed and worked out. If searches of premises are involved. Verification of the correct address and location of the premises together with a discreet watch and surveillance should ordinarily be undertaken in an effort to verify the veracity of the information. If this type of verification and working out of the information discloses that the same is reliable, then it could be acted upon.

**(v) Source reports from Police, State Excise, Prohibition agency, Income-tax, CBI and other enforcement authorities-**

Unless the Government Department concerned clearly indicates that information emanates from one of their reliable and tried sources, such information should ordinarily be treated on the same basis as from casual informants. If the

agency forwarding the information is locally available it would always be advantageous to discuss the details with it at appropriate level.

In the case of telegrams or telephone calls, purporting to be from a sister organization calling for immediate action, it would be worthwhile for the officer receiving such information to ring back the organization, make absolutely sure that the person at the other end is the officer of that organization which, claims to be and check up on the reliability of the information. This should be done before the information received over the telephone or in a telegram is acted upon.

#### **(vi) Information from Anonymous / pseudonymous sources:**

The greatest possible care and circumspection are necessary where the source of the information is anonymous or pseudonymous, may it be a letter, telephone call or telegram etc. Such communications should first be examined in the light of background information available and only after ensuring that such background knowledge warrants it, action as detailed below should be taken. Efforts should also be made to ascertain the identity of the source. If specific clues are supplied, the same should be carefully verified by maintaining watch, mounting surveillance and going into such other details as are capable of verification or confirmation. Corroboration of information should be attempted from independent sources also. Action to "strike" should be taken only after cautious and detailed processing leads to a strong and reasonable belief that the information is reliable. Even so, orders of a senior officer, ordinarily of the rank of Assistant Commissioner must be obtained before resorting to search. Senior most officers available either on the spot or on 'Phone'.

#### **II.1.6.2. Action on the Basis of Judgement**

**II.1.6.2.1.** Apart from acting on the basis of information received, officers on spot will, sometimes, find it necessary to act on the basis of their observation & judgement of the behavior of passengers / other persons. Where, however, detailed baggage examination of the packages has to be undertaken or a personal search conducted, the senior most officers present on the spot should invariably be consulted.

**II.1.6.2.2.** In the case of diplomatic and consular officers and Trade Commissioners etc. who enjoy immunities from baggage examination, Government's instructions governing the concessions and privileges admissible to them should be very strictly observed. In case of any reliable information received which would appear to necessitate examination of their baggage, immediate contact should be established with the D.R.I. who in consultation with the appropriate Government of India agencies will work out the method and manner of action to be taken. The field formations on their own shall not take any precipitate action.

**II.1.6.2.3.** It is recognized that a detailed examination or a personal search, when they have to be resorted to, can never be made to look pleasant; nonetheless their rigor can be minimized by extending courtesy and expression of regret in suitable words at what had to be done. It should be the endeavor of every officer to ensure that such examination and search are carried out with circumspection and restraint and is not made more distasteful than is inherent in nature of things.

[ DRI letter F.No. 1/1/65. dt.

23.07.66 ]

#### **II.1.7. KINDS OF ALERTS**

- (a) **Red Alert-** for arrest of a person.
- (b). **Light Blue Alert-** for search of baggage and / or person, keeping a watch, maintaining surveillance, obtaining information about a person etc. and where the lookout is to be maintained for a continuous period And identifying particulars about a person are available. These will also be issued against person who have not taken income Tax clearance.
- (c). **Letter Alert—** for search of baggage and / or person, keeping a watch, maintaining surveillance, obtaining particulars of a person etc., and where the lookout is to be maintained for a particular visit, over a short period or the identifying particulars of the person are not available. These may also be issued against person who have not taken income Tax clearance.

- (d). **Warning Circular**—will be issued for banning entry of a person into India. The Ministry of Home Affairs issues these to all passport issuing and Immigration authorities on recommendation of the Directorate.

**II.1.8. Basis for Issue of Alert Notices:**

**II.1.8.1.** The Red Alerts against smugglers will only be issued in those cases where a person is required to be arrested under the Customs Act, or allied Acts. The officer who detains a person on the basis of a red alert should follow the procedure laid down under section 104 of the Customs Act. He should also inform the officer as mentioned in the 'Special Directions' in the Alert. The officer who had requested for the issue of the alert would then take further action in the matter.

**II.1.8.2.** The Red Alert will also be issued against a person who is required to be detained under the COFEPOSA Act but is absconding. In such cases the person detained should be taken to the nearest Police Station who should be asked to keep the person under their custody till the detenu can be transferred to the concerned state. Here again, the officer mentioned in the 'Special Directions' should be contacted who would take further action for transfer of the detenu to the concerned jail.

**II.1.8.3.** The Light Blue and Letter Alerts for search of baggage / person would be issued where a particular person is suspected to be indulging in smuggling activities. As far as the examination of baggage is concerned, the Customs Officer at the point of entry or exit, is empowered to check the baggage in normal course. However, the search of person cannot be said to be covered under this provision. Here, it is proposed to issue instructions regarding search of person only in those cases where there is definite information that the subject is indulging in smuggling activities himself. It may be clarified that the responsibility to decide whether the person of a suspect is required to be searched or not, in all cases, would rest on the officer on the spot. The Directorate, in most of the cases, has been writing very clearly that the question of search of person may be decided on merit. This practice would be continued and it is suggested that the person on the spot should use his discretion fully to decide whether the person of suspect should be searched. In any

case, the information contained in Letter Alert or Light Blue Alert should be treated as an information received from any other source and then necessary action be taken. The reason to believe required to be formed under Section 100, 101 or 104 would thus be of the officer on the spot. It may however, be clarified that the issue of alert is an executive action of secret nature. We would, therefore, neither mention in writing nor verbally that the alert system exists; it is to be treated as an information from a secret source

**II.1.8.4.** Warning Circulars are issued in public interest under Section 3 of the Foreigners Act, 1946.

**II.1.9. Issue, Review and Maintenance of Alerts:**

**II.1.9.1.** All categories of alerts will be issued on the basis of recommendations received from the field formations or on the basis of material available in the Directorate. The field formations are requested to send their recommendations, by name, to any officer of the Directorate's Headquarters at Delhi. It may be clarified that though the request for issue of Red Alert can be sent by telex, the request for issue of Light Blue or Letter Alert should only be sent in a double sealed cover under Registered Post. In urgent circumstances, the request can also be made on telephone. In very urgent and exceptional circumstances the field formations may issue an alert directly to all exit points, but a copy of this letter should invariably be endorsed to the Directorate's Headquarters at New Delhi for the purpose of regularizing it.

**II.1.9.2.** In this regard it may be mentioned that agencies such as Directorate of Enforcement, Narcotics Commissioner, CBI, Directorate of Archaeological Survey of India, Income Tax Authorities, etc. have been advised to send their requests for issue of alerts directly to the DRI Headquarters. In case they send the request directly, they may be advised to approach the system of the field formation. If no regularization takes place within a month, the field formations will be at liberty to withdraw the alert without further notice to the concerned authorities. The requests received from the Zonal Units of the DRI or Directorate of Enforcement should also be treated in the same manner.

**II.1.9.3.** This will however, exclude those cases in which the information is received by the field formations directly themselves and they decide to maintain a lookout on its basis. The responsibility for maintenance and withdrawal of such local lookouts would entirely rest on the concerned field formation.

**II.1.9.4.** Every alert issued by the Directorate will carry a validity period. In case the validity period is not mentioned the matter should be referred to the Directorate's Headquarters immediately. It may be clarified that no alert can be withdrawn by the field formations, particularly the exit and entry points, unless a formal withdrawal letter is received from the DRI. The field formations who had made the original request for issue of alert should inform the Directorate's Headquarters sufficiently in advance, say 2 months, before expiry of the validity period, in case they desire the alert to be continued.

**II.1.9.5.** The Red Alert will be issued to all Customs and Central Excise formations including entry and exit points, and copies of the Red Alert would also be endorsed to the Enforcement Directorate including Zonal / sub-Zonal units, Narcotics Commissioner and Zonal / Regional units of the DRI.

**II.1.9.6.** The Light Blue and Letter Alerts on the other hand will have limited circulation and will only be forwarded to entry and exit points and concerned Commissioners / formations. It is suggested that formations and Commissionerates, which do not control any entry or exit point, may stop maintaining Light Blue and Letter Alerts.

**II.1.9.7.** The receipt of all alerts should be acknowledged by the field formations, after the alert is entered in the visadex system or in the file maintained for the purpose.

The field formations should continuously review and advise the DRI as to the number of alerts required by each formation. Since we now follow the practice of sending the alerts directly to the entry and exit points, the field formations avoid endorsing copies from one formation to another, such as endorsement of copies received by the Commiserate to Airport, docks, etc. under his jurisdiction.

**II.1.9.8.** It may be clarified that the responsibility whether a particular alert will be issued or not and the selection of proper Performa would lie with the DRI. Similarly, unless the validity period is specifically fixed by the formation making the request, the responsibility of fixing the validity period would be of that of DRI.

### **II.1.10. RED ALERTS**

**II.1.10.1.** The Red alerts for apprehension of a person will be issued in the following circumstances :

- (a)** A person is required to be arrested under the Customs Act / any other allied Act.
- (b)** A person is required to be detained under Section 3 of the COFEPOSA Act.
- (c)** If a person arrested under Customs or Allied Acts is on bail and the Court has imposed condition on the bail that he cannot move out of the jurisdiction of the Court or cannot leave the country.
- (d)** Where a person is involved in an offence under the Customs or allied Act and is wanted for interrogation, which is likely to lead to his arrest. However, the red alert in such a case would be considered only in extra ordinary circumstances.

**II.1.10.2.** Red Alert would not be issued if the full identifying particulars of the person or his photograph are not available. Exception to this can only be made in very special circumstances, which should be clearly mentioned by the authority making recommendation for issue of Red Alert.

**II.1.10.3.** The Red Alert will be issued in a series indicating running 'R' number of the year.

**II.1.10.4.** The validity of the Red Alert would normally be till arrest. However, where the goods involved are of small quantity, or value the case involved is a baggage one, a person is a crew member of a dhow of foreign origin and who would normally not come back to India or the person is of foreign origin and who would normally not come back to India after he has absconded, the validity of the Alert may be indicated to be 5 years. It would, therefore, follow that in all these circumstances, the Red Alert may be reviewed to see whether it can be withdrawn.

**II.1.10.5.** The Red Alert may be withdrawn in the following circumstances:



- (a) If the person has been arrested.
- (b) If the person has died.
- (c) If the investigations do not show adequate evidence to justify his arrest.
- (d) If the person is of foreign origin particularly crewmember of a dhow and who travel without documents.

In such cases the withdrawal would be considered if the person is not noticed in India, for a number of 5 years, after his involvement in the case or after issue of the Red Alert, as the case may be.

**II.1.10.6.** The Red Alert will be issued to all the field formations and should not be removed from Visadex System/file unless withdrawal instructions are received from the Directorate. It is suggested that the field formations should continue to review all Red Alerts and recommend their withdrawal at the appropriate time.

**II.1.11. LIGHT BLUE ALERTS:**

**II.1.11.1.** The light blue alert shall be issued in the following cases:

- (a) Where the person is suspected to be involved in smuggling activities over a period of time and it is likely that he will carry contraband / incriminating documents concerning smuggling or F.E.R.A. offences.
- (b) The person is suspected to be a carrier of contraband / incriminating documents concerning smuggling or F.E.R.A. offences.
- (c) Where a person is reported to be contacting another person who is known to be involved in smuggling activities.

**II.1.11.2.** The Light Blue Alerts will be issued in a series indicating running 'LB' number of the year.

**II.1.11.3.** While making the recommendations, the field formations should make efforts to indicate as many identifying particulars of a person as available so as to avoid confusion. Where the full particulars are not available, the Directorate would normally issue a Letter Alert, which would have a short validity.

**II.1.11.4.** While making the recommendations, regarding search of person of the suspect, care should be taken to make sure that a definite information about his activities is available. Wherever there is any doubt that a person may or may not be indulging in smuggling activities, request should only be made for examination of his

baggage, the examination of the person being left to the Senior Most Officers on duty.

**II.1.11.5.** The names of associates are usually mentioned in the alert for the purpose of giving background material about the suspect. It is, therefore, clarified that no action is to be taken against the associates, unless specified otherwise. Normally, if action is required to be taken against an associate, a separate alert would be issued.

**II.1.11.6.** The validity of the L.B. alert would normally be 2 years. However, this can be reduced or increased taking into account merit of individual case. It is reiterated that unless a formal withdrawal letter is received from the DRI, the alert should not be removed from their records by the field formations.

### **II.1.12. LETTER ALERTS**

**II.1.12.1.** Letter alerts will normally be issued for specific purpose such as:

- (a)** Where a person is suspected to be involved in smuggling activities on a particular visit or for short period, say 15 days;
- (b)** Where personal particulars of a suspect are not available and are required to be collected.

**II.1.12.2.** The Letter Alert will be issued in the series indicating running 'LA' number of the year. No standard Performa would be used for this category of alerts.

**II.1.12.3.** While making recommendations, the field formations should try to include as many identifying particulars of the person as may be available on their records; the Directorates would in any case add whatever particulars are available on its records.

**II.1.12.4.** The validity period of a Letter Alert will either be for a specific visit or for a short period not exceeding 3 months at a time.

### **II.1.13. WARNING CIRCULARS**

**II.1.13.1.** Ministry of Home Affairs can, in certain circumstances, deny or restrict entry to foreigners into India. One of the several circumstances under which admission can be denied is indulging in undesirable activities. The foreigners who indulge in smuggling activities are covered by this provision. The names of persons alongwith their particulars are circulated to all Passport issuing authorities, all Indian

Missions abroad, Foreigners Regional Registration Offices and Immigration Authorities at all exit and entry points. These circulars are known as 'Warning Circulars'. In case of foreign smugglers these Warning Circulars are issued only at the recommendation of the Directorate of Revenue Intelligence.

**II.1.13.2.** It would be obvious that the facility of issue of Warning Circulars is duplication of our alert system. We therefore, use this facility as a compliment to our alert system. Here it would be pertinent to mention that even after issue of a Warning Circular it is possible for a person to enter into India either on a visa granted by our Mission in special circumstances or on the basis of temporary visa granted at the point of entry. It has, therefore, been decided that the recommendation for issue of a Warning Circular should be made to be Ministry of Home Affairs in very special circumstances, such as:

- (a) Some foreign smugglers attract fancy of the press and receive wide publicity, which certainly hurts image of the department and the country. In some cases it may not be possible to issue / continue Light Blue or Letter Alerts issued against these persons and it may be more prudent to get 'warning circulars' issued against them.
- (b) The possibilities of a foreign carrier returning to India after he has been convicted and complete his sentence are remote. But in case he is an important member of a gang, the chances of his visiting India again after some cooling period cannot be ruled out. Issue of an alert in such cases may not be as useful as getting a Warning Circular issued.

**II.1.13.3.** The field formations may make the recommendation for issue of Warning Circular in all the above or similar circumstances. It may, however, be noted that the Directorate would either keep the alert current or a Warning Circular would lie on the Directorate. There is no validity period for Warning Circulars but they are reviewed by the Ministry of Home Affairs as well as by Directorate from time to time.

**II.1.13.4. Receipt of alerts and maintenance of visadex system:**

All alerts, the officer to whom they are addressed should see including extension and withdrawal of alerts received from the Directorate. If that is not

possible, a senior officer not less than the rank of Superintendent should see them and indicate proper disposal.

**[ Excerpts from DRI D.O. letter No. 348/XVII/7178  
DATED.31/07/79 ]**

**II.1.14. RECEIPT OF INFORMATION AT THE AIRPORT**

**II.1.14.1.** The different types of information received at the airport orally or in writing from the intelligence wing of the Custom House, other intelligence organisations, e.g. Directorate of Revenue Intelligence or the contacts of the Air Customs staff or A.I.U. of Airport will be recorded in the following records:

- 1) Telephone Book
- 2) Information Register
- 3) Visadex

**II.1.14.2. Oral Information**

All information received at the airport on telephone shall first be recorded in the Telephone Book. This will be a permanent record. All the information entered in the Telephone Book must then be properly recorded in the Information Register which will also be a permanent record. All the information received on telephone shall be confirmed in writing by the authority supplying the information. On receipt of confirmation copy of the telephone information, the entries in the Telephone Book, Information Register and the Visadex must again be checked to ensure that all entries are correctly made.

**II.1.14.3. Writing Information**

All information received by the Airport Customs staff from their own contacts as regards suspects must be recorded and submitted to the Asst. / Dy. Commissioner in charge who shall see the information and have it properly recorded in the Information Register and Visadex. Written information received from Customs Houses and other sources shall also be treated in the same manner.

**II.1.14. 4. Maintenance of Visual Index System at Airports**

The laid down initial procedure for recording and indexing of information relating to suspects is “Visadex or Cardex” which is still in vogue at some ports and airports. This system is designed for effective visual control at the shortest notice of the names appearing in it. These are 63 vertical cards arranged in each tray of a Visadex Cabinet. Each card has the brief particulars such as the name (aliases of the suspect), father’s name, date of birth, nationality, passport particulars, occupation, address, local / permanent, modus operandi, associates, case details etc. The name of the suspect appears on the left-hand bottom corner of the card. On the right hand bottom corner are signals in different colours, i.e. red, dark blue, light green and yellow to indicate arrest, personal search including baggage, only baggage search and / or surveillance. At Preventive Commissionerate of Mumbai, Index cards are prepared in respect of suspect offenders, suspect vehicles and vessels on the basis of intelligence reports received. So also index cards are prepared in respect of all economic offenders who have been detained under COFEPOSA and those to whom show cause memos have been issued.

#### **II.1.14.5. Operation of Visadex System**

At Chhatrapati Shivaji Airport, Mumbai, the Intelligence Bureau has provided computer terminals to the Customs authorities for carrying out Visadex checks. These terminals are installed in arrival / departure wings of the airport and also in the main Visadex office. All these computer terminals are connected to the main Computer Cell managed by the E.D.P. staff of the Intelligence Bureau.

The officer posted at the Immigration carries out the work of feeding and updating of Visadex pertaining to Immigration. The Customs authorities carry out computer Cell and work pertaining to Customs Visadex.

The alerts received from various enforcement agencies are fed into the main system by the officer specially assigned to carry out such work, commonly called as Speciall Visadex Officer. This system is jointly linked with the Immigration counters. When the work of primary check of arriving or departing passengers is being carried out by the Immigration counter officers, the passenger’s name is matched with the names maintained in both the Immigration and Customs Visadex. The software presently being used by the Immigration Computer Cell has been on the Soundex System. To illustrate, while a name is being checked by the Immigration officer, it is matched with all the similar sounding names or names having the same first

alphabets in parts of the names as compared to the names maintained by both Immigration and Customs Visadex. Upon comparison with the Visadex, if it is found that the name figures on the Immigration Visadex, it is flashed alongwith other similar sounding names and names having the same cycle of first alphabets in their various parts of the screen of the Immigration officer. Similarly, therefore, if the name figures on Customs Visadex, it is flashed on the Customs Echo Terminal alongwith similar sounding names and names having the same cycle of first alphabets in their various parts. If, however, the names sound different or do not contain the same cycle of first alphabets in their various parts, they are not flashed on either Immigration Screen or the Customs Echo System.

As the system works on the soundex system, it is absolutely necessary that the name is fed correctly to enable the system to match it with the names mentioned in the Visadex.

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## CHAPTER II

### **GUARDS, PATROLS AND SURVEILLANCE**

#### II.2.1. GENERAL NOTES

Guard duties in Rummaging and Intelligence Division fall into two categories:

- (i) Guarding suspected places while searches are being conducted or when searches could not be completed, or prior to entering the premises before search in ensure that contraband is not removed from the premises.

- (ii) Guarding of suspect vessels.

As anti-smuggling measure, suspect vessels when in port shall be guarded round-the-clock by the Rummaging staff. The guard-duty officers shall work in shifts, the number of officers and Sepoys in each shift depending on the availability of staff. Their main functions are;

- (i) Carefully search all members of the Ship's crew who leave or board the vessel. Ship's officers need not ordinarily be searched, but if necessity arises, they must be searched in a ship's cabin.
- (ii) Patrol various parts of the ship such as crew's quarters, hatches, engine room, boat-deck etc. keeping a sharp look out for suspicious movements.

- (iii) Keep a lookout for unauthorized cargo boats or dinghies that loiter in the vicinity or tie up alongside the guarded vessel.
- (iv) If the vessel is working overside, exercise vigilance on the cargo boats alongside.
- (v) Keep a watch on the quayside lest any member of the crew attempts to throw any contraband overside.
- (vi) Keep a watch on the vessel from stem to stem to foil any attempt at unauthorised discharge or loading of goods, contraband etc. by members of the crew.

## II.2.2. PATROLS

Patrolling involves scanning of a particular area for detection of illegal and criminal activity. Patrolling can be categorized on the basis of the type of area covered such as Land Patrolling, Air Patrolling and Sea Patrolling.

### II.2.2.1. LAND PATROLLING

In the yesteryears, patrolling was conducted on foot. Officers of Police and Customs used to patrol a particular area on foot. Such patrolling can be conducted to cover short distances. Regular Road patrolling by vehicles is conducted by Customs Officers at night along the shore to detect any suspicious activity.

Blitz patrolling can be conducted where the entire force of the organization is concentrated over a particular area. Such patrolling can be conducted in areas which are suspected to be hubs of illegal and criminal activity, such as hideouts, shady, abundant warehouse, unpopulated waterfronts, etc.

Staggered patrolling can be conducted to cover various areas in staggered manner.

### II.2.2.2. JOINT SEA PATROLLING

II.2.2.2.1. The concept of joint sea patrolling along with other security agencies was started after serial blast in Mumbai under Costal Security Scheme being recommended by Ministry of Home Affairs to the state having coast line. The action point emerged after the discussions held in the meeting convinced by Chief Secretary, State of Maharashtra are as under.

1. The Joint Costal Patrolling should recommence not latter than 15<sup>th</sup> September 1993 Each team will consist of 8 personnel including one PSI and 3 'Armed Police' Constables from Maharashtra Police, 2 Naval personnel and 2 Customs personnel including Customs Inspector, Customs Inspector will be overall



in-charge of the trawler and each such team. One Light Machine Gun in each trawler to be provided by Navy. Night vision binocular will be made available by the Customs and the Wireless Set will be made available by the State Police.

2. As advised by the Ministry of Home Affairs, if the funds are placed at the disposal of Customs Department, they should do the hiring of private trawlers. If, on the other hand, funds are placed at the disposal of State Government by MHA, the State Government through District Magistrates will undertake the responsibility of hiring of trawlers.

3. Making available local transport to the Joint Patrolling party will be the responsibility of the State Government and the money required for the POL expenses will be made from available grants with respective SPs.

4. Patrolling on the High Seas beyond 200 Nautical miles from the coast Line will be exclusive responsibility of the Navy. The area between 12 nautical miles to 200 Nautical miles will be responsibility of the Coast Guards and the area from the Coast line upto 12 Nautical miles will be jointly patrolled by the abovementioned teams comprising of Customs, Police and Navy. On shore patrolling will be responsibility of the State Police.

5. It has been decided that entire responsibility of making available on-shore facilities (e.g. transport, mess arrangement, making temporary accommodation for the patrolling team etc.) would be that of State Government.

6. The Nodal Officer to co-ordinate the activities pertaining to collection and sharing of information regarding the smuggling activities and other such information effecting the security on the coastal line would be the Commissioner, CID, (Intelligence). He should convene regular meetings of the group comprising Navy, collector Customs, , IB and Coast Guard.

7. The Nodal Officer for implementation of the offshore joint coastal patrolling will be the Addl. DGP (L&O) who should co-ordinate with the Divisional Commissioner, Konkan Division, the Commissioner Fisheries and the Collector of Customs (Preventive): Immediate action should be initiated for locating the suitable trawlers, identifying of the man-power, creation of 12 sub-control centers and working out the modalities for effective implementation of offshore joint costal patrolling scheme, so that the scheme could be put into operation with effective from 15<sup>th</sup> September 1993.

8. The District level Co-ordination Committee headed by the respective Collectors will continue to work to ensure ground level co-ordination and implementation of coastal security scheme in their respective districts.

9. As a long term measure, Home Department in consultation with the Director General of Police should prepare a proposal for the creation of Marine Police Wing, for policing the costal waters within the limits of Maharashtra State. To begin with the State Government may procure about 12 trawlers for this purpose. The Director General of Police should carry out a study in consultation with the Coast Guard / Navy, Mazgaon Dock etc. with a view to find out which type of trawlers would be ideally suitable for marine patrolling up to 12 nautical miles. A small unit will have to be created which should also include various operators, machines etc, to run and maintain the trawlers. It would also be a considered if these technical staff could be taken either on deputation or if it could be hired from local sources. The Director General should submit a self-contained proposal in this regard to the Government as early as possible.

II.2.2.2. Accordingly joint coastal patrolling was started along the coast line of the Thane, Mumbai, Raigad, Ratnagiri, Daboli and Sindhudurg Dist. Of Maharashtra. During the passes of time the participation by Indian Navy was reduced and afterward there participation was stopped.

II.2.2.3. Subsequently a meeting on JSP was held on 25.05.2006 which was attended by the officers of Home Department and Police Department of Maharashtra and officers of Customs.

The following decisions were taken :

1. Joint Coastal Patrolling in its original form should be continued until the Coastal Security Scheme becomes operational.
2. The Commissioner, SID and Customs Department should work out the arrangements for Joint Coastal Patrolling.
3. As per the arrangements, suggested by the Commissioner, SID and Customs Department, the Police and the Navy will provide necessary man-power for the patrolling.

### **II.2.3. THE ROLE/DUTIES OF CUSTOMS OFFICERS AT THE TIME OF JOINT SEA PATROLLING**

During Joint Sea Patrolling Customs Officer is incharge of the patrolling craft. He should ensure that patrolling team reports for patrolling well in time so that patrolling is commenced at stipulated time. It should be ensured that time is staggered so that there is no buffer time during the change in shift. The Customs Officers incharge of the patrolling team should ensure that equipment required during the patrolling, such as binocular, night vision, communication sets and arms are on board. The Customs Officers being incharge of the patrolling team has to chalk out the route of patrolling depending upon perception or any intelligence received. During course of patrolling Customs Officers will stop and board suspected vessels and carry out the checks / searches as envisaged in the Customs Act, 1962. He should also report any untoward incident, noticed. After patrolling the Customs Officers should make entries in the JSP register and a daily shift report in the prescribed performa as below :

#### REPORT OF JOINT SEA PATROLLING

Day / Night

Date :    /    /

Name of the Patrolling Boat :

Name of the Supdt. / Officer :

Name of the Hawaldar / Sepoy :

Name of the Police Staff :

Time of starting patrolling :

Time of stopping patrolling :

Area covered :

Remarks (Including number of vessels checked / searched and report on any incident )

Details of the crafts checked / searched by JSP team.

Sr. No.	Name of the craft	Regn. No.	Remarks

SIGNATURE  
SUPERINTENDENT / OFFICER /  
JOINT SEA PATROLLING

The periodical meetings being held by the agencies like State Police / Coast Guard / Navy / Port Security / D.G. Shipping regarding the intelligence gathering and sharing shall be attended by the Officers of the appropriated levels and the appropriated action taken as per the decisions / minutes of the meetings.

#### **II.2.4. PATROLLING BY CUSTOMS DEPARTMENT BY DEPARTMENTAL VESSELS**

II.2.4.1. As per the Provisions of Section 100,104,106 etc., of the Customs Act, 1962 the officer of Custom is empowered:

- For search of suspected persons entering or leaving India.
- To arrest persons who have committed an offence.
- To stop and search conveyance used in smuggling of any goods .

II.2.4.2. The patrolling by Customs vessels extends up to the Indian Customs Waters. As per Section 2 (28) of the Custom Act, 1962, Indian Customs Waters means the water extending into the sea to the limit of contiguous zone of India as mentioned in Section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zone Act, 1976, and includes nay bay, gulf harbour, creek or tidal river. As per Section 5(1) of the Maritime Zone Act, the contiguous Zone of India extends up to a distance of 24 nautical miles from the nearest point of the base lines.

II.2.4.3. The board vide its letter F. No. :384/108/25-CUS(AS) dated 04.9.06 has directed to ensure that Customs Marine Vessels are optimally used by conducting Sea Patrolling for 4 to 6 hours per vessel every day. The Vessels have to be so deployed at different times of the day so that there is always an element of surprise.

II.2.4.4. \* Reporting and maintenance of Log Book.

After patrolling the Supdt. / Officer in charge should make entries in the 'harbour patrol register', mentioning the names of the patrolling team, time of starting and stopping the patrolling, area covered, details of the crafts checked / searched or any untoward incident noticed. Log book of the patrolling craft is to be maintained by the skipper which is to be countersigned by the Supdt. / Officer in charge of the patrolling team

## **II.2.5. COASTAL SECURITY COMMAND AND THE ROLE OF THE CUSTOMS**

After the terrorist attack in Mumbai on 26.11.2008 the Ministry of Home Affairs, New Delhi has overhauled the Coastal Security Scheme. Among us other thing it has decided to established Coastal Security Commands under the overall supervision and control of the Indian Navy and to have Joint Operation Centre at designated places to thwart any untoward incident regarding National Security. Further it has decided that the Officers from all the Constituents agencies will man such JOC. The role of the Customs in this Coastal Security Command is not yet properly communicated.

## **II.2.6. SURVEILLANCE ON SUSPECTS**

To ensure uniformity of action the following phraseology will be used for the different types by the Officer doing surveillance work. Each alert memo wherein instructions regarding keeping surveillance on a suspect are communicated to the field staff will clearly indicate the type of surveillance required to be kept on any particular suspect.

(a) Shadowing: Maintain a 24-hour watch on the suspect and keeping record of all his movements.

(b) Close-Surveillance: Keeping track of activities of the suspect i.e. contacts made by him (personal or by telephone) movements etc. It does not necessarily mean keeping a physical watch but the movements of the suspect and his general activities are to be ascertained by a minimum of one check per day.

(c) General-Surveillance: It would mean keeping a general track of the activities and movements of the suspect by periodical checks.

## **II.2.7. SURVEILLANCE OPERATIONS**

**II.2.7.1.** Surveillance is usually defined as the covert, continuous or periodic watching of persons and associations, vehicles, places or objects to obtain information concerning the activities and identities of individuals. Very often surveillance is the only Investigation technique available to identify the sources, couriers and recipients of illicit drugs.

**II.2.7.2.** Officers planning a surveillance operation, whether on foot or by any other means, must take into consideration the possibility of counter surveillance by or on behalf of the suspect by similar means including electronic countermeasures.

### **II.2.7.3. A) Types of surveillance**

**II.2.7.3.1.** For the most part there are three types of surveillance:

- (a) Moving surveillance, where the Investigator follows the subject on foot or in a vehicle;
- (b) Stationary surveillance, where a place, object or person is continuously watched from a fixed point;
- (c) Electronic surveillance, where electronic, mechanical or other devices are used to intercept the contents of any wire or oral communications.

**II.2.7.3.2.** The objectives of a surveillance operation are as follows;

- (a) To obtain evidence of an offence;
- (b) To protect undercover officers or corroborate their testimony;

- (c) To locate persons by watching their associates and the locations they frequent;
- (d) To check the reliability of informants;
- (e) To locate hidden property or contraband;
- (f) To prevent the commission of a criminal act or to apprehend a subject in the commission of an offence;
- (g) To obtain information for later use in interrogation;
- (h) To develop leads and information initiated by contacts with other sources;
- (i) To ascertain the whereabouts of a specific individuals at all times;
- (j) To obtain admissible evidence for use in court.

**II.2.7.3.3.** Surveillance strategies can also be categorized according to function. There is, for example, information-seeking surveillance, where the investigator attempts to learn everything he or she can learn about a criminal enterprise. The surveillance will assist in identifying the source of supply of the suspect, the couriers, the co-conspirators, and the recipient.

**II.2.7.3.4.** Pre-purchase surveillance is used to gather tactical information that will assist the undercover officer who will attempt to make a purchase from a suspect. The investigator tries to identify the associates of the suspect and his relationship or type of association with the suspect. The investigator also seeks to identify the sources of supply and couriers.

**II.2.7.3.5.** Cover surveillance is used primarily for the protection of the undercover officer. It is also used to corroborate the agent's testimony. This is done not only through testimony that an agent was seen entering a locale with money and leaving with drugs, but it is also designed for the surveillance officer to observe the actual transaction if that is physically possible. Cover Surveillance also encompasses the identification of approaches to the immediate purchasing area in case the undercover officer should find himself in trouble, the amount of force that might have to be use to assist the undercover officer, and the personnel and equipment needed in case the operation goes wrong.

**II.2.7.3.6.** Post purchase surveillance is usually conducted to determine where funds are channeled after a sale to identify other customers of the seller, and to keep

the seller under observation in case the undercover officer bought a substance that was not what it was purported to be.

#### **II.2.7.4. B) Preparation and equipment**

**II.2.7.4.1.** Most competent investigators are capable of conducting a good surveillance operation. However, there are certain qualities that may be particularly desirable in a surveillance officer. In particular, the surveillance officer should have an ordinary appearance. Any outstanding physical characteristics such as being exceptionally tall, short or obese may attract the suspect's attention, the officer must have the ability to act in a natural manner under all circumstances and must suit the particular scene under surveillance.

**II.2.7.4.2.** The surveillance officer should be alert and resourceful, particularly in view of the fact that no matter how carefully a surveillance operation has been planned, there are always going to be unanticipated occurrences. The officer must have demonstrated good powers of observation and memory, as he or she may not be able to write down notes on events, descriptions, or times during the surveillance. The surveillance officer must also be patient and possess considerable powers of endurance. Surveillance operations invariably entail a great deal of waiting for a suspect to appear or a good deal of routine activity as the officer follows the subject through many innocuous activities day after day.

**II.2.7.4.3.** Disguises used by surveillance officers can be almost anything that the officer believes will help the operation. On a short term surveillance of a building, the officers may use utility belts with tools and hard hats to appear to be utility company employees, or some other kind of equipment to enhance the cover. Cameras, binoculars, telescopes and recording equipment are also quite helpful if the situation allows for their unobtrusive use.

**II.2.7.4.4.** One of the very first steps that should be taken in a surveillance operation is to designate an officer-in-charge. In operations where a number of officers are involved, a tactical plan for all eventualities, specifically outlining the duties of all participating officers, must be prepared if a surveillance is going to take a long period of time, decisions about relief assignment should be made before the surveillance begins. There must also be a prearranged, secure system of communicating with superiors and a system of central coordination established



before the operation is begun. Signals for communicating between and among surveillance officer should also be agreed upon. Finally, a cover story and explanation for being in a particular place at a particular time, should be discussed in advance of the operation's inception.

#### **II.2.7.5. C ) Moving Surveillance on foot**

**II.2.7.5.1.** A moving surveillance operation may be conducted on foot or in vehicles. Foot surveillance is used generally only in cases where relatively short distances are involved, or in cases where contact with a suspect must be maintained after the suspect has left a vehicle. However, all surveillance operations must be set up in a manner that allows a more lengthy foot surveillance to be maintained when necessary. There are four main methods for conducting surveillance on foot. These are a one-person surveillance, a two-person surveillance, the ABC method and the progressive method.

**II.2.7.5.2.** A one-person surveillance involves a single attempting to follow a suspect. It is very difficult to conduct successfully because the suspect must be kept in view at all times and close contact is required to enable the officer to observe the suspect if he turns a corner, enters a building or makes some other sudden move. The one-person surveillance is also impacted by the degree and type of pedestrian traffic and the physical characteristics of the area. It is not a preferred method of moving surveillance and should be avoided if possible.

**II.2.7.5.3.** A two-person surveillance provides for greater security against detection and lessens the risk of losing the suspect. On streets that are very crowded with pedestrians and vehicles, both officers involved in the surveillance should remain on the same side of the street as the suspect. The first officer should follow the suspect fairly closely. The second officer should remain some distance behind the first surveillant. On less busy streets one officer should walk on the opposite side of the street nearly abreast with the suspect. In order to avoid detection the two officers should make periodic changes in their positions relative to the suspect under surveillance.

**II.2.7.5.4.** The ABC method utilizes a three-person surveillance team. The ABC method further reduces the risk of losing the suspect and provides far greater security against detection. The ABC method also permits greater variations in the positioning of the officers and allows surveillance officer who believes he or she has been identified to drop out of the surveillance. Under normal conditions, officer "A" keeps a reasonable distance behind the suspect while officer "B" follows officer "A" and concentrates on keeping "A" in view. Officer "B" also checks to make sure that the suspect is not employing a confederate to detect surveillance. Officer "C" walks on the opposite side of the street slightly behind the suspect. On streets with little or no traffic, two officers are usually positioned on the opposite side of the street, or one officer is positioned in front of the suspect. On very crowded streets, all three officers should be on the same side of the street as the suspect. The lead officer should follow closely to observe the suspect at intersections or for turns into buildings. As in the two-person method, the surveillance officers should frequently alter their positions relative to the suspect.

**II.2.7.5.5.** Under normal conditions, when the suspect approaches an intersection and there is a high probability of turning, officer "C" across the street should reach the intersection first. By pausing at the corner, officer "C" can watch the suspect and signal the direction taken to the other officers. If "C" signals that the suspect has turned the corner and stopped, both "A" and "B" may have to cross the intersection, proceed to a point beyond the range of vision of the suspect, and rely on officer "C" to signal to them when the suspect continues on. Whether a suspect stops or not, the turning of a corner provides a good opportunity to rotate the positions of the officers.

**II.2.7.5.6.** In the progressive method of surveillance, the suspect is intermittently kept under surveillance as he progresses along a certain routine or habitual route. The surveillance officer waits at a fixed point until the suspect disappears from view. If the suspect follows the same route each day, the destination may be determined without constant, close surveillance. The Officer should be positioned each day in the place where the suspect disappeared from view on the previous day, or more than one officer can be used to extend the period of observation. This method is of value in locating meeting places when the risk of trailing a suspect is too great.

#### **II.2.7.6. D ) Moving surveillance with vehicles**

**II.2.7.6.1.** As is the case with foot surveillance, there are four types of vehicular surveillance one, two and three-car surveillance and the leapfrog method. In a one-car surveillance, the vehicle should be positioned behind the suspect's car, with the distance varying dependent on the amount of traffic in the area. In city traffic no more than two vehicles should be permitted between the suspect's car and the surveillance vehicle. In rural areas, it is advisable to give the suspect a good lead. If intersections and forks in the road are rare with a far distance between, the lead can be extended to a point where the suspect's car may even be temporarily lost from view over hills or around curves. Whenever possible there should be another car between the surveillance vehicle and the suspect's car.

**II.2.7.6.2.** When conducting two- car surveillance in urban areas both cars should remain behind the suspect's car. Occasionally, one car drive on a known parallel route, timing itself to arrive at intersections just before the suspect in order to observe his or her route at the intersection. For surveillance operations in big cities, the use of motor cycles is important since they avoid problems created by traffic jams. When the scale of the operation so demands, helicopters and electronic signal transmitters should be used.

**II.2.7.6.3.** In a three-car surveillance, parallel routes can be used more frequently, and the positions of the cars can be changed frequently enough to prevent the discovery of the surveillance. One car may be used to lead the suspect while the suspect's vehicle is observed in the rear-view mirror.

**II.2.7.6.4.** In a leapfrog surveillance method, for example, a suspect's vehicle may be observed intermittently, as it proceeds along its suspected route. From a fixed point the officers watch the suspect's vehicle disappear from view. After a number of such surveillance's, the suspect's finally detection is too great. At that point surveillance is called off for the day. The next time the suspect makes a routine trip the officers can initiate their surveillance at the same geographical point where the previous surveillance was cancelled.

**II.2.7.6.5.** As in the case of foot surveillance, a suspect who believes he or she may be followed can resort to various techniques to detect a surveillance operation. The most common techniques are as follows:

- (a) Alternative fast and show driving or parking the vehicle frequently :
- (b) Stopping suddenly around curves or corners or speeding up a hill, then slowing down on the other side;
- (c) Committing flagrant traffic violations such as U turns, driving the wrong way on one way streets and passing red lights;
- (d) Using double entrances to driveways, going in one entrance and out the other;
- (e) Crossing parking lots;
- (f) Crossing congested areas; (g) Deserting the vehicle beyond a blind area or corner.

#### **II.2.7.7. E ) Fixed surveillance**

**II.2.7.7.1.** Fixed surveillance entails having officers watch from a stationary vantage point such as a room, house or outdoor fixture located near the premises being observed. Fixed surveillance are used for several reasons, including the following:

- (a) Detecting drug operations in a targeted area:
- (b) Identifying persons who frequent the domicile or business establishment and determining their roles in illicit drug activity;
- (c) Providing evidence for a search warrant or electronic surveillance authorization;
- (d) Determining the habits of the persons who frequent the locale under observation.

**II.2.7.7.2.** Before any fixed surveillance operation is initiated a very careful study of the surrounding area should be made. The investigators should note the residents, transients and the general character of the community. Binoculars are essential equipment in a fixed surveillance operation. Similarly, a still or motion picture camera with a telephoto lens can be used effectively.

#### **II.2.7.8. F ) Electronic surveillance**

**II.2.7.8.1.** Electronic surveillance encompasses many different technologies, some of which require complicated and costly equipment, The use of electronic surveillance is strictly limited within the laws of many countries because of concerns for the right of privacy of the individual. It is most important for the drug enforcement unit to be mindful of these potential limitations to this investigative strategy and to plan electronic surveillance operations accordingly.

**II.2.8.** The use of the more complicated types of this investigative technology should ordinarily be reserved for those drug-trafficking organizations that are at the highest levels. Specialized instructions and training are necessary for the effective use of the various devices and techniques, that might be employed in this specialized investigative approach.

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### **CHAPTER III**

#### **REVISED DRI SERIES OF FORMS**

**II.3.1.** A review of the D.R.I. series of forms was undertaken by the Directorate of Revenue Intelligence with a view to facilitate data entry in electronic format called DRIPS (DRI Profiling System), by simplifying them and making it more relevant to the changing offence

scenario. This exercise to adopt electronic format and revise the DRI forms were also undertaken to assist and use the same in the Risk Management System. The details available in the existing eight forms in the DRI series have been reduced to three form, viz. DRI-1, 2 and 3 without ignoring the vital details of each case. In fact, no change is contemplated in case of the DRI-1 format and is to be filled in all cases wherever information is recorded.

**II.3.2.** The salient features of the revised format are as follows:-

- i. All India centralized Customs offence data availability.
- ii. Built in tools to generate periodical reports and other reports on predefined fields. The software can also be used to generate various reports like, DRI 2/3 form, CEIB reports etc.
- iii. The software allows data entry and access to all aspects of offences viz. detection, investigation, issuance of show cause notice, adjudication/settlement, appeals, Preventive detention, rewards, etc.
- iv. Separate details of such investigations not culminating into issuance of show cause notice giving details of persons/firms involved.
- v. The revised DRI -1 to 3 in respect of seizure/commercial fraud cases were introduced with effect from 01.04.2002.

**Note:** Data entry in DRIPS should not be limited to preliminary entries only and needs to be updated at every stage of the case. Ultimately, it would be the aim of the Directorate to ensure proper dissemination of the information gathered through these reports to the other formations also so that effective measures to combat economic crimes can be chalked out.

**II.3.3. DRI-1 ( INFORMATION REPORT )** DRI-1 should be forwarded in respect of all cases wherever information is recorded. (As soon as the information is received, should be recorded, in the form DRI – I in the handwriting of the informer or the recording officer. It must be in the form of informer's statement in first person. In the information report, the informer's name will not be mentioned but only his code number if any will be given. As soon as information report is ready, it should be registered and sent to the section in charge not below the rank of an Assistant Commissioner who will issue necessary instructions for its follow – up after scrutiny.

The original information report should be immediately registered in the Register of Information and deposited with the custodian designated for the same. The information report should be also filed in a separate guard file. Only such details of the information, which are necessary for action, will be conveyed to the concerned officer/officers for further investigation or enquiry. The information report in DRI-1 form should be sent to the Directorate of Revenue Intelligence within 24 hours of its receipt.

**II.3.4. DRI-2 SEIZURE/DETECTION INTIMATION REPORT.** Revised DRI-2 form is forwarded, incorporating the details of both outright smuggling and commercial fraud cases in place of the existing the DRI-2, 3, 4 and 4A, within seven days of the seizure/detection of a case. No limitation of value or duty is assigned for the generation of this report and is required to be forwarded in respect of all cases registered. The revised format is more comprehensive and structured to generate and disseminate required information in respect of a case with the aid of the software DRIPS. This software also has report building tools and compilation of dossiers etc.

**II.3.5. DRI-3 COMPLETION OF INVESTIGATION REPORT.** The DRI-3 form is required to be forwarded within seven days of completion of investigations in respect of a case for which DRI-2 is has been already forwarded. DRI -3 will give the details of the show cause notice/notices and roles played by the officers in the investigation of a case.

**II.3.6.** A copy of each of these reports is sent to the D.R.I. Headquarters. Copy of the same is also be marked to the jurisdictional Zonal, Regional/ Sub-regional office of the D.R.I. and to the jurisdictional office of the Commissioner of Customs (Prev.).

**II.3.7.** The revised format of DRI-1 to 3 are as per **Annexure-I, II and III**

[ DRI F.No.XII A / 33-POL / 2003 dated:- 5<sup>th</sup> August, 2003. ]

## Annexure - II

-	-	-		
-	-	-	<b><u>DRI - 2 (REVISED )</u></b>	
-	-	-	<b><u>SEIZURE/DETECTION INTIMATION REPORT</u></b>	
-	-	-	-	-
			Sr. No. of DRI-2 (Beginning from 1st April F.Y.)	
			Date of Issue :	
			<b>I. CASE DETAILS</b>	
			1.	Case File No.
			2.	Source of the Case
			a.	Information/Intelligence :
				Dri-1 Date :
			b.	Others (Followup, Alters) :
			3.	Date of Detection :
			4.	Name of the Formation :
			a.	*Commissionerate :
			b.	Division :
			5.	Nature of Offence :
			a.	Commercial Fraud / Outright Smuggling / Drug Trafficking
			6.	Offence Relating To :
			a.	Import / Export / Town Seizure
			<b>II. OFFENCE DETAILS</b>	
			1.	Amount Involved :



	2.	Value of Goods Involved/Seized :	
	3.	Description of Offence :	
	4.	Modus Operandi in Brief :	
<b>III.</b>	<b>GOODS DETAILS</b>		
	A.	NON-SEIZURE	
	B.	SEIZURE DETAILS	
		Value of Goods Seized :	
		Value of Conveyance Seized :	
		Total Value of Seizure :	
<b>IV.</b>	<b>FIRM DETAILS</b>		
	Name of the Firm* :		
	1.	Name of the Proprietor / Partners / Directors of the Firm :	
	2.	Address of the Firm in India :	
	3.	Telephone Numbers :	
	4.	Address of the firm Abroad :	
	5.	Telephone Numbers :	
	6.	Nature of the Firm :	
	7.	Accused Category :	
	8.	Business of the Firm :	
	9.	IEC of the Firm :	
		Place of Issue / Date :	
		IEC Address :	
		Did the IEC Address exist ?:	
		If existed, Did the IEC holder occupy it ?:	

		<b>If he occupied, Did he own up imports ?:</b>	
		<b>If he owned up, was he actual importer ?:</b>	
<b>10.</b>	<b>PAN Card Details</b>		
	<b>a.</b>	<b>PAN Card No. :</b>	
	<b>b.</b>	<b>PAN Card - Date of Issue :</b>	
	<b>c.</b>	<b>PAN Card - Place of Issue :</b>	
<b>11.</b>	<b>Address of the Factory :</b>		
<b>12.</b>	<b>Address of the Godown :</b>		
<b>13.</b>	<b>Bank Details</b>		
	<b>a.</b>	<b>Bank Name :</b>	
	<b>b.</b>	<b>Bank Account No. :</b>	
<b>14.</b>	<b>Previous Offences (if Known):</b>		
<b>15.</b>	<b>CHA Details :</b>		
	<b>a.</b>	<b>License no :</b>	
	<b>b.</b>	<b>Whether CHA License holder himself handled the imports or sub-agent</b>	
	<b>c.</b>	<b>If it was handled by Sub-agent his details</b>	
	<b>d.</b>	<b>Name of sub-agent</b>	
	<b>e.</b>	<b>Name of his firm</b>	
	<b>f.</b>	<b>Address of Firm</b>	
	<b>g.</b>	<b>Address of person</b>	
	<b>h.</b>	<b>Past Offences</b>	

		i.	Authority of other CHA's simultaneously	
		j.	Type of card held by him-F/G/H[see R.19(6) of CHALRs, 2004	
			<b>Name of the Firm* :</b>	
	1.	<b>Name of the Proprietor / Partners / Directors of the Firm :</b>		
	2.	<b>Address of the Firm in India :</b>		
	3.	<b>Telephone Numbers :</b>		
	4.	<b>Address of the firm Abroad :</b>		
	5.	<b>Telephone Numbers :</b>		
	6.	<b>Nature of the Firm :</b>		
	7.	<b>Accused Category :</b>		
	8.	<b>Business of the Firm :</b>		
	9.	<b>IEC of the Firm :</b>		
		<b>Place of Issue / Date :</b>		
		<b>IEC Address :</b>		
		<b>Did the IEC Address exist ?:</b>		
		<b>If existed, Did the IEC holder occupy it ?:</b>		
		<b>If he occupied, Did he own up imports ?:</b>		
		<b>If he owned up, was he actual importer ?:</b>		
	10.	<b>PAN Card Details</b>		
		a.	<b>PAN Card No. :</b>	
		b.	<b>PAN Card - Date of Issue :</b>	
		c.	<b>PAN Card - Place of Issue :</b>	
	11.	<b>Address of the Factory :</b>		
	12.	<b>Address of the Godown :</b>		
	13.	<b>Bank Details</b>		

	a.	Bank Name :	
	b.	Bank Account No. :	
14.		Previous Offences (if Known):	
15.		CHA Details :	
	a.	License no :	
	b.	Whether CHA License holder himself handled	
		the imports or sub-agent	
	c.	If it was handled by Sub-agent his details	
	d.	Name of sub-agent	
	e.	Name of his firm	
	f.	Address of Firm	
	g.	Address of person	
	h.	Past Offences	
	i.	Authority of other CHA's simultaneously	
	j.	Type of card held by him-F/G/H[see R.19(6) of CHALRs, 2004	
V.		<b>PERSONAL DETAILS</b>	
		Name of the Person* :	
	1.	Alias, if any :	
	2.	Father's/Husband's Name :	
	3.	Accused Category :	
	4.	Nationality :	

5.	Date of Birth :		
6.	Business Interests :		
7.	Residential Address :		
8.	Residential Telephone Nos. :		
9.	Mobile Nos. :		
10.	Profession/Occupation :		
11.	Address (Abroad) :		
12.	Telephone Nos. (Abroad) :		
13.	Details of Passport/Driving Licence/Election Card		
	a.	Passport No. :	
	b.	Date of Issue :	
	c.	Place of Issue :	
	e.	Driving Licence No. :	
	f.	Date of Issue :	
	g.	Place of Issue :	
	h.	Valid Upto :	
	i.	Election Card No. :	
	j.	Date of Issue :	
	k.	Place of Issue :	
14.	PAN Card Details		
	a.	PAN Card No. :	
	b.	Date of Issue :	
	c.	Place of Issue :	

15.	<b>IEC Code :</b>		
	<b>Place of Issue / Date :</b>		
	<b>IEC Address :</b>		
	<b>Did the IEC Address exist ?:</b>		
	<b>If existed, Did the IEC holder occupy it ?:</b>		
	<b>If he occupied, Did he own up imports ?:</b>		
	<b>If he owned up, was he actual importer ?:</b>		
16.	<b>Bank Account Details</b>		
17.	<b>CHA Details :</b>		
	a.	<b>License no :</b>	
	b.	<b>Whether CHA License holder himself handled</b>	
		<b>the imports or sub-agent</b>	
	c.	<b>If it was handled by Sub-agent his details</b>	
	d.	<b>Name of sub-agent</b>	
	e.	<b>Name of his firm</b>	
	f.	<b>Address of Firm</b>	
	g.	<b>Address of person</b>	
	h.	<b>Past Offences</b>	
	i.	<b>Authority of other CHA's simultaneously</b>	
	j.	<b>Type of card held by him-F/G/H[see R.19(6) of CHALRs, 2004</b>	
18.	<b>Role of the Person :</b>		
19.	<b>Whether Interrogated (Yes/No) :</b>		
20.	<b>Whether Arrested (Yes/No) :</b>		
21.	<b>Whether Guilt Admitted (Yes/No) :</b>		

	22.	Previous Offences (if known) :	
	23.	Previous Convictions (if known)	
	24.	Previous Detentions (if known) :	
VI.	<b>CHA DETAILS</b>		
VII.	<b>EXPORTER/IMPORTER DETAILS</b>		
VIII.	<b>ROLE PLAYED BY THE OFFICERS :</b>		
<b>If there are more than one firm/persons/goods involved in the same case, all the relevant details, as given above respectively, are to be filled in separately for each of the firms/persons/goods.</b>			
<b>This form is to be filled up and submitted within 72 hours of booking the case</b>			
<b>* Indicates Mandatory Fields</b>			
<b>This form is to be filledup and emailed to <a href="mailto:drimumbai@dri.nic.in">drimumbai@dri.nic.in</a>;<a href="mailto:dridgri@dri.nic.in">dridgri@dri.nic.in</a></b>			

## Annexure- III

-	<b><u>DRI - 3 (REVISED)</u></b>		
-	<b><u>COMPLETION OF INVESTIGATION REPORT</u></b>		
<b>I.</b>			<b>CASE DETAILS</b>
	1.		Case File No.
	2.		Part Case File No. (if Any)
	3.		Source of the Case
		a.	Information/Intelligence :
			Dri-1 Date :
		b.	Others (Followup, Alters) :
	4.		Date of Detection :
	5.		Name of the Formation :
		a.	Name of the Formation :
		b.	Name of the Formation :
	6.		Name of the Formation :
		a.	Commercial Fraud / Outright Smuggling / Drug Trafficking
	7.		Offence Relating To :
		a.	Import / Export / Town Seizure
	8.		Scheme Under which Export / Import Fraud Committed :
<b>II.</b>			<b>SCN DETAILS</b>
	1.		SCN No. and Date of Issue :
	2.		Amount Demanded :



	3.		Value of Goods Proposed to be Confiscated :	
	4.		Value of Goods Seized :	
IV.			<b>SCN NOTICEES (FIRMS/PERSONS) FROM WHOM DUTY DEMANDED / EXPORT BENIFITS DENIED</b>	
	1.		Name :	
			Address :	
			IEC of the Firm :	
V.			<b>SCN NOTICEES (FIRMS/PERSONS) AGAINST WHOM PENALTY IS PROPOSED</b>	
VI.			<b>ROLE PLAYED BY THE OFFICER (Additional details not provided in DRI-2)</b>	
<p>If there are more than one firm/persons/goods involved in the same case, all the relevant details, as given above respectively, are to be filled in separately for each of the firms/persons/goods.</p>				
<p>This form is to be filled up and submitted after issue of SCN</p>				
<p>* Indicates Mandatory Fields</p>				
<p>This form is to be filledup and emailed to <a href="mailto:drimumbai@dri.nic.in">drimumbai@dri.nic.in</a>; <a href="mailto:dridgri@dri.nic.in">dridgri@dri.nic.in</a></p>				

## Chapter IV

### CENTRAL ECONOMIC INTELLIGENCE BUREAU

**II.4.1.** The Bureau of Central Economic Intelligence has set up a Central Information Bank of economic offences / offenders and has asked field formations to forward case data as per prescribed monetary limit, details of current cases within 48 hours of search / seizure action using the E I D C (Data entry) software formats. Formats for flow of DATA from enforcement agencies were circulated by the Bureau vide letter F.No.294 / 10197 / C E I B (DB) dt.01.07.99.

**II.4.2.** All the formats are filled in respect of the following type of Investigation / Intelligence cases: -

- i. Cases involving monetary limit for Rs. 50 lakhs or more of duty evaded or search / seizure carried out in respect of Central Excise, Customs and forfeiture of property.
- ii. Cases involving Rs. 50 lakhs or more of seizures and / or Rs. 1.00 crore or more of suspected concealment of income in respect of I.T. cases.
- iii. Cases of FERA violation of Rs. 10 lakhs or more (by Enforcement Directorate). –
- iv. All cases of Narcotic Drugs detected by NCB and Custom formations, other than those of peddlers (by NCB).

**II.4.3.** The information in respect of offences registered was being forwarded to CEIB in two formats as per the letter mentioned above. However, while designing and implementing the DRIPS software by DRI, the field requirements of CEIB was kept in mind and a separate module for generating the report itself has been incorporated. All the information as per the fields forwarded by CEIB has been included in the data entry stage itself and the report builder tool exclusively created for CEIB reports will automatically generate the same as and when required. No separate data entry is required in DRIPS for generating CEIB reports. The revised format for generating CEIB reports is as per **Annexure- IV**.

The CEIB categorize the list of business/occupation, modus operandi of the offence/offender and the reporting agency with code numbers. The details of the same as mentioned below:-

1. **List of Business / Occupation Codes** **Annexure-V**
2. **List of Offence / Modus – Operandi Codes** **Annexure-VI**
3. **Reporting Agency Codes for Customs & DRI Cases** **Annexure-VII**

Annexure-V**Central Information Bank on suspect Major economic Offenders****List of Business / Occupation Codes**

<b>Business / Occupation</b>	<b>Code</b>
1. Advocate	001
2. Architect	002
3. Appraiser / Valuer	003
4. Artist	004
5. Auctioneer	005
6. Auditor	006
7. Banker / Financier / Money Lender	007
8. Chartered / Cost Accountant	008
9. Commission Agent / Broker	009
10. Contractor / Builder	010
11. Decorator	011
12. Doctor	012
13. Engineer	013
14. Goldsmith / Jeweler	014
15. Hawala Agent	015
16. Industrialist	016
17. Insurance Agent	017
18. Journalist	018
19. Landlord	019
20. Manufacturer	020

<b>21.</b>	Photographer	021
<b>22.</b>	Publisher	022
<b>23.</b>	Real Estate Agent	023
<b>24.</b>	Retail Trader	024
<b>25.</b>	Tax Consultant	025
<b>26.</b>	Travel Agent	026
<b>27.</b>	Wholesale Trader	027
<b>28.</b>	Transporter /Fleet Operator	028
<b>29.</b>	Job Worker	029
<b>30.</b>	Company Executive / Employee	030
<b>31.</b>	Others (please specify)	031

**Annexure- VI****Central Information Bank on Suspect Major Economic Offenders****List of Offence / Modus – Operandi Codes**

<b>Offence / Modus – Operandi</b>	<b>Code</b>
1. Misuse of Banking Channel	001
2. Money Laundering through Bank	002
3. Money Laundering through Hawala	003
4. Investment in Real Estate	004
5. Benami Transactions	005
6. Use of Hawala Entries	006
7. Misuse of Incentive in Income Tax (like Sec. 80HHc)	007
8. Smuggling of Contraband	008
9. Smuggling of Explosive / Ammunition	009
10. Smuggling of Gold through Land Border	010
11. Smuggling of Gold through Sea	011
12. Smuggling of Gold through Air	012
13. Smuggling of gold through Carrier	013
14. Smuggling of Silver through Sea	014
15. Smuggling of Silver through Air	015
16. Smuggling of Silver through Carrier	016
17. Smuggling of Silver through Land Border	017
18. Misclassification of Product	018
19. Under – valuation of Assessable Value	019
20. Misuse of Exemption Notifications	020

<b>21.</b>	Misuse of various Performa Credit/Set/off/Money Credit Schemes	021
<b>22.</b>	Under – valuation of Imports	022
<b>23.</b>	Over – valuation of Exports	023
<b>24.</b>	Drawback Frauds	024
<b>25.</b>	Import License Violation	025
<b>26.</b>	Un-disclosed Investment in Shares, FDRS, other Securities	026
<b>27.</b>	Introduction of Black Money through Bogus Creditors / Debtors	027
<b>28.</b>	Under – invoicing of Sales	028
<b>29.</b>	Over – invoicing of Purchases	029
<b>30.</b>	Claim of Bogus Expenses / Capital built – up cases	030
<b>31.</b>	Introduction of Black Money in the Books of A/Cs In the form of Squared up Loans	031
<b>32.</b>	Under – valuation of fixed Assets	032
<b>33.</b>	Wrong Claim of Depreciation / Investment Allowance	033
<b>34.</b>	Creation of Capital through Gifts in the names of Minors / Ladies	034
<b>35.</b>	Creation of number of Entities to reduce tax	035
<b>36.</b>	Misuse of MODVAT schemes	036
<b>37.</b>	Suppression of production and unaccounted manufacture	037
<b>38.</b>	Clandestine removal of excisable goods	038
<b>39.</b>	Wrong or Fraudulent availment of rebate, drawback, refund and other export incentives	039
<b>40.</b>	Technical Offences under Central Excise & Salt Act and Central Excise Rules not covered above	040

41.	Illegal sale – purchase of Foreign Exchange in the Open market	041
42.	Illegal sale – purchase of Foreign Exchange by Bank Employees by having Pseudo Counters	042
43.	Bogus Import Remittances through Bogus Import Documents	043
44.	Creating NRIs, obtaining Power of Attorney of their NRI Accounts, Selling checks at premium	044
45.	Remittances of Foreign Exchange through Hawala Bank TT	045
46.	Non – realization of Export Proceeds and retention of Export Proceeds abroad	046
47.	Bogus Exports -- Availing VABAL scheme	047
	-- Repartition of Black Money as export proceed	048
48.	Importation of Gold and Silver – Purchased through Hawala	049
49.	Carrying of Foreign Exchange through “Diggi”	050
50.	Foreign Exchange Transaction -- through Vostro Accounts	051
	-- through Escrow Accounts	052
51.	Cross Border Smuggling of narcotics -- by air	053
	-- by sea	054
	-- by land	055
	-- by post	056
52.	Inland smuggling of narcotics	057
52.	Clandestine manufacture of narcotic and Psychotropic substances	058
54.	Smuggling of narcotics through carrier	059



**Annexure-VII****Reporting Agency Codes for Customs & DRI Cases****AGENCY CODE 04**

<b>Reporting Agency</b>	<b>Code</b>
<b>I Directorate of Revenue Intelligence</b>	
DRI Headquarters	0400
Ahmedabad Zonal Unit	0401
Banglore Zonal Unit	0402
Mumbai Zonal Unit	0403
Kolkata Zonal Unit	0404
Delhi Zonal Unit	0405
Chennai Zonal Unit	0406
Lucknow Zonal Unit	
<b>II Commissioners of Customs</b>	
Bangalore	0407
Kolkata (Port)	0408
Cochin	0409
Delhi (General)	0410
Goa	0411
Chennai (Port)	0412
Mumbai (General)	0413
New Kandla	0414
Nhava Sheva	0415
Mumbai International Airport	0416

Visakhapatnam	0417
Ahmedabad	0418
Lucknow	0419
NE Region, Shillong	0420
Patna	0421
Kolkata (Preventive)	0422
Amritsar	0423
Kolkata (Airport & Aircargo)	0424
Chennai (Airport & Aircargo)	0425
Delhi (Aircargo)	0426
Delhi (ICD)	0427
Jodhpur	0428
Mangalore	0429
Mumbai (Import)	0430
Mumbai (Export)	0431
Mumbai (Aircargo Complex)	0432
Mumbai (Preventive)	0433
Pune	0434
Trichy	0435

<b>Annexure-IV</b>		
<b>Central Information Bank of Economic Offence Cases, CEIB</b>		
1.		<b>Agency Code</b>
2.		<b>Running Sr.No.(To be given by the respective field</b>
		<b>formation financial year wise</b>
3.		<b>Case type (Group/Individual)</b>
4.		<b>Case category (Search/Survey)</b>
5.		<b>File No.(File no. of the field formation)</b>
6.		<b>File Date</b>
7.		<b>Source Code</b>
8.		<b>Case Report Date(Date on which reported to CEIB)</b>
9.		<b>Section contravened</b>
10.		<b>Amount involved</b>
11.		<b>Evidence brief</b>
12.		<b>Case Detail</b>
13.		<b>Type of Offence/Case</b>
14.		<b>Acts and Sections</b>
	i.	<b>Act description</b>
	ii.	<b>Section description</b>
15.		<b>Case Search Details</b>
16.		<b>Seizure Description</b>
17.		<b>Assesses Details</b>
	i.	<b>Name *</b>
	ii.	<b>Group/Individual</b>
	iii.	<b>Company Estb. Date</b>
	iv.	<b>Indian/Multinational</b>

	v.	PAN No.
	vi.	Place / Date of Issue
	viii.	Circle/Ward
	ix.	Business Description
	x.	IEC of the Firm
	xi.	No. of warrants
	xii.	Company Type
	xiii.	Duty evaded on seized goods
	xiv.	Estimated concealed income
	xv.	Estimated concealed wealth
	xvi.	Estimated concealment of Tax evaded
	xvii.	Estimated amount of FERA violation
	xviii.	Order Date
	xix.	Returned/assessed income
	xx.	Basis
	i.	Name *
	ii.	Group/Individual
	iii.	Company Estb. Date
	iv.	Indian/Multinational
	v.	PAN No.
	vi.	Place / Date of Issue
	viii.	Circle/Ward
	ix.	Business Description
	x.	IEC of the Firm
	xi.	No. of warrants
	xii.	Company Type
	xiii.	Duty evaded on seized goods
	xiv.	Estimated concealed income

	xv.	Estimated concealed wealth
	xvi.	Estimated concealment of Tax evaded
	xvii.	Estimated amount of FERA violation
	xviii.	Order Date
	xix.	Returned/assessed income
	xx.	Basis
18.		Total duty demand
19.		Total duty recovered
20.		Details of Directors/Promoters/Partners/Trustees/Beneficiaries
	i.	Name
	ii.	Alias
	iii.	Father's/Husband's Name
	iv.	Date of Birth/Birth Place
	v.	Nationality
	vi.	Gender
	vii.	Identification marks
	viii.	Voter ID. No.
	ix.	Education Qualification
	x.	Occupation
	xi.	Religion
	xii.	Mother Tongue
	xiii.	Languages Known
	xiv.	PAN NO.
	xv.	Date of Issue
	xvi.	Place of Issue
	xvii.	Address Residence
		Address Office
		Address (any other)

		<b>Associate Details</b>
	<b>i.</b>	<b>Associate Name</b>
	<b>II.</b>	<b>Occupation</b>
		<b>Bank Account Details :</b>
		<b>Assets Details :</b>
		<b>Overseas Investments :</b>
		<b>Previous Offences/Cases</b>
<b>21.</b>		<b>Reference to other agencies</b>
		<b>If already made : Name of the Agency and date of reference</b>

## **Chapter V**

### **SEARCHES**

**II.5.1. Introduction:** One of the most important duties of the Customs Officers is that in which he will be called upon to conduct a search or to supervise other officers in a search operation. The chances of conducting a successful search increase proportionately with the planning, systematic procedure and thoroughness, which go into a search operation, whether it be directed to a person, premises, vehicle, vessel or some other object.

**II.5.2. Definition:** A 'search' can be defined as the examination of an individual's house, premises or person for the purpose of discovering proof of his guilt in relation to some crime or misdemeanor.

**II.5.3. Empowerment:** Chapter XIII of the Customs Act, 1962, deals with searches, seizures, etc. Sections 100, 101, 102, 103, 105, and 106 of the Customs Act, 1962, empower an Officer of Customs to carry out searches. Under Section 42, 43 and 44 of the NDPS Act, 1985 also a Customs Officer is empowered to carry out searches.

**II.5.4. Categories:** Searches can be of three different categories as under:

1. Search of the person.
2. Search of premises.
3. Search of conveyances/animals

**II.5.5. Search of Persons under the Customs Act, 1962:** Three sections namely, Sections 100, 101 & 102 of the Customs Act, 1962 deal with the power to search persons. Section 100 of the Customs Act, 1962 stipulates the general power. Section 101 of the Customs Act, 1962 extends the scope of the general power in respect of specified commodities and Section 102 of the Customs Act, 1962 stipulates the procedure to be adopted in connection with the search of such persons. The provisions of Section 102 of the Customs Act, 1962 apply to searches under both the Sections 100 and 101.

For proper understanding vis-à-vis, analysis of search persons, it is convenient to seek answers to the following questions

- (a) Who are the persons competent to search suspected persons?
- (b) What are the circumstances in which such persons can be searched?
- (c) Which of the persons can be searched?
- (d) For what purposes the persons can be searched?

**II.5.6. The persons competent to search :**

**II.5.6.1.** Searches under Section 100 of the Customs Act, 1962, can be conducted by the "proper officer" of the Customs. Searches under Section 101 of the Customs Act, 1962 can be conducted only by "an officer of Customs empowered in his behalf by general or a special order of the Commissioner of Customs." The Commissioner of Customs has specified the following officers as proper officers:

Under Section 100 of Customs Act, 1962 - All officers of the Preventive Department except Clerks. Under Section 101 & 103 of Customs Act, 1962 - All officers of the Preventive Department except Clerks & Class IV officers.

**II.5.6.2.** According to Section 5(2) of the Customs Act, 1962, an officer of Customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Customs who is subordinate to him. In view of this provision, the designation of the officer of the lowest rank authorised to perform the functions under the particular section of the Act has been indicated.

### **II.5.7. The circumstances in which persons can be searched**

**II.5.7.1.** Under Section 100 of Customs Act, 1962, a person can be searched in a Customs Area if the proper officer has reason to believe that the person to be searched has secreted on person, any goods liable to confiscation or any documents relating thereto. Under Section 101 of the Customs Act, 1962, the search can be conducted outside the Customs area provided there is reason to believe that the person to be searched has secreted on person, goods of the specified description which are liable to confiscation or documents relating thereto. The goods of the specified description are at present (a) gold, (b) diamonds, (c) manufactures of gold or diamonds, & (d) watches. The list of the aforesaid goods may be extended by inclusion therein of any other class of goods, which the Central Govt. may specify, by notification in the Official Gazette.

**II.5.7.2.** The expression 'Customs Area' has been defined in terms of Section 2 (ii) and it means "the area of Customs Station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities". In the context of vehicles, 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.

The scope of the power to search has been extended to practically all persons under Section 101 of the Customs Act, 1962, but the extension is not wide and general. The extension has been circumscribed by the provisions that this extensive power would apply only where there is reason to believe that the articles secreted are of a specified description, or the documents pertaining to the goods of the specified description and the same are liable to confiscation.



### **II.5.8. Procedure for search of person**

- (a) Section 102 of the Customs Act, 1962 lays down procedure for search of person. The person to be searched under Section 101 of the Customs Act, 1962 has the right to be taken to the nearest Gazetted Officer of Customs or Magistrate. If this requirement comes into operation, the officer of Customs has no other alternative than to take the person to be searched without unnecessary delay to the nearest Gazetted Officer of Customs or Magistrate. The Act specifically provides that the person to be searched can be detained until the officer of Customs can bring him before the Gazetted Officer of Customs or the Magistrate. The Gazetted Officer of Customs or the Magistrate before whom the suspected person is brought, is competent to decide if there is any reasonable ground for search and he has the obligation to discharge the person forthwith if he comes to the conclusion that there is no reasonable ground for search.
- (b) Before conducting the search of the person, the Customs officer shall call upon two or more persons to attend and witness the search. The Customs officer can issue an order in writing to the persons for attending and witnessing the search. The Provision require that a list of all things seized in the course of search in the form of statement of facts/events shall be prepared by the Customs officer and shall be signed by the witnesses. It requires that even nil list should be prepared.
- (c) The Act requires that no female shall be searched by any one except a female.
- (d) in case the contraband looked for is precious stones, a metal detector will show nothing and the visual examination of the armpits, public parts, groins and inside of the thighs has to be thorough. X-ray examination should be resorted to if suspicion of concealment in body cavities exists. In no case, the search should be confined only to feeling the various parts of the suspect person.

### **II.5.9. Recommendation and guidelines for search:**

**II.5.9.1.** When conducting searches of person, there are some recommendations and guidelines and the officer should constantly bear in mind. The most obvious of these is the need for two officers to be present whenever an individual is to be thoroughly searched. The second officer can physically assist in controlling the suspect if necessary. He can also witness the seizure of evidence or testify concerning any accusations made by the suspect about the conduct of the searching officer.

**II.5.9.2.** There are three types of searches that are commonly made of individuals:

(a) the frisk search (b) the field search and (c) the strip-search.

**(a) Frisk search**

The frisk is a cursory search also known as a pat-down. It is usually a brief search for weapons and is limited to the general area of the outer clothing. A frisk may be conducted on persons not subject to arrest. A frisk is lawful when the officer

- (1) has observed suspicious activity on the part of the person being frisked;
- (2) has reason to believe that the suspect is armed; and
- (3) the officer limits himself to a search for weapons.

A suspect may also be stopped and searched when a reliable informant has advised that the suspect is armed. A frisk under either decision is restricted to a quick pat-down or its equivalent, plus an examination of bags or other objects that may contain weapons.

**(b) Field search**

A field search is conducted on the scene of arrest. The search is done subsequent to handcuffing. This is a systematic search performed by dividing the body down the middle and searching one-half of the body at time. This search is conducted for weapons, narcotics, narcotics paraphernalia and other contraband goods.

**(c) Strip search**

The Strip Search is conducted in a controlled and private environment such as a jail cell or detention area. This suspect is made to undress completely and all clothing is thoroughly searched. While in the wall position, the suspect is given a through search which includes body cavities – mouth, ears, nose and rectum.

**II.5.10. Rectum concealment**

**II.5.10.1.** Rectum is lower part of the large intestine between the sigmoid flexure and anal canal.

**II.5.10.2.** The rectal region of the human body is a convenient cavity suitable for secreting contraband items like gold, silver and narcotics. Smugglers regularly employ carriers, both male and female, who specialize in carrying contraband in their rectums.

**II.5.10.3.** This is a very painful process and calls for great physical endurance. The standard procedure employed is to abstain from consumption of solid food several hours prior to the insertion, of the material. The bowels are purged by taking suitable laxatives. Thus all waste material inside the body is flushed out. Fresh intake of solid food is restricted well in advance. The contraband meant for concealment is reduced in size and length. Precious metals are converted into small pellets and put into latex condom. The condom and the anal region are subjected to large doses of lubrication in order to facilitate easy movement. Depending on the body size and structure, approximately, between  $\frac{1}{4}$  kg and  $\frac{3}{4}$  kg, can be stored inside the rectum.

**II.5.10.4.** Once inside the rectum, the body is capable of retaining this foreign matter for duration of four to six hours. After this duration, it becomes difficult to retain the material inside. The pressure to eject the material becomes tremendous.

**II.5.10.5.** Customs personnel are able to detect cases of rectal concealment because the presence foreign material inside the rectum affects the normal gait of the person. Normal walking becomes difficult, the legs do not appear steady, and the person always adjusting his posterior posture. If such persons are examined, the heavy lubrication of the anal region becomes apparent. The possibility of bloodstains cannot be excluded. The material is ejected in the normal way and if necessary medical assistance is sought.

### **II.5.11. Vaginal concealment**

**II.5.11.1.** The musculo- membranous passage extending from the cervix uteri to the vulva is the vaginal passage in females. This affords a safe and private area for effective concealment. Vaginal concealment has been used from time immemorial by female couriers, spies and underground activists.

**II.5.11.2.** The advantages of this system of concealment area:

- Easy to insert and retrieve
- Does not cause physical injury
- Can be retained in the body for a long duration of time
- Cannot be detected easily
- When used in conjunction with sanitary napkin, it is a highly effective form of concealment.

**II.5.11.3.** The vaginal concealment technique is superior to the rectal concealment because of the above advantages.

**II.5.11.4.** Females can be searched only by females. Hence trained female searchers are essential in an Investigating team. Since these are delicate and sensitive issues, a trained officer should be able to detect potential suspects by cleverly reading facial and body language. Any individual resorting to such devious means of secreting goods in their private parts are prone to display:

- A guilty look;
- An embarrassed look;
- Unseemly haste to leave the place as quickly as possible;
- Get unnecessarily hostile when questioned; and
- Put up resistance to be searched.

**II.5.11.5.** Only a highly observant female officer can successfully detect cases of vaginal concealment by visual observation. It would be most advisable to use confirmatory test by way of hand-held metal detector, which has so far proved to have unfailing records.

**II.5.11.6. Power to screen or x-ray bodies**

(a) Under Section 103 of the Customs Act, 1962, bodies of persons, who are liable to be searched under Section 100 of the Customs Act, 1962, can be screened and x-rayed if the proper officer has reason to believe that such a person has any goods, liable to confiscation, secreted inside his body.

The proper officer should detain the person suspected by him and produce him without unnecessary delay before the nearest Magistrate. The Magistrate has the power to determine if there is reasonable ground for believing that the suspected person has any goods liable to confiscation, secreted inside his body. The Magistrate has the obligation to discharge the person forthwith if he comes to the conclusion that there is no such reasonable ground. On the contrary, if the Magistrate has for believing that the person produced before him has any goods liable to confiscation, secreted inside his body and he is also satisfied that for the purpose of discovering such goods, it is necessary that the body of such person should be screened or x-rayed, he may make an order to that effect. When such an order is made, the proper officer shall, as soon as practicable, take the suspected person before a Radiologist possessing qualifications recognised by the Central Government for the purpose of this Section. The Radiologist 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. When, on receipt of the Radiologist's report, 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.

- (b) It is advisable to obtain order of the Magistrate for keeping the person in the custody of the Customs officers and also for the period for which the person may be kept in custody.
- (c) The aforesaid procedure for the screening or x-raying of the bodies of suspected person can be waived only in the case of a person 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.

#### **II.5.11.7. Refusal to be x-rayed**

Section 134 of the Customs Act, 1962 stipulates that –

If any person –

- (a) resists or refused to, allow a Radiologist to screen or to take x- ray picture of his body in accordance with an order made by Magistrate under Section 103 of the Customs Act, 1962; or
- (b) resists or refused to allow suitable action being taken on the advice and under the supervision of a registered Practitioner for bringing out goods liable to confiscation secreted in his body, as provided in Section 103 of the Customs Act, 1962; he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

#### **II.5.12. Power to search the premises**

**II.5.12.1.** Power of search granted under Section 105 of the Customs Act is a power of general search. But it is essential that before this power is exercised the preliminary conditions required by the section must be strictly satisfied, that is, the officer concerned must have reason to believe that any documents or things, which in his opinion are relevant for any proceeding under the Act, are secreted in the place searched.

**II.5.12.2.** The object of search under Section 105 of the Customs Act is not search for a particular document or things but a power of general search which may be useful or necessary for proceedings either pending or contemplated under the Customs Act. Since, at that stage one can not predict what documents could be found in search and which of them may be useful or necessary for the proceeding unless they have been scrutinized and utility determined, therefore, specification or

description of documents before search in advance can not be given under Section 105.

**II.5.12.3.** Section 105 of the Customs Act, 1962 empowers Assistant Commissioner of Customs, etc. to search any place either personally or through other officers duly authorised, if he 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 the Customs Act, 1962, are secreted there. The procedure for such search will be as provided in the Code of Criminal Procedure, as far as may be, subject to the modification as provided by sub-section (2) of the section. The object of the section is to make a search for the goods liable to be confiscated or the documents secreted in any place which are relevant to any proceeding under the Customs Act, 1962. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and documents relevant to a proceeding under the Customs Act, 1962.

**II.5.12.4.** In this context, the term 'document' occurring in Section 105 of the Customs Act, 1962 has not been defined in the Act. But Section 3 (18) of the General Clauses Act defines the term as hereunder: "document' shall include any matter written or expressed or described upon any substance by means of letters, figures or marks, or by more than one of these means which is intended to be used, or which may be used, for the purpose of recording matter'.

**II.5.13.** **'Document'**, as defined in Black's Law Dictionary, 5<sup>th</sup> Edition, is 'an instrument on which is recorded, by means of letters, figures, or marks, the original official or legal form of something which may be evidently used. In this sense, the term 'document' applies to writings, to words printed, lithographed or photographed; to maps or plans; to seals, plates or even stones on which inscriptions are cut or engraved. In the plural, the deeds, agreements, title papers, letters, receipts, and other written instruments used to fact.'

**II.5.14.** **'Secreted' - meaning of** - The argument that the word 'secreted' is used in Section 105 of Customs Act, 1962 in the sense of being hidden or concealed and unless the officer had reason to believe that any document was so concealed or hidden, a search could not be made for such a document, is not acceptable. The

word 'secreted' must be understood in the context in which the word is used in the section. In that context, it means 'documents' which are kept not in the normal or usual place with a view to conceal them' or it may even mean 'documents which are likely to be secreted'. In other words, documents or things which a person is likely to keep out of the way or to put in a place where the officer of law cannot find it. It is in this sense that the word 'secreted' must be understood as it is used in Section 105 of the Customs Act, 1962.

## **II.5.15. Reason to believe**

**II.5.15.1.** To search is the main weapon in the hands of a Customs engaged in the detection of smuggling activities. But, pre-condition to justify the act is that he should have reason to believe that the place to be searched has goods or documents secreted about it, which will be useful or relevant to any proceedings under the Act. This obvious reason behind the legislative provision is to save the citizen from unnecessary harassment. The expression 'reason to believe' which is the key to almost all action under the Customs Act, 1962, the Supreme Court made it clear that the expression is not synonymous, with subjective satisfaction of the officer. The belief must be held in good faith; it cannot merely be a pretence. It is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the Section.

**II.5.15.2.** Under Section 105 of the Customs Act, 1962, the Customs officer can himself issue a warrant if he himself has 'reason to believe'. He can, in fact, though not lawfully, also do the act of issuing warrant even where really he has no reason to believe though he mentions in the warrant that he has reason to believe. But, in such a case, he is liable to punishment under Section 136(2) (c) of the Act. Obviously, the Legislature considered it necessary to introduce provision in Section 105, by giving power to the Customs officer to issue warrant himself but introduced safeguards by way of fixing a high rank for the officer and providing under Section 136(2)(c) for his liability to punishment if he abused the power entrusted to him under Section 105 of the Act.

**II.5.15.3.** It is not possible to lay down precisely or exhaustively as to what constitutes 'reason to believe'. It would depend on various circumstances. The issue

of a warrant and the reason to believe for issue of a warrant would involve the following elements:

- (a) Articles of search;
- (b) place in which they are secreted;
- (c) manner in which they are secreted;
- (d) person in possession of the articles of search or the place where they are secreted.

**II.5.15.4.** It may be that the information which the Warrant officer has regarding each of the elements is not precise or absolutely certain without any possibility or doubt. But still if the information is such as leads him to believe that articles of search are secreted in a place which is concrete, he may thereby have 'reasons to believe' as contemplated in Section 105. He may in such circumstances issue a warrant even if he does not know the name of the person who is in possession of the articles of search or the place where they are secreted.

#### **II.5.16. Search of lockers**

Under Section 105 of the Customs Act, the authorities concerned would be authorized to search every place and seize valuables there-from, if on the search of the original place, it appears that other valuables have been secreted elsewhere and not only at the place as mentioned in the original order. These search and seizure, would be considered as a continuing action flowing from the original order. The power to search under Section 105 is a general one, the word 'secreted' as used therein would mean secreted improperly and without disclosure at any place. When *bona fides* of the information and complicity of the petitioners is properly established, the authorities are entitled to search and seize the valuables in lockers also.

#### **II.5.17. Inspection and seizure**

Under the Notification of the Government of India in the Ministry of Finance (Department of Revenue) Central Excise No.69/59 (G.S.R. No.822 of 1959), the Central Government declared that the provisions of Sub-section (1) of Section 105, Section 110, Sub-section (2) of Section 115, clause (a) of Section 118, Sections 119, 120, 121, 124, 129 and clause (b) of sub-section (1) of Section 142 of the Customs Act, 1962 (52 of 1962) relating to matters specified therein, shall



be applicable in regard to like matters in respect of the duties imposed by Section 5 of the first mentioned Act, subject to modifications and alterations which the Central Government considers necessary and desirable to adopt these provisions to the circumstances, inspection and seizure cannot be done simultaneously – Seizure can only be made under Section 110 of the Customs Act making applicable to Central Excise and not under Section 118(a) or 119 or 105 – Similarly, Rules, 120, 121, 124, 129 and 142 of the Central Excise Rules will not apply because they do not relate to seizure.

**II.5.18. Preliminary steps for the Execution of search warrants:**

**II.5.18.1.** Before a search warrant is actually executed, the following preliminary steps shall be taken.

- i) A complete survey should, in the first instance, be made of the building, premises/street/lane for the purpose of having a first hand knowledge of the location of such building/premises/street/lane etc. as also any special peculiarities of these places.
- ii) In the light of the information gathered by the survey, a co-ordinated action should be drawn up by the leader of the search party and submitted for Assistant Commissioner (Preventive or Rummaging)'s approval. This plan will inter-alia provide for (I) the number of Officers and Class IV (Group D) staff required for the raiding party, (ii) the detailing of Officer at various vulnerable points and (iii) suitable briefing regarding the things the officers are to look for and the precautions they should take.

**II.5.18.2. Search Warrant – Execution of –**

(a) The form of search Warrant to be used for searches shall be as under :

No .....of .....(date).....

Whereas there are reasons to believe that prohibited and dutiable goods liable to confiscation and documents and things, which in my opinion will be useful for and relevant to proceedings under the Customs Act, 1962, are secreted in the places mentioned below.

I,.....Assistant Commissioner of Customs, .....Department, .....Customs House, hereby authorise Superintendent/s Shri .....and Preventive Officers of

Customs S/Shri ..... for the aforesaid prohibited and dutiable goods, documents or things in the places mentioned herein above and seize the same under Section 110 of the Customs Act, 1962 and produce them forthwith before me, to be dealt with under the Provisions of the Customs Act, 1962.

Given under my hand and seal of the Officer this day of .....(date).....

Assistant Commissioner of Customs,

.....(Deptt.)

- (b) The search warrant should be prepared in Triplicate. All these copies after execution will be suitably endorsed to the effect that the search warrant has been executed. In the event of non-execution of the search warrant for any reason, the search warrant would be endorsed to the effect that it is unexecuted. Thereafter, the file should be put up to the Additional Commissioner as laid down in Section 105 (2) of the Customs Act, 1962.
- (c) The actual search under cover of the search warrant shall be executed as if it is a search made under the provisions of the Code of Criminal Procedure. The search shall be conducted in presence of two independent witnesses and the search list (panchanama) will be prepared in Triplicate. A clear copy will be furnished to the person whose place is searched, the triplicate copy of the search list (panchanama) alongwith the duplicate copy of the search warrant will be retained in the file giving the material relevant to the grounds of belief the original Search Warrant and the original search list (panchanama) duly endorsed will be returned to the Officer-in-charge, Prosecution Unit/Legal Section for being retained as permanent record after Assistant Commissioner of Customs has duly perused the endorsement with respect to the execution of the search warrant and search Unit giving the list of articles seized during the course of the search.

A search Warrant Register shall be maintained by the Legal/Prosecution Unit in the proforma shown below:

Sr. No.	S. W. No.	Date of issue	Date of Execution and time	Name of Officers Executing the search warrant
1	2	3	4	5

File No.	Particulars of premises	Description of goods/ documents/things seized	Approximate value of goods
6	7	8	9
Last date before which S/C memo must issue	Adjudication Order	Date of release of the seized goods/documents/things.	Remarks
10	11	12	9

(d) When any searches are conducted in town, search list (Panchanama) will have minimum 4 copies. The original Panchanama along with the original of the Search Warrant and a copy of the Seizure report shall be placed in the Prosecution file after perusal of the Assistant Commissioner. The second copy of the Search List along with a copy of the Search Warrant and copy of seizure Report shall be placed in the Investigation File (Penalty File). A third copy of the panchanama along with seizure Report will be placed; in the Reward file. A clear copy of the Panchanama should be given to the person from whose premises the goods are seized.

(e) Endorsement to be made on search warrants.

1. Submitted unexecuted

Preventive Officer

2. Submitted

The place of .....was searched under Search Warrant No. .... dated.....on.....by me with the assistance of .....Intelligence Officer(s)/ Preventive Officers and the goods and the documents were seized.

Preventive Officer.

#### **II.5.19. Procedure to be observed by the Customs officer while conducting a search**

The Customs Act does not provide for any special procedure to be followed in conducting a search. Sub-section (2) of Section 105 of the Customs Act, 1962, however, provides that the provisions of the Code of Criminal Procedure, 1898, relating to searches shall, 'so far as may be', apply to searches under the Section

subject to modification as specified therein. As regards the procedure for search is that if the Assistant Commissioner of Customs has reason to believe that any goods liable to confiscation or any documents or things are secreted in any place, he may authorise any officer of Customs to search or may himself search for such goods, documents or things. An officer of Customs conducting a search has to observe the following formalities under the Criminal Procedure Code.

- (a) The person of the officials and of the search witnesses must be searched before they are allowed to enter premises so as to avoid any suspicion that any member of the search party had planted the thing recovered, surreptitiously in the premises;
- (b) The officer of Customs about to make a search shall call upon two or more respectable inhabitants of the locality in which the premises to be searched is situated to attend and witness the search respectable person is one who is impartial and on whom the owner and occupier of the premises searched can prima facie rely; Presence of independent witnesses is an essential requirement of Section 100(4) to (8) of the Criminal Procedure Code and therefore of Section 105 of the Customs Act. Even though Section 100 of the Criminal Procedure Code says that the witness must be of the same locality, this is merely directory and not mandatory. So long as the persons are respectable, they can be from a different locality. An omission to get witness of the same locality will, therefore, be at the most an act of irregularity and will not render such as illegal. If respectable persons are not to be found very near the premises to be searched, it will not be illegal to bring person from half a mile away.
- (c) The search shall be made in presence of such witnesses and a list of all things seized in the course of the places in which they are respectively found shall be prepared by such officer or other persons;
- (d) The said list shall be signed by such witnesses;
- (e) The occupant of the place searched or some person on his behalf shall be permitted to attend during the searches;
- (f) The copy of the list prepared and signed by the witness shall be delivered to such occupant.
- (g) Where any person in or about such place is reasonably suspected of concealing about his person or any article for which search shall be made by

another woman with strict regard to decency. A list of all things recovered from the possession of such persona shall be prepared and a copy thereof shall be delivered to such person.

- (h) Under Section 47 (2) of Cr. PC, the officer of Customs is authorised to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.
- (i) If any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested, who according to Customs, does not appear in public) such person or officer of Customs shall, before entering such apartment give notice to such woman that she is at liberty to withdraw. and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.
- (j) Under Section 165, Cr. PC, a Customs officer has to conduct a search after completing certain formalities. One of these is the statement of the grounds of proof and specifications of the articles searched. Since sub-section (2) of Section 105 of the Customs Act, 1962, relating to searches says that the provisions of Criminal Procedure Code, 1898, shall apply to searches made it is necessary to observe these formalities also while conducting a search under Section 105 of the Customs Act, 1962, otherwise there will not be compliance of sub-section (2).

#### **II.5.20. Search by police officer**

Under Section 105 of the Customs Act, an officer of Customs duly authorized, is competent to search for goods which he has reason to believe are liable to confiscation. Although the Police Officer is not authorized to conduct the search as contemplated by Section 105. Police has powers under the Cr.P.C. to search and seize if they had reason to believe that cognizable offence had been committed in respect thereof. Assuming that the search was illegal, then also, it will not affect the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs.

## **II.5.21. Search of Conveyance/Animals**

**II.5.21.1.** Section 106 of the Customs Act, 1962 stipulates that 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 Custom water has been, is being, or is about to be, used in the smuggling of any goods or any 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; and
- (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.

Where for the purpose 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 recognised 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 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 fail, the vehicle or animal may be fired upon.

## **II.5.21.2. Power to stop and search conveyances**

The very purpose of Section 106 of the Customs Act in stopping the conveyance and searching the same when it was reasonably believed by a Customs Officer that such conveyance was or going to be involved in carrying out smuggling activities, will be frustrated if the Customs Officer, in the *bona fide* exercise of his powers and consequential duties as enjoined under Section 106 of the Customs Act is not permitted to take all consequential actions necessary for stopping the conveyance and conducting the search of such conveyance. The Customs Officer's power under Section 106 of the Act is not confined only to immobilization of the conveyance not of the driver or occupant of the conveyance even when without which immobilization, stopping of the conveyance cannot be effected. Sub-section (2) of Section 106 of the Customs Act authorizes a competent Officer to fire upon animal, vehicle or aircraft for forcibly stopping the same. It will be only hyper-technical

to contend that although in an attempt to immobilize an aircraft or a vehicle, the same may be fired upon and by such process serious damage to the aircraft or the vehicle may be caused which may lead to loss of life of the pilot or driver together with occupants of the concerned conveyance, an action in injuring the driver or the occupant of the vehicle in an attempt to immobilize the vehicle is beyond the scope and ambit of Section 106.

#### **II.5.22. Protection against criminal liability under Section 155 of the Customs Act, 1962.**

In *Costao Fernandes vs State* (1996) 7 SCC 513: (1996) 82 ELT 433 (SC), the court observed that it is necessary to indicate a note of caution in the matter of consideration of protection against criminal liability if sought for under Section 155 of the Customs 1962 at the threshold of the criminal trial. Since such immunity is claimed at the threshold, the court should carefully scrutinise the relevant facts and materials placed before it for the purpose of finding (a) that the concerned officer was authorised to act for prevention of smuggling activity and in fact had acted bona fide in exercise of his duties and functions in preventing the smuggling activities being carried or about to be carried, (b) there are- prima facie materials to indicate that such officer had honestly attempted to stop the conveyance for effecting search of the same, (c) that such an attempt to stop the vehicle was sought to be frustrated either by not stopping the vehicle or by attempting to forcibly taking away the vehicle despite attempt by the concerned officer to stop the vehicle and (d) that recourse to use of force on the driver or occupant of the vehicle was apparently necessary to immobilise the vehicle or to save himself from imminent danger of personal risk. If on consideration of the materials placed before the court, a possible view can objectively be taken that in discharge of the duties and functions under Section 106 of the Customs Act 1962, a competent officer had bona fide used force is not just a rise for high-handed action at his part which was not at all necessary in the facts of the case but prima facie there is justification for the course of action pleaded by the officer, the court would give effect to the protection under Section 155 of the Customs Act, 1962 by dropping the criminal case initiated against the concerned officer (*Bhappa Singh v Ram Pal Singh* 1981 (Supp) SCC 12 : 1981 SCC (Cri) 602).

#### **II.5.23. Automobile searching**

**II.5.23.1.** The search of an automobile must be conducted methodically and thoroughly. The officer must have some definite notions as to where to look, and nothing must be dismissed as impossibility. The officer must continue the search for evidence until the entire vehicle has been covered, even if he uncovers some contraband during an early part of the search.

**II.5.23.2.** Experienced investigators have learned that contraband is frequently hidden in relatively few locations on the vehicle. The motor and dashboard recesses, the seats, and the trunk compartment are the most widely used of these areas. However, the frequency of past usage of these hiding places must not lead the searching officer to overlook other places of concealment. The vehicle is divided into three search areas: (1) the front end, (2) the interior, and (3) the rear. Each section must be closely examined before the search is carried to the next area.

(1) **The front end:** The grill, the bumper and the fender area provide excellent hiding places. Narcotics may be placed in a container between the grill and radiator or secured to the grill. Contraband has been discovered attached to the inner surface of the fender by means of a magnet, a magnetized container or tape. The back of the license plate, the bumper and the underside of the undersigned of the gravel pan should also be examined. The numerous recesses of the motor adjacent area are frequently used to hide narcotics. A small packet of narcotics may be placed in a watertight container and suspended inside the radiator. The battery, the battery case, the engine block, the clutch and starter housings have all been used in the past. Close attention must be paid to the ventilating ducts or any container found attached to the side of the motor well. The air filter of the carburetor should be examined. The body frame and supports also provide places of concealment that should be checked.

(2) **The interior:** The back of the dashboard is undoubtedly the most extensively used place of concealment for narcotics packages. The profusion of electric wires, the almost inaccessible recesses and availability to the occupants all contributes to the popularity of this location. It is not uncommon to find within this area items attached by tape or pinned to the wiring. Fresh air ventilating outlets are also frequently used to hide contraband. The ability to locate evidence in this area will necessarily depend on search tactics. The rear portion of the dashboard



can be thoroughly scrutinized with a mirror held in one hand and the flashlight pointing up under the dash. Merely glancing in the general direction of this area and groping blindly into the dark is inadequate. The mirror also may be used under fenders and in other areas where visibility is difficult. The area beside and under the seats is used frequently to hide contraband. Remove the seats whenever possible, rather than merely looking or feeling under and between seat cushions. The front and rear floor mats are also removed whenever possible since contrabands are often hidden under this floor covering. Each object found in a vehicle must be inspected. Any flashlight, book, magazine, or container found in the automobile must be closely scrutinized.

- (3) **The rear:** The trunk must be given a complete examination and any item found in this compartment must be inspected, including clothing, rags, containers and tools. The spare tyre wheel must be checked. The interior of the trunk lid must also be examined for possible contraband. The underside of the fenders, the bumper and the gravel pan must all be carefully searched.

## **II.5.24. RUMMAGING OR SEARCH OF AIRCRAFTS**

### **II.5.24.1. Object of search**

One method used by smugglers for smuggling prohibited goods like narcotics and other dangerous drugs, arms and ammunitions, gold and silver bullion, diamonds, foreign and Indian currency in excess of the permissible limits is through concealment on board an aircraft arriving from (or leaving for) foreign ports. This necessarily requires involvement of airport employee(s) on one end if not both for concealing and/or retrieving the contraband on/from the aircraft. Skilful rummaging of aircrafts can thwart such organized smuggling. In thoroughly rummaging an entire aircraft the various parts of the aircraft including the engine room, cargo hold, toilets, pantry, overhead lockers, seats, life jackets, paneling, pilot cabin, garbage bins etc. need to be searched thoroughly. Different aircrafts have different internal designs and layouts and for thorough and efficient rummaging, the rummaging staff should be aware of the various types of aircrafts and their internal layouts.

### **II.5.24.2. Safety precautions to be observed:**

The Superintendent or IO in-charge of the search party should ensure that the officers and sepoy under them take adequate precautions to safeguard themselves as well as the aircraft selected for rummaging. As in the case of ship/vessel rummaging, each and every minute precaution to be taken cannot be listed but in general the precautions to be taken can be as under:

- (i) Inform the concerned airlines authorities/Engineer on duty before commencement of search.
- (ii) Ensure that the aircraft entry register is filled in with details of each and every officer of customs and or witnesses entering the aircraft and the time of their entry.
- (iii) Take assistance of aircraft engineers concerned before any panels in the cargo hold and toilets, engine rooms, water tanks etc. before any vital portions of machinery or aircraft are opened with their assistance.
- (iv) Officers must always work as a team and concentrate on the areas of the aircraft assigned to them for the search.
- (v) If the information is specific, it must be ensured that the cleaning staff and other persons are not allowed access into the aircraft before and while the customs search is in progress. And, if the information is for contraband on the departure side, then it must be ensured that the search is carried out just after the cleaning staff/other persons allowed inside have finished their work and just before the passengers are allowed to board. The cleaning staff/other persons allowed inside must be frisked when they leave the aircraft in such cases.
- (vi) Before calling off the search, the Superintendent or IO i/c must ensure that all those who have entered the aircraft holds, toilets or other closed places have emerged therefrom.
- (vii) Ensure that all locked doors; panel covers etc. are properly refitted and closed after inspection.
- (viii) Ensure that during the search no part of the aircraft is damaged or displaced from its original position as it involves the safety and security of passengers.
- (ix) Ensure that the aircraft entry register entry is closed with details of each and every officer of customs and or witnesses leaving the aircraft and the time of their exit and the results of such search.
- (x) Observe "No smoking" regulations wherever so required on the aircraft.

**II.5.24.3. Supervision**

- (i) An aircraft search is generally carried out under the supervision of Superintendent or IO i/c who assigns the officers to different sections of the aircraft unless there is information about specific location/s on the aircraft, in which case the officers should concentrate on these spots.
- (ii) The Superintendent or IO i/c should, from his experience, carefully select flights arriving/departing/terminating from/to sensitive and prone sectors to increase likely hood of a successful search.
- (iii) In law, Customs Officers have full access and unhindered to every part of the aircraft. They have also the right to break open and search any place, box etc where necessary. Care should however, be taken to conduct the work in a manner that would cause the least inconvenience and damage and the assistance of aircraft engineers should be taken in this regard.
- (iv) If cleaning staff and other persons are allowed access inside due to shortage of stop over time of the aircraft during a search, one officer must be posted at the exit point to frisk such staff when they enter/leave the aircraft.

**II.5.24.4. Search of aircrafts**

- i) Before rummaging an aircraft, the officer in charge of the Customs party should communicate his intentions to the airlines authorities/engineers. While insisting on making a thorough search, officers should avoid giving annoyance to the aircraft's personnel and damaging the aircraft in any way. They must not search vital parts of the aircraft except in the presence of the airlines authorities/engineers provided that such officers do not refuse to attend.
- ii) Mirrors fitted on long rods, torches, gloves and certain tools should be provided for the use of searching officers.
- iii) Two independent and respectable witnesses should be taken along when an aircraft is to be searched where the information is specific. In routine cases, the assistance of the airlines staff or security personnel can be taken.
- iv) When this is not possible and articles or contraband are found, such articles should be allowed to remain undisturbed in their original concealed place until they have been seen by two witnesses who should be procured as soon as possible.

- v) The containers in which contraband is concealed should also be seized, but if such containers happen to be articles of furniture belonging to the aircraft, they should not be removed except with the permission of the Assistant Commissioner in-charge.
- vi) In his report, the seizing officer should mention every minute detail which may have some bearing on the case, as any additional information subsequently recorded may not be considered, in court, to be reliable by virtue of the fact that it was not recorded in the original report.
- vii) All seized goods should be properly sealed and labeled, the labels being signed by the witnesses as well as the accused (if any)

### **II.5.25 Offences by officers of Customs**

Sub-section (2) (c) of Section 136 of the Customs Act, 1962 stipulates that, if an officer of Customs searches or authorises any other officer of Customs to search any place - without having any reasons 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. Thus, sub-section (2) of the Section provides for adequate penal action against a Customs official, who regardless of the provisions of the statute searches or causes to be searched any place without reasonable belief that any goods, documents or things of the nature defined in Section 105 are secreted in that place. In other words, the provisions of sub-section (2) aim at screening innocent people from undue harassment in the hands of irresponsible or dishonest Customs officers, under threats of penal action.

### **II.5.26. RUMMAGE OR SEARCH OF VESSELS**

#### **II.5.26.1. Object of search**

An effective method of prevention of smuggling is to rummage suspect vessels in the port. In rummaging the entire vessel has to be thoroughly searched for prohibited and restricted goods (viz. opium and other dangerous drugs, arms and ammunitions, gold and silver bullion, foreign and Indian Currency in excess of the permissible limits, obscenities, seditious literature, counterfeit coins, Leathers, fountain pens, watches, other consumer luxury goods the import and export of which are restricted and other goods which have not been duty declared but have been

concealed in any; of the various parts of the vessels including the engine room, bridge, officers and crew quarters, saloons, cargo, hatches, lockers, life boats, coal bunkers, ventilators, paneling of cabins, cofferdam etc.

#### **II.5.26.2. Safety precautions to be observed:**

The Superintendent or IO in-charge of the rummaging party will ensure that the officers and Sepoys under them take adequate precautions to safeguard themselves as well as the vessel under rummage:

The nature of all the precautions to be taken in this connection cannot normally be enumerated but this shall include the following:

- (i) Informing the Master of the Vessel or the Ship's Officer/Engineer on duty before commencement of a rummage.
- (ii) Informing the Ship's Officer/Engineer concerned before any oil tanks or water tanks, cofferdams etc. are opened.
- (iii) Allowing adequate time for escape of gas or fuel, air, before entering into such tanks etc, in such places, Officers must always work in pairs.
- (iv) Making sure that all those who have entered such tanks or other closed place have emerged therefrom before the tank etc. is closed.
- (v) Informing the ship's Officer/Engineers, before any vital portions of machinery are opened.
- (vi) Ensuring that all tank covers etc. are properly refitted and closed after inspection.
- (vii) Observing "No smoking" regulations wherever so required on the vessel.

#### **II.5.26.3. Supervision**

- (i) A rummage is generally carried out under the supervision of Rummaging Superintendent ( R ) who details the officers to different sections of the ship unless there is information about particular spots on the vessel, in which case the officers have to concentrate on these spots.
- (ii) The Customs Officers have in law full access to every part of the vessel. They have also the right to break open and search any place, box etc. Care should however, be taken to conduct the work in a manner that would cause the least annoyance and loss.

#### **II.5.26.4. Search of vessels**

- (i) Before rummaging a vessel, the officer in charge of the Customs party should communicate his intentions to the Chief Officer (and Chief Engineer, if the engine room is to be searched). Whilst insisting on making a thorough search, officers should avoid giving annoyance to the ship's personnel and damaging the ship in any way. They must not search vital parts of a vessel except in the presence of the Ship's Officers, provided that such officers do not refuse to attend. Officers' cabins and crew's quarters should not be searched unless the occupants are present. (Boiler suits, torches and certain tools should be provided for the use of searching officers).
- (ii) Two independent and respectable witnesses should be taken along when a ship is to be searched.
- (iii) When this is not possible and articles or contraband are found, such articles should be allowed to remain undisturbed in their original concealed place until they have been seen by two witnesses who should be procured as soon as possible.
- (iv) The containers in which contraband is concealed should also be seized, but if such containers happen to be articles of furniture belonging to the ship, they should not be removed except with the permission of the Assistant Commissioner in-charge.
- (v) in his report, the seizing officer should mention every detail down to the minutest which may have come bearing on the case, as any ; additional information subsequently recorded may not be considered, in court, to be reliable by virtue of the fact that it was not recorded in the original report.
- (vi) All seized goods should be properly sealed and labeled, the labels being signed by the witnesses as well as the accused (if any).

## **CHAPTER VI**

### **SEIZURES**

#### **II.6.1. PRELIMINARY**

**II.6.1.1.** The natural corollary of a fructuous search is Seizure. Section 110 of the Customs Act, 1962, empowers the officers of Customs to seize goods,

documents, etc., provided there is reasonable belief that such goods are liable to confiscation under the provisions of the Customs Act.

**II.6.1.2.** Seizure of goods, documents and things under the Customs Act, especially in anti-smuggling operations, is an important aspect of Customs procedures.

## **II.6.2. SEIZURE OF GOODS, DOCUMENTS AND THINGS**

**II.6.2.1.** It has been laid down in Section 110 of the Customs Act, 1962, that-

(1) If the proper officer has reason to believe that any goods liable to confiscation under this Act, he may be 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.

(2) Where any goods are seized under sub-sec. (1) and no notice in respect thereof is given under clause (a) of sec. 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 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.

**II.6.2.2.** In this context, the following lines enumerate definitions and elaboration of certain terms mentioned in the above Section:

**II.6.2.2.1. 'Proper officer'-who is.** - Under sec. 2(34) of the Customs Act 'proper officer' in relation to any functions to be performed under the Act, means the officer of Customs who is assigned those functions by the Board or Commissioner of Customs but he does not include the officer of police or any other officers enumerated under section 151 of the Customs Act, 1962.

As regards to the expression 'by the Board or Commissioner of Customs' the Supreme Court in *Gopikisan v Asstt. Commissioner of Customs* AIR 1967 SC 1298:

1967 Cr LJ 1194 observed that a fair reading of the provision is that the preposition 'by' refers both to the Board and the Commissioner. Both the Board and the Commissioner of Customs can assign functions to an officer of Customs. And in *Durga Prasad v H. R. Gomes* AIR 1966 SC 1209: 1983 ELT 1501, the court held that where the Commissioner of Customs has assigned the powers of a 'proper officer' to the subordinate officer, the said subordinate officer must himself be deemed to have the powers of a proper officer under sec. 110(3) of the Customs Act.

**II.6.2.2.2. Expression 'seize'- meaning of.** – The expression 'seize' means to take possession of goods contrary to the wishes of the owner of the property. Seizure must take place from the custody of an unwilling person in possession of goods that are liable to be confiscated – *Masood Ali v Metropolitan Magistrate* 1961 Tax LR 2961 (All).

To 'seize' means to take possession of forcibly, to grasp, to snatch or to put in possession — Black's Law *Dictionary*, 5<sup>th</sup> Edn.

'Seizure' is a forcible or secretive dispossession of something against the will of the possessor or owner — Black's Law *Dictionary*, 5<sup>th</sup> Edn.

A 'seizure' under the authority of law does involve a deprivation of possession and not merely of custody – *Gian Chand v State of Punjab* AIR 1962 sc. 496: 1983 ELT 1365.

Action in sealing the godowns and removing the books of account amount to seizure within the meaning of sec. 110 of the Act- *Vilayat Hussain v Union of India* (1997) 95 ELT 19 (MP) (DB)

**II.6.2.2.3 Reasonable Belief-meaning of** – various interpretations

- 1) The seizing officer should have reason to believe that the goods in question are liable to confiscation under the Act. The "reasonable belief" is a prerequisite condition of the power of seizure that the law confers on the officer. The belief is subjective & need not be disclosed. It is also not subject to any judicial review. The court cannot examine whether this belief is reasonable or not. The court at the most can consider whether sufficient factors exist to warrant a reasonable belief. Existence of a reasonable belief in



Section 105 or Section 110 of Customs Act, 1962 is a check upon an unrestricted power vested in the executive officer.

- 2) Whether or not the officer concerned entertains reasonable belief cannot be looked under a microscope. It is only from the circumstances attending the incident that can form the basis of such belief. It is not open for the Courts to scrutinize the action of the concerned Officer with minute details and considerations. It is only the experienced eye of the concerned Officer which can form the opinion. The opinion formed by the Officer cannot be wholly objective, it has some undoubted elements of subjective thinking. It would be wrong for the Court to consider the matter as if the Court is sitting in appeal over the conclusions reached by the concerned Officer. If the circumstances and material which was before the appropriate officer Prima facie gives sufficient ground to entertain the belief which he entertained, it is immaterial as to whether the Court on its own might or might not have entertained a similar belief. The belief which is referred in Section 123 is "reasonable belief". Therefore, what is to be seen is whether a reasonable man placed in the situation in which the appropriate officer was, would entertain such belief or not. In forming the said belief the condition of mind had to be considered in the given circumstances.
- 3) Reasonable belief means honest belief. Webster defines "reasonable" as meaning "just Honest". Section 123 is a statutory exception to the General Rules which require the prosecution to prove the charges of which a person is alleged to be guilty. For applying under Section 123 it is necessary that Customs Authorities should have reasonable belief. It is not on the basis of pretence that Section 123 can be resorted to.
- 4) Section 123 of the Customs Act, 1962 shifts the burden on the accused to prove that the goods are not smuggled goods only when the goods are seized under the Act in the reasonable belief that they are smuggled goods. Their reasonable belief must be of the officer who seized on the articles and who is authorized to seize. Section 110 of the act empowers only the proper officer to seize the boots if he has the reason to believe is that any tools are liable to confiscation under the act.
- 5) The question as to whether the authority had reason to believe or not must be judged in the context as to whether prima facie there are grounds to justify the

belief. At the time of seizure it is not necessary to give the detailed reasons inasmuch as section 110 (1) of the Customs Act provides for assignment of reasons which on ultimate analysis may be found to be correct or incorrect. During further investigation after seizure, it may be found by seizing authorities that apart from the reasons on the basis whereof the goods have been seized, other reasons also exist. It is one thing to say that some goods had been seized without their being any reason to believe in existence at all and it is another thing to say that sufficient reasons to believe existed but during investigation other reasons had also been found. 'Belief' is a major operation of accepting it will act as true so without any fact, no belief can be found. It is true that it is not necessary for the customs authorities to state reasons for this belief for such seizure, he must disclose the materials upon which his belief was formed.

**II.6.2.2.4**     'Any goods'- what they include. – The words 'any goods' used in sec. 110 would obviously include both dutiable goods and goods as defined in Sec. 2(22). Therefore, any conveyance or animals, used as a means of transport in smuggling of goods or in the carriage of any smuggled goods, shall be liable to confiscation under sec. 110(2) unless the owner of the conveyance shows that it was so used without his knowledge or connivance- *Tarlok Singh v Supdt. Of Customs* 1978 ELT (Delhi): (1979)15 DLT 183.

#### **II.6.2.2.5.     Seizure of Documents**

**II.6.2.2.5.1.** Sub-sec. (3) of sec. 110 empowers the proper officer to seize the documents, which in his opinion will be useful for or relevant to any proceeding under the Act. It is, therefore, obvious that sub-sec. (3) gives an independent power in the matter of seizure of documents and the said power is not subservient to the power exercisable by the proper officer under sub-sec. (1) of sec. 110. Since the purpose of the two sub-sections is different, the documents or things can be seized under sub-sec. (3) of sec. 110 even in those cases where there may be no seizure of goods on the ground that the goods are liable to confiscation. In other words, the seizure of goods on the ground that the proper officer has reason to believe that such of sub-sec. (1) of sec. 110 cannot be read as a condition precedent to the exercise of power of seizure of documents under sub-sec. (3) of sec. 110 of the Customs Act .

**II.6.2.2.5.2. Document** includes “any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter”. [Section 3(18) General Clauses Act]. This definition has to be applied to the Customs Act which does not define ‘document’.

*British Physical Labs. v. Asstt. Commissioner, DRI* – 1983 (14) E.L.T. 2270(Kar.)

### **II.6.2.2.5.3. Passport – whether document.**

**Passport** is a *prima facie* evidence of nationality, a document of identity and essential for exit / entry into countries. It has become a condition of free travel. – *Satwant Singh v. Ramarathnam* - AIR 1967 SC 1836.

The Criminal Court has the power to withhold or impound the passport of any person, more so of a foreigner, accused of a grave offence. – *Assistant Commissioner v. Abdul Samathu* – 1985 (22) E.L.T. 761 (Mad.).

Passport may be seized under FERA (on summons issued under Section 40 and in exercise of the powers under Section 38). It can be said to be both a document and a thing (vide Section 38), or at a least a thing which is capable of being perceived. – *Abdul Kadir Md. Jhaveri v. U.O.I.* – (1987) 14 ECC 81 (Guj.).

Passport is a document liable to seizure under sec. 110(3) – *Devadasan Dayalal v Commissioner of Customs* (1986) 26 ELT 728 (Ker) referred with approval in *P. O. Thomas v Union of India* 1990 Cr. LJ 1028 (Ker) (DB);

However in the latest judgement in the case of Avinash Bhosle, Honourable Supreme Court has held that passport cannot be seized by customs authorities

### **II.6.2.3. SECTION 110A OF THE CUSTOMS ACT, 1962**

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.

**II.6.2.4. SECTION 110 (1A) OF THE CUSTOMS ACT, 1962**

**II.6.2.4.1.** Section 110 (1)(A) of the Customs Act, 1962, stipulates that 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 consideration, 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-sec. (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.

**II.6.2.4.2.** Notification issued in this regard has been reproduced below:

In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature, of the goods, mentioned in the Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section.

**The Schedule**

1. Liquors;
- 1A. Photographic Films;
- 1B. Patent or Proprietary medicine, i.e., any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia or Formulary;
2. Primary cells and primary batteries including re-chargeable batteries;

3. Wrist watches including electronic wrist watches; watch movements, parts or components thereof;
- 3A. Zip fasteners;
4. All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, computers; components and spares thereof including diodes, transistors, integrated circuits, etc;
- 4A. Gold in all forms including bullion, ingot, coin, ornaments crude jewellery.
- 4B. Silver in all forms including bullion, ingot, coin, ornament, crude jewellery.
5. Dangerous drugs and psychotropic substances.
6. Conveyance;
7. Man-made yarn and fabric; and
8. Currency, Indian & Foreign;
9. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
10. Diamonds, precious and semi-precious stones.
11. Ball Bearings.
12. Cellular Phones.
13. Software ;
14. Any good seized by the proper officer under section 110 of the customs Act, 1962 (52 of 1962) for which order for provisional release has been passed but provisional release has not been taken by the concerned person within a period of one month from the date of the communication of such order".

**All the goods which are seized under Section 110 of the Customs Act, 1962 and are of any of the other kind, being perishable and not being confiscated, can only be disposed of under Section 150 of the Customs Act, 1962.**

**Section 150 of the Customs Act, 1962 - Procedure for sale of goods and application of sale proceeds.** – (1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied -

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs,

and the balance, if any, shall be paid to the owner of the goods.

#### **II.6.2.5. SECTION 110 (2) OF THE CUSTOMS ACT, 1962**

**II.6.2.5.1.** Sub-sec. (1) of sec. 110 authorizes seizure, the requirement being reasonable belief on the part of the concerned officer at the time of seizure. The powers of seizure founded on a mere reasonable belief being obviously an extraordinary power, the second sub-section envisages completion of the enquiry within a period of six months from the date of seizure. But it provides that if such an enquiry is not completed within that period and a notice under Sec. 124(a) is, therefore not given, the person from whom the goods are seized becomes entitled to their restoration. However, on the supposition that in some cases such an investigation may not be completed owing to some difficulties, the legislature gave under the proviso power to the Commissioner, an officer superior in rank, to extend the time on two conditions, namely, (1) it does not exceed one year, and (2) on sufficient cause being shown. The objective, therefore, clearly is that in view of the extraordinary power of seizure, the enquiry should ordinarily be completed within six

months but since it might not be possible to do so in some cases, it gives power of extension to the Commissioner. The law is careful to entrust the power of extension only on being expressly asked for and the same is granted as exceptions to the general rule of six months laid down in sub-sec. (2). The second limitation to the power is that such an extension can be granted only on sufficient cause being shown, a phrase often used for condonation of delay, such as, sec. 5 of the Limitation Act, 1908.

**II.6.2.5.2.** There can be no doubt that the proviso of second sub-section of sec. 110 contemplates some sort of enquiry. The Commissioner, obviously, is expected not to pass extension orders mechanically or as a matter of routine, but only on being satisfied that there exists facts which indicate that the investigation could not be completed for *bona fide* reasons within the time laid down in sec.110 (2) and that, therefore, extension of that period has become necessary. He cannot therefore, extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension. The burden of proof in such an enquiry is clearly on the Customs officer applying for extension and not on the person from whom the goods are seized. The question, therefore, is as to the nature of such a function and power entrusted to and conferred on the Commissioner by the proviso. It will be noticed that whereas sub-sec. (1) of sec. 110 uses the expression 'reason to believe' for enabling a Customs officer to seize goods the proviso to sub-sec. (2) uses the expression 'sufficient cause being shown'. It would seem that sub-sec. (1) does not contemplate an enquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are reasons to suspect their illegal importation. Even so, such satisfaction, is not absolutely subjective in as much as the reasons for his belief have to be relevant and not extraneous. It is clear that the legislature was not prepared to use the same language while giving power to the Commissioner to extend time and deliberately used the expression 'sufficient cause being shown'. The words 'sufficient cause being shown' must mean that the Commissioner must determine on materials placed before him that they warrant extension of time. Where an order is made in *bona fide* exercise of power and reading the provisions of the Act which confers such power, the order undoubtedly is immune from interference by a court of law, and, therefore, the adequacy of the

cause shown may not be ground for such interference. But there can be no doubt at the same time that the enquiry to be held by the Commissioner has to be on facts, i.e. materials placed before him. There is, therefore, no question in such cases of the subjective satisfaction of the Commissioner for, what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time.

**II.6.2.5.3.** The right to restoration of the seized goods is a civil right which accrues on the expiry of the initial six months and which is defeated on an extension being granted, even though such extension is possible within a year from the date of the seizure.

**II.6.2.5.4.** An *ex parte* determination by the Commissioner would expose his decision to be one-sided and perhaps one based on an incorrect statement of facts.

**II.6.2.6 Section 123 of the Customs Act, 1962, Burden of proof in certain cases.**

– [(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, [and manufactures thereof,] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

**II.6.2.6.1.** Section 123(1) only regulates the procedure and is just, fair and reasonable. It is applicable retrospectively and would not be violative of Articles 20 and 21 of the Constitution of India – Goods seized in the reasonable belief that they were smuggled goods on a date prior to issue of notification specifying said goods



under Section 123 sub-clause (b) retrospective effect can be given for the purpose of detention of person concerned.

**II.6.2.7. Notice under section 124(a) of the Customs Act and service thereof.** – Sub-sec. (2) of sec. 110 requires notice under sec. 124(a) to be ‘given’ to the person from whose possession the goods were seized within six months of the seizure of the goods. This is a mandatory provision in the sense that failure to do so entitles the person from whose possession the goods were seized to get return of the same. Incidentally, Sec. 124 of the Act provides that no order confiscating any goods or imposing any penalty under the Chapter (Chapter XIV) shall be made on any person unless the owner of the goods or such person –

(a) is given a notice in writing;

(b) is given an opportunity to make a representation in writing.

**II.6.2.7.1.** Interestingly, sec. 124(a) does not provide any time limit for issuing such show-cause notice. The object of service of such notice is also different so far as sec. 124 is concerned, through in view of sec. 110(2), the goods seized should be returned for non-service of such notice within the specified time frame. It does not, however, denude the adjudicating authority of the power to initiate proceedings even thereafter.

**II.6.2.7.2.** As to the service of notice, sec. 153 of the Act provides that it may be effected –

(a) by tendering it or sending it by registered post; or

(b) affixing it on the notice board of the customs house, if it cannot be served in the manner provided in clause (a).

**II.6.3. Service of order, decision, etc.** – Any order or decision passed or any summons or notice issued under this Act, shall be served-

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

Therefore, there may be no real requirement to get such notice, etc. through COIN officers and may be sent by post to person resident outside India as well.

#### **II.6.4. Period of limitation under section 110(2) – whether affects proceedings under section 124. :-**

Sec. 124(a) makes service of notice upon the concerned person or the owner of the goods, a pre-condition to confiscation of goods or imposition of penalty. Incidentally, the section does not provide any time limit for issuing such show-cause notice, through sec. 110(2) does. Now, sec. 110 relates to seizure of goods, which the proper officer has reason to believe, are liable to confiscation. Service of notice in respect of such seized goods under sec. 124(a) is necessary in order to enable the concerned person to show cause why such seized goods shall not be confiscated or why personal penalty should not be imposed on him. Sub-sec. (2) of sec. 110, in this connection, provides that where any goods are seized under clause (a) of sec. 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. Thus, so far, as sec. 110 is concerned, non-service of notice under sec. 124(a) within the prescribed period, renders such goods returnable. The legislative object behind this provision is obviously, not to allow the Customs authorities to keep the goods under seizure for indefinite time without a proper enquiry being held as to whether such goods are actually liable to confiscation. So, in relation to sec. 110, non-service of notice within the prescribed period affects merely the validity of the seizure. It does not affect the confiscation and penalty proceedings as contemplated by sec. 124. Because though the goods seized on a reasonable belief that they are liable to confiscation, proceedings may still be held and / or continued.

#### **II.6.5. Time limit of six months – whether applicable to seizure under section 110(3).**

Sec. 110(1) of the Act deals with seizure of goods; sub-sec. (2) stipulates the condition when the seized goods are to be returned and sub-secs. (3) and (4) deal with the documents seized. The Legislature in its wisdom thought it proper to lay down condition and time for return of seized goods, but has not done so in case of

seized documents. In view of this it cannot be urged that along with the seized goods, seized documents should also be returned. It is, however, expected that the seized documents would be retained only so long they are required for investigation and should not be retained beyond the period necessary.

## **II.6.6. CONFISCATION OF GOODS**

**II.6.6.1.** Section 126 of the Customs Act, 1962, which deals with the confiscation of goods is reproduced below:

**II.6.6.2. 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.

### **II.6.6.3. Confiscated goods vests in Central Government. –**

**II.6.6.3.1.** Section 126 of the Customs Act specifically provides that when any goods are confiscated under the Act such goods shall thereupon vest in the Central Government. It is also evident from the provisions of Sec. 141 of the said Act, that goods in the customs area shall be subject to the control of the officers of customs. Moreover, after confiscation of consignment of imported goods, the same is vested in the Central Government in accordance with the provisions of Sec.126 of the said Act.

**II.6.6.3.2.** A direction should be given to the Customs Authorities to start an adjudication proceeding for which they will make an enquiry on the documents and materials to be produced by the parties and thereafter shall come to a conclusion as to whether the writ petitioner is entitled to release of the goods in question. At the time of such hearing it will be upon to the Customs Authorities to decide as to whether in view of the order of the Commissioner of Customs confiscating the goods and liberty given to the importer to get the goods released on redemption in lieu of confiscation, the consigned goods which have been confiscated by the said order are to be held as properties of the Central Government on confiscation in terms of Sec.126 of the Customs Act.

**II.6.6.4. Provisions of Sec. 126 are applicable when goods are absolutely confiscated.–**

Condition of fixing time limit while extending the option for redemption of goods is not in exercise of any statutory powers given under the provisions of the Act. The auxillary authority has to be exercised rationally. As regards the provisions of Sec. 126 are concerned, the same only provided that where any goods are confiscated under the said Act, such goods shall thereupon vest in the Central Government. The confiscation in the instant case is not an absolute confiscation. The same with condition extending option to the appellant, to redeem the same. In case of exercise of option by the appellant, the vesting of such confiscated goods in the Central Government does not arise at all. The provisions of Sec. 126 are applicable in cases where the goods are either ordered to be absolutely confiscated or where the persons to whom the option have been given for redemption of the goods do not exercise such an option. The appellant having met the conditions for redemption, the provisions of Sec. 126 would not apply.

**II.6.6.5. Certain officers required to assist officers of customs. -** The following officers are hereby empowered and required to assist officers of Customs in the execution of this Act, namely, -

- (a) officers of the Central Excise Department;
- (b) officers or the Navy;
- (c) officers of Police;
- (d) officers of the Central or State Governments employed at any port or airport;
- (e) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

**II.6.7. Distinction between Customs Officer and Police Officer –**

**II.6.7.1.** The expression 'Police Officer', used in Section 523 of the Cr.P.C., is to be construed strictly and to include only Police Officer properly so called. The expression is not to be construed liberally so as to include officers of other Departments on whom certain powers of a police officer may have been conferred

for certain purposes. The provisions of that Section were not applicable to the property seized by the Customs Officers under Section 110 and 115 of the Customs Act.

**II.6.7.2.** The duties of the Customs Officers are different from those of the Police Officers. Thus, although the Customs officers have powers to seize, confiscate goods, etc. as also the Police officers. They also have the power of a police officer for the purposes of investigation within the meaning of the Cr.P.C. However, possessing of certain powers by the Customs Officers, which may have some similarity with the powers of police officers for the purpose of detecting the smuggling of goods, would not make them police officers.

**II.6.7.3.** There is no express provision in the Customs Act empowering the customs officer to make an investigation of crimes under the Act. The powers of the customs officer are mainly for checking the smuggling of goods and the due realization of customs duties and to determine the action to be taken in the interests of revenue of the country by way of confiscation of goods on which appropriate duties have not been paid and thereby imposing fines and penalties. Therefore, in exercising the powers conferred on him by Section 104 and 108 and Section 110 of the Act, the customs officer is not acting as an investigating officer within the meaning of the Criminal Procedure Code.

**II.6.9. Officers of the Enforcement Directorate – powers.-**

Sec. 151 of the Customs Act empowers the officers mentioned in the section to assist officers of customs in the execution of this Act. Officers of the Enforcement Directorate have no power to seize articles from persons. They can merely assist the officers of the customs in the execution of the Act – *Vasantlal Ranchhoddas v Union of India* AIR 1967 Bom 138.

**II.6.10. Police officers – powers.-**

Sec. 151 does not empower police officers to exercise the powers of customs officers under the Customs Act, 1962. They can simply assist the customs officers. Where gold is seized by police officers and subsequently transferred to the customs authorities, the seizure could not be said to have been effected under the Customs Act by invoking sec. 151 – 1970 All LJ 390.

**II.6.11. PANCHNAMA (SEARCH LIST) DRAWING OF :-**

- (i) The Search list, as far as practicable must be prepared in the premises from which the goods were recovered. In a case where more than one room is searched in a building the search list can be prepared in any one of the rooms from which the goods are recovered. When goods liable for confiscation are found in different rooms they must be shown to the search witnesses in the rooms where they are found before they are removed to another room. It is to be borne in mind that immediately on detection, the goods should be allowed to remain in its original place until the search witnesses have seen them.
- (ii) In a case where goods are recovered from the person of a carrier as a result of personal search, the search list may either be drawn in the premises where the person is searched or if it is not practicable at the spot as near to the search premises as possible.
- (iii) Great care should be exercised in selecting exhibits, which have a bearing on the mode of concealment, etc. The officers should invariably take possession of the packages, boxes, bags, writing papers, containers in which the goods were concealed etc.
- (iv) While seizing the documents, the following procedure should be adopted :
  - (a) All loose documents should be signed by the witnesses.
  - (b) Each page of all exercise books registers etc. must be numbered and the pages containing writing must be signed by the witnesses. The number of written pages and the pages should be separately indicated in the documents.
  - (c) The first and last document in the register, the exercise books etc. must be signed by the witnesses.
  - (d) The seizing officer will also cause all seized goods to be property sealed with the Customs seal as well as the seal of the accused (if any) if he so desires.
- (v) As required under Section 103(2) of the Criminal Procedure Code a list of all things seized in the course of the search and of the places in which they are respectively found shall be prepared by the officer executing the search warrant and be signed by the two independent witnesses. As far as possible, a full inventory should be prepared before the seizure. Where for any reason this is not possible,

with the owner's consent, the goods may be seized in packages, bundles, boxes, etc. and the containers sealed carefully with the owners seal and the seal of the supervising Customs Officer. A memo should be served on the spot directing the owner to attend the Custom Office on the specified day and time for the preparation of the detailed inventory, examination and valuation of his goods. If in spite of this memo, the owner fails to attend the Custom Office within the specified time-limit for examination of the goods, etc. the goods may be examined in his absence before two independent witnesses.

#### **II.6.12. SEIZURE OF VEHICLES, MACHINERY GOODS – INVENTORY OF ACCESSORIES TO BE TAKEN:**

**II.6.12.1.** Whenever vehicles, cars or machinery goods are seized by Customs Officers, they should record not only all the specifications and descriptions of the articles but also clearly record the presence or absence of the accessories and tools such as stepney, battery, horn, condition of cushion, winding handles, etc. For this purpose, if the vehicle seized is in a very poor condition the services of a professional surveyor may be availed of, if necessary. All the Preventive Officers should, therefore, note that if any doubt arises at a later stage regarding the exact condition of such seized articles owing to acts of omission on the part of the seizing officers, the Senior Officer making the panchanama will be held responsible on the matter.

[ Board's letter F. No. 20/21/60-Ad. V dated 7.2.1962 ]

#### **II.6.12.2. Streamlining of procedure for seizure of goods and preparation of Panchnama-guidelines**

**II.6.12.2.1** The Central Vigilance Commission, in one of its annual report has observed that the procedures for seizure of goods, and preparation of "Panchnama" needed to be streamlined, as in a number of cases, several deficiencies were allowed to remain in these areas, due to which, the vigilance cases initiated against particular officers could not succeed at enquiry stage eventually. The officers stressed on certain omissions / deficiencies to counter department's relied upon evidence and this could not be ignored by the Enquiry officer. It has also come to Board's notice that as the laid down guidelines are not followed strictly, unnecessary

complaints are received e.g. searches by unauthorized persons or seizures not recording all the goods recovered or copies of seizure memos / Panchnamas not being given. Deficiencies in Panchnama is often also exploited by the unscrupulous parties involved in smuggling / tax evasion and they escape penalty / punishment otherwise due, by establishing that the Panchnama did not reflect the facts properly & therefore could not be relied upon.

**II.6.12.2.2.** The Board would like you to ensure that officers under your charge, engaged in enforcement / preventive functions, scrupulously adhere to the laid down guidelines while undertaking any searches of any premise, place or person(s) or effecting seizure of any goods in such searches specially valuables like currency, watches, precious and semi precious stones, gold / silver (including jewellery), sensitive goods like narcotics, arms and ammunition or other contraband goods of considerable value etc. Though a large number of instructions already exist on the procedure to be followed (some of which are given in the Department's Preventive Manual), some of the important points mentioned below are reiteration for guidance of field officers:-

- (a) The search of the premises / persons should be conducted, invariably, by persons with due authorisation / authorities, in the presence of two independent and respectable Panch witnesses of the locality and the occupants of the place or their representative(s). The leader of the party conducting search must show / read out the search authorisation to the Panch witnesses as well as he occupants of the premises or their representative(s) and must obtain their signatures on the search authorisation, in token of the same having been seen by them:
- (b) All the members of the search party, before starting search, must offer themselves for being searched by the witnesses and / or the occupants of the premises and / or their representative(s), and this fact must be clearly incorporated in the Panchnama. Great care must be taken in recording in the Panchnama, all relevant & precise details of the incriminating goods including valuables, currency notes or documents recovered and seized during the search. The denominations of currency & total amount, details of valuables or other contraband goods (with identification marks,



wherever possible), both in quantities and value term and the manner of packing / sealing of the goods seized, should be clearly mentioned in the Panchnama, to avoid any controversy of the actual contents / value in different seized packages, at a late date;

- (c) Detailed inventory of all contraband goods on Customs side or clandestinely manufactured / unaccounted exciseable goods etc. on central Excise side proposed to be seized under the reasonable belief that these are liable to confiscation under the provisions of Customs Act, 1962 / Central Excise Act, 1944 should be prepared & got duly authenticated by the Panchas as well as representative(s) of the person(s) whose premises are searched;
- (d) The description of places / packages etc., from where these goods / currency / valuables etc, were recovered & if concealed, the manner of concealment etc., in cases of sensitive goods and even other goods seized – should be clearly mentioned, (unless it becomes impractical to undertake a detailed inventory of contents of each packages) and each package should be got sealed and labelled, presence of Panchas and the owner / person incharge, from whose premises these goods are recovered and labels got duly signed;
- (e) The detailed inventory, as stated above, and copies of Panchnama, on each page, must be got signed by the Panchas and the owner / person incharge of the premises, who have witnessed the search / seizure & a copy of the Panchnama shall be handed over to him;
- (f) It should be clearly mentioned in the Panchnama that except for the documents / goods seized under Panchnama, nothing else was seized and / or taken in possession;
- (g) The time and date of starting the search as well as the time and date of concluding the search, should be clearly mentioned in the Panchnama and a facsimile of the seal used during the search should also be embossed on the Panchnama;
- (h) Any untoward incidence occurred during search should be clearly mentioned in the Panchnama. If search was conducted smoothly, this fact should be mentioned in the Panchnama;

- (i) On completion of the search, all members of the search party, must again offer themselves for being searched by the witnesses and / or the occupants of the premises, and / or their representative(s) and this fact should also be incorporated in the Panchnama;
- (j) On completion of the Panchnama, it must be read over to all concerned, in vernacular, and signatures of Panch witnesses as well as occupants of the premises / their representative(s) should be obtained on the Panchnama;
- (k) A copy of the Panchnama should be handed over to the occupants of the premises or their representative(s), under proper acknowledgement.

**[ Ministry's letter No. 394/226/98-Cus (AS)**

**dt.30.8.1999]**

**Form of Bond for Provisional Release of Vehicles/ conveyance Seized under Section 110 of the Customs Act, 1962.**

**KNOW ALL MEN BY THESE PRESENTS THAT I/WE** ..... of ..... hereinafter called the "**GRANTOR**" [which shall unless excluded by or repugnant to the subject and context include (in case of individual) his heirs, executors, administrators and/or representative (in case of firm) their partners and their respective heirs, executors, administrators and/or representatives (in case of a limited company) their successors and/or successors] am/are jointly and severally held and firmly bound unto the President of India [hereinafter called "the Government of India" which expression shall include his successors and/or assigns] in the sum of Rs..... (Rupees .....) here insert the bond amount to be paid to the Government of India or to the Collector of Customs ..... or as he may direct for which payment well and truly to be made I/We the grantor do bind and oblige myself/ourselves for the whole firmly by these presents.

Whereas the Grantor is the sole owner/owners of the vehicles mentioned in the schedule thereto which have been seized by the Customs Officers and the case is under consideration and investigation of the Customs Collectorate .....

**AND WHEREAS** the said vehicles/ Conveyance being the public vehicle/or vehicles/ Conveyance used as public or private carrier I/we have applied to the Commissionerate of Customs ..... for the release of the said vehicle pending investigation and have deposited with the Collectorate of Customs ..... a sum of Rs..... (Rupees ..... Only) (hereafter the Security deposit amount) to be applied for the purpose hereinafter mentioned.

**AND WHEREAS** the Commissioner of Customs has agreed thereto subject to the terms and conditions herein contained.

**AND WHEREAS** the Grantor has agreed to the terms and conditions of these present and has agreed to execute the same.

**NOW THE CONDITIONS OF THE ABOVE WRITTEN BOND OR** obligation are such that;

(a) the officer adjudicating upon the case is not of the opinion that the vehicle/conveyance should be or should have been confiscated or does not after adjudication pass an order for confiscation or for realization of fine in lieu of confiscation or for payment of any incidental charges or in the event of his imposing any personal penalty either of the **GRANTOR** or any other person concerned in the case of fine and/or penalty and/or other incidental charges payable by the Grantor shall have been paid; and

(b) the grantor produces the said vehicle/ Conveyance whenever called upon to do so by the Commissioner of Customs or any person duly authorized by the said Commissioner, of, and

(c) the Grantor duly complies with the provisions of the Customs Act, 1962 and/or any rules and regulations made thereunder in relation to the enquiry if any to be held by the Customs officers or in relation to the adjudication in the case.

**THEN** the above written bond or obligation shall be void, otherwise the same shall subject to the provisions herein contained, remain in full force and virtue.

**PROVIDED ALWAYS** and it is hereby expressly agreed and declared by and between the parties to these present as follows :-

- (1) Nothing herein contained shall prejudice effect of the right of the Government of India or the Commissioner of Customs to proceed against the Grantor in respect of breach of the provisions of any law for the time being in force or to recover any amount which may be found to be payable by the Grantor in excess of the amount deposited as hereinbefore stated.
- (2) It is declared that these presents relate to the performance of an act in which the public are interested.
- (3) The said deposit of Rs..... made by the Grantor as aforesaid may at any time be appropriated by the Commissioner of Customs or any other officer who may be incharge of the case the Grantor towards any penalty that may be imposed by the adjudicating officer and/or against any fine in lieu of confiscation and/or against all incidental charges that may be due and payable by the Grantor in respect of the preservation, transport of the vehicle, and the balance if any shall be refunded to the Grantor.
- (4) In case the above written bond or obligation becomes void as aforesaid the said sum of Rs..... deposited by the Grantor shall be refunded to him/them.

The schedule above referred to –

1. Make .....
2. Model.....
3. No. of cylinders .....
4. Horse power .....
5. Registration No.....
6. Engine No.....
7. Chasis No.....
8. Seating capacity.....

**IN WITNESS** whereof the parties to these present have here-unto set and subscribed their respective hands this day of Two thousand .....

**SIGNED** by the Grantor at .....

(name of place)

In the presence of .....

\* Signature .....

Occupation .....

Address.....

SIGNED BY for and on behalf of the

President of India by at

In the presence of

.....

@@@@@@@@

## **Chapter VII**

### **INVESTIGATION**

#### **II.7.1. PRELIMINARY**

**II.7.1.1.** The concept of investigation is polymorphous and gives it different meanings in different contexts, but unique in character as provided by the Court of criminal procedure of the statute. The word investigation has not been defined anywhere under the special statute viz., NDPS Act. But, the answer for this can be got from section 2(h) of the code of criminal procedure. It cannot be said that either the officer of Enforcement Directorate or the Customs officer is not empowered with the power of investigation though not with the power of filing a final report as in the case of a police officer. The word, investigation cannot be limited to only to police investigation but on the other hand the said word is with the wider connotation and flexible so as to include the investigation carried on agency whether he be a police officer empowered or authorised officer or a person not being a police officer under the direction of a magistrate to make an investigation vested with the power of the investigation.

**II.7.1.2.** The term investigation has a wider connotation and it is flexible enough to include the investigation carried on by an agency whether he be a police officer or empowered or authorised officer or its person not being a police officer under the direction of a magistrate to make investigation. As defined by the code, in section 2h, the term investigation is an inclusive definition and it being an inclusive definition the ordinary connotation of the expression “investigation” cannot be overlooked and it would mean search for material and facts in order to find out whether or not an offence has been committed. It does not matter whether it is made by the police officer or a Customs officer who intends to launch a complaint.

**II.7.1.3.** The customs authorities are empowered to investigate and in connection with the investigation, exercise powers conferred under section 105, 108, 110, 111 and 113 of the Customs act 1962. Particularly section 105 of the Customs act 1962 empowers the authorities to search and under section 108 of the said act to

issue summons. It is, therefore, open to the authorities to ask for further details or to supply document for the purpose of investigation.

**II.7.1.4.** Establishing an offence depends entirely on efficient investigations. The nature of the investigation varies from case to case. However, in so far as, Customs cases are concerned, basically investigation will mean the efforts to locate the source of the offending goods, the brains behind the entire smuggling operations, the operators, funds, etc. The investigating officer is required to keep his knowledge update about all the relevant laws, rules / regulations so as to come to a proper logical conclusion about the case entrusted to him for investigation.

**II.7.1.5.** One of the important tools of investigation is interrogation, which is widely used in Customs cases. The main reason is that the statements recorded by Customs Officer are not hit by Sec. 25 of the Evidence Act.

**II.7.1.6.** Sometimes Interrogation should be entrusted to an officer who has the necessary background and ability to interrogate the person. The interrogator should approach his subject, i.e., the person under interrogation in a proper way so that he can elicit as much information as possible from the subject. The ability to conduct a good interrogation is closely related to the experience that the interrogating officer has.

**II.7.1.7.** The interrogator must prepare the outlines of his approach and his questions before actually commencing the interrogation. Preparation would include the acquisition of thorough knowledge of the background data regarding the subject and complete details regarding the particular incident, which had resulted in the person being brought for interrogation. At the same time the officer should be capable of switching his approach depending upon the developments during the course of interrogation.

**II.7.1.8.** Every officer should at the earliest inform the subject about the provisions of the Customs Act, particularly regarding the need for the subject to be truthful in his statement. The provisions of Section 108 of the Customs Act should be explained in a language, which the person understands. The particular way in which

an interrogation is commenced would naturally depend upon not only the personality of the person but also the extent of his involvement.

### **II.7.2. INVESTIGATION – ENQUIRY**

The power under Section 108 of the Act would be exercised for the purpose of obtaining any information with regard to the alleged smuggling. Section 108 contemplates enquiry. A Customs officer making an enquiry under Section 107 or 108 of the Customs Act is not a police officer and the person against whom enquiry is made is not an accused person. Thus, the enquiry made under Section 108 is an enquiry in connection with the smuggling of any goods and for any such enquiry, a Customs Officer of gazetted rank has been given the power to summon any person to give evidence. The object of such an enquiry is to ascertain facts with regard to smuggling of goods. A person who is summoned under Section 108 may have nothing to do with the actual smuggling of goods although he may know other relevant facts regarding such goods. That is why even a person who has nothing to do with actual smuggling of goods can also be summoned in an enquiry under Section 108. Therefore, it is not possible to construe that Section 108 can be invoked by the Customs authorities only in a case in which a notice under Section 124 of the Act is issued.

### **II.7.3. SUMMONS**

Summons as understood in legal parlance is an intimation of requiring a person to whom it is issued to appear to give evidence and or produce some document, etc. It is not an order in the sense that it decides any question or communicate a decision taken. It merely intimates the person concerned that he is required to appear before the named authority for given evidence and order to produce a document, etc. Normally, issuance of summons follows an order for such issuance by the authority concerned. However, that order is not a consequence of any determination of any question at issue nor it is the execution of any such a determination.

### **II.7.4. SUMMONS - MEANING AND SCOPE**



Section 108 gives power to the Customs Officer to call upon the person either to give evidence or produce document which would have a vital bearing in the enquiry including adjudication proceedings. Status of the person summoned is of no consequence. It, however must be ensured that the procedural safeguards are not violated. Summons issued under this Act is not summons issued under C.P.C. or Cr. P.C.

#### **II.7.5. SUMMONS AND RECORDING THE STATEMENT**

The party should make himself available as directed for interrogation and should answer the questions put to him. But he cannot be asked not to take recourse to the plea of failure of memory and to give answers which must be direct and not evasive. He cannot be directed to compulsorily rake up his memory and give replies only in negatives or affirmatives. The officer interrogating him should record faithfully in whatever manner or way the party responds to the questions and can well make his own observations pertaining to the demeanor of the party. Necessary consequences and inferences drawn may then follow.

#### **II.7.6. PERSON SUMMONED UNDER SECTION 108 OF THE CUSTOMS ACT 1962 IS BOUND TO APPEAR AND GIVE EVIDENCE**

If a person does not answer, the summons under Section 108 he would render himself liable to prosecution under Section 228 of the I.P.C. If on the other hand, he gives false evidence, he would be liable to prosecution under Section 193 of the I.P.C. for giving false evidence in a judicial proceeding.

#### **II.7.7. SUMMONS- EVIDENCE- RIGHT OF SILENCE**

Section 108 of the Customs Act does not compel a person summoned to incriminate himself. In other words, he can maintain silence, if the answers to the questions put to him are likely to incriminate him. In such a situation, Section 193 IPC. is not attracted. Right of silence is not an offence and it cannot be said to be an obstruction to the proceedings referred to under Section 108.

### **II.7.8. STATEMENT UNDER THE CUSTOMS ACT 1962**

**II.7.8.1.** Recording of the interrogation is known as 'statement'. Section 107 of the Customs Act, 1962 stipulates that:

“Any officer of Customs empowered in this behalf by general or special order of the 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.

**II.7.8.2.** Section 107 refers to an enquiry by a Custom Officer. Such enquiry does not have the attributes of judicial proceedings unlike the enquiry under Section 108. It also does not enable the enquiry officer to compel the attendance of witnesses or production of documents or things, and the witness also cannot be compelled to speak the truth under penalty. What Section 107 contemplates, is therefore, a less formal and rigorous type of enquiry by Customs officer; whereas Section 108 contemplates an enquiry which is considered to be a legal proceedings. But neither the enquiry under Section 107 nor the enquiry under Section 108 can be considered to be the same as an investigation into a Criminal offence, by an officer in-charge of a Police Station under Chapter XIV of the Code of Criminal Procedure.

**II.7.8.3.** Section 107 of the Act does not empower any and every Gazetted Officer of the Customs Department to record statements during the inquiry under the Section. It specifically says that only an officer of the Customs empowered in that behalf by general or special order of the Commissioner of Customs can record statements under the Section.

**II.7.8.4.** Under Section 5(2) vide Office Order No. 5 dtd. 1.2.1963 issued by Commissioner of Customs, Bombay, all officers except Clerks and Class IV officers, of the Preventive Department are the officers empowered to record the statement under Section 107 of the Customs Act, 1962. Similar orders have been issued by other Commissioners empowering different categories of officers.

**II.7.8.5.** **Any person**. – The word ‘any person’ in Section 107 certainly covers every person including a suspect and potential accused.

**II.7.8.6.** **Enquiry and investigation – Scope**. – The provision of Section 107 are designed to facilitate the investigatory process by examination without restriction on person, place or time. The object of Section 107 indicates that while the normal process of enquiry is facilitated by S.108, investigatory emergencies are taken care of by Section 107.

#### **II.7.9. POWER TO SUMMON PERSON TO GIVE EVIDENCE AND PRODUCE DOCUMENTS**

**II.7.9.1.** Sec. 108 of the Customs Act 1962 stipulates that –

- (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 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 authorized 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 Sec. 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 judicial proceedings within the meaning of Sec. 193 and Sec. 228 of the Indian Penal Code (45 of 1860).

**II.7.9.2.** Vide the Gazette of India – Extraordinary – Part-II – Section 1 vide the taxation law (amendment) Act, 2006, in Section 108 of the Customs Act, for sub-section (1), the following sub-section was substituted, namely :-

“(1) Any gazetted officer of customs duly empowered by the Central Government in this behalf, 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.”

**II.7.9.3.** By virtue of above amendment, the Gazatted officer of customs duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary in the inquiry proceedings under Regulation 20 of Customs House Agents Licensing Regulations, 2004. The relevant Regulation 20 is reproduce below :-

**II.7.10. Procedure for suspending or revoking licence under Regulation 20.** — (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit, within such time as may be specified in the notice, not being less than forty-five days, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs House Agent desires to be heard in

person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs shall prepare a report of the inquiry recording his findings.

(6) The Commissioner of Customs shall furnish to the Customs House Agent a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and shall require the Customs House Agent to submit, within the specified period not being less than sixty days, any representation that he may wish to make against the findings of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs House Agent, pass such orders as he deems fit.

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act.

#### **II.7.11. DOCUMENTS**

**II.7.11.1.** Customs Act does not define 'Document.' Section 3(18) of General Clauses Act define 'Document' as under -

**II.7.11.2.** " Document includes, " any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording the matter."

This definition has to be applied to Customs Act, 1962.

#### **II.7.12. SMUGGLING**

**II.7.12.1.** In this context, the expression 'smuggling' has been defined in Sec. 2(39) of the Act to mean any act or omission which will render such goods liable for confiscation under Sec. 111 or Sec. 113. The same definition has been adopted in COFEPOSA Act. Even the general concept of the smuggling has two elements; one, the bringing into India of goods the import of which is prohibited; and two, the bringing into country's stream of goods the import of which is permitted, without paying the Customs duty which they are chargeable. The second eventuality can occur not only where there is a clandestine import evading the assessment of duty, but also where there is a clandestine removal without payment of duty. Similarly, smuggling may also entail exports of goods which is prohibited or without following the due procedure or payment of appropriate export duty.

**II.7.12.2.** Under Sec. 108 of the Customs Act, 1962, a Customs Officer is given the power to interrogate any person in connection with the smuggling of any goods which is officers' duty to prevent. Such a person may have nothing to do with the

smuggling although he may know the whereabouts of the goods and persons. Sub-sec. (3) of sec. 108 does not compel any person to make a statement, but if he makes a statement he has to state the truth in order to avoid punishment under Sec. 193, IPC. At that stage nothing may be known as to whether an offence has been committed or who has committed it and the person interrogated at that stage certainly is not a person accused of or charged with an offence. He is merely called upon to give evidence to facilitate the inquiry. He is not a witness giving evidence in a court and his testimony will make him liable under Sec. 193., IPC, because of provision of sub-sec (4) of sec. 108 of the Customs Act, 1962.)

**II.7.12.3. PROFORMA OF SUMMONS UNDER SECTION 108 OF THE CUSTOMS ACT, 1962.**

OFFICE OF THE COMMISSIONER OF CUSTOMS, .....  
(Name and address of the section)

.....

**SUMMONS UNDER SECTION 108 OF THE CUSTOMS ACT, 1962**

Summons No. .... File No. ....

**SUMMONS UNDER SECTION 108 OF THE CUSTOMS ACT, 1962**

Summons No. .... File No. ....

WHEREAS, I, ..... , ..... of Customs, ....., consider the attendance of Shri ..... necessary for giving evidence and / or producing relevant documents in respect of an enquiry being made by me under this act.

WHEREAS, I am satisfied that the relevant documents are in your possession or under your control. Now, therefore, in exercise of the powers conferred on me under Section 108 of Customs Act, 1962, I hereby summon you to appear before me in person to give evidence and / or produce the below mentioned documents at .....(place) ..... on the ..... day of ....( year ) at ..... hours.

You are not to leave the above-mentioned Customs Office without leave and - if the case is adjourned – without ascertaining the date of adjournment.

Non compliance with these summons is an offence under Sections 174 and 175 of the Indian Penal Code, 1880.

You are warned that giving false evidence in these enquiry proceedings is an offence punishable under Section 193 of the Indian Penal Code.

ISSUED TODAY, THE ..... DAY OF ..... ,( year )

Documents required:

CUSTOMS

.....

OF

.....( Name & address of Office ).....

( Seal of Office )

### **II.7.13. EVIDENCE-UNSIGNED STATEMENT**

**II.7.13.1.** Neither Section 107 nor Section 108 specifically provides for obtaining of signature of the deponent to the statement. Under Section 138B, the signed statement alone can be made use of, not unsigned statement, for the purposes mentioned in that Section. When appellant No. 2 had squarely implicated appellant No. 3 and he did not deny having made such a statement and did not contend that it was not a voluntary statement, the appellant No. 3 cannot be heard to say that it is no statement or it was not voluntary statement.

**II.7.13.2. Section 138B of the Customs Act, 1962.** - Relevancy of statement 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.



**II.7.13.3. Confession – Statement** – Statement under Section 108 of the Customs Act, 1962 in order to amount to confession must either admit in terms, the offence, or at any rate substantially all the facts which constitute the offence. An admission of an incriminating facts howsoever grave, is not by itself a confession or a statement containing and exculpatory assertion of some fact which, if true, would negative the offence alleged, cannot amount to a confession. It is now well settled that a statement in order to amount to a confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of an incriminating fact howsoever grave is not by itself a confession. A statement which contains an exculpatory assertion of some facts, which is true, would negative the offence alleged, cannot amount to a confession.

**II.7.13.4. Confession** – The confession does not become vitiated merely because the same was extracted by inducement, threat or promise i.e. if a person is induced to speak the truth, that may persuade him to make a true confession similarly if a person exerts threat, that if the statement turns out to be untrue the maker thereof would be made liable for perjury, such a treat is not sufficient to exclude the statement from the range of admissibility because there is nothing wrong in informing or reminding a person of his statutory obligation to speak the truth and also of the consequences of his not doing so. A promise that no prosecution would be launched against the maker of the confession for perjury is also insufficient to sideline and confession.

**II.7.14. CONFESSION – PROPOSITIONS**

The Supreme Court has laid down following propositions regarding confessional statement :-

1. The police is the instrument for the prevention and detection of crime. The powers of Customs Officers are meant for checking the smuggling of goods and due realization of customs duties in the interest or revenue by way of confiscation of goods and imposing penalties and fine.
2. Customs staff has merely to make report in relation to offences which are dealt with by a Magistrate. He is merely interested in the detection and prevention of smuggling of goods.
3. The power of search etc. conferred on the Customs Officer are of a limited character and have a limited object.

4. If the Customs Officer takes evidence and there is an admission of guilt that would not be treated as confession to a police officer – K.I. Pavunny v. Assistant Collector – 1997 (90) E.L.T. 241 (SC). See also : Romesh Chand Mehta v. Sate of West Bengal – 1969 (2) SCR 461.

**II.7.15. CONFESSONAL STATEMENT – when admissible :**

It is a fundamental principle of criminal jurisprudence that caution must be administered to a person from whom a confessional statement is recorded that the same could be used against him in a judicial proceeding. Section 164 Cr. P.C. uses and refers to the expressions, “Confessions and Statements”. In other words, the distinction between statements and confessions was kept in mind while enacting Section 164 Cr.P.C. It is well settled that all confessions are statements, but all statements are not confessions. Section 108 of the Customs Act authorising the empowered authority to record what the summoned person, states. A plain reading of Section 108 of the Customs Act, makes it clear that it does not enable the empowered authority to record a confessional statement from a person summoned thereunder. In the absence of any such power conferred under Section 108 of the Customs Act, the empowered authority can only fall back upon Section 164 Cr.P.C. to record a statement of confessional nature from the person summoned. As already stated, Section 164(2) Cr.P.C. enacts that the Magistrate while recording a confessional statement, must administer the warning or caution to the person making the confessional statement, that the same would be used against him. The same caution or warning, it follows, must also be administered to the person summoned, under Section 108 of the Customs Act by the empowering authority. Non-compliance with the mandatory provisions contained in Section 164(2) Cr.P.C. is not curable under Section 463 Cr.P.C. and renders the statement so recorded inadmissible in evidence. It, therefore, follows that unless the empowered authority under Section 108 of the customs Act administers the caution or the warning embodied under Section 164(2) Cr.P.C. before recording a statement of confessional nature, from the person summoned, the statement so recorded will be inadmissible in evidence for any purpose. In other words, the impugned statements recorded by the empowered authority under Section 108 of the Customs Act are inadmissible in evidence and liable to be eschewed from consideration for any purpose, as no caution or warning

embodied under Section 164(2) Cr.P.C. was administered to the person from whom the said statements were recorded.

#### **II.7.16. ADMISSIBILITY OF A CONFESSIONAL STATEMENT MADE UNDER THE CUSTOMS ACT**

As to the admissibility of a confession made by a person summoned for an enquiry under Section 107 of the Customs Act, 1962, it can be seen that such a person is not an accused person and the officer summoning that person is not a Police officer. Any confession made by such person is admissible in law since it is not hit either by Section 25 or Section 26 of the Evidence Act. However, if it is shown in a given case that such a confession was obtained by the Customs officer by exertion of inducement, threat, coercion or duress, or extracted by illegally detaining the person in an unauthorised prolonged custody, or obtained by using third degree methods, then the question about the acceptability and reliability of such involuntary confession would arise.

#### **II.7.17. CONFESSION RETRACTED**

**II.7.17.1.** A retracted confession must be looked upon with greater concern unless the reason given for having made it in the first instance (not for retraction as erroneously stated in some case) are on the face of them false. Once the confession is proved satisfactorily, any admission made therein must be satisfactorily withdrawn or the making of it explained as having proceed from fear, duress, promise or the like from someone in authority. A retracted confession is a weak link against the maker and more so against a co-accused. The rule of prudence requires corroboration in material particulars by some other evidence. Merely because such statement is corroborated by Customs Officer as to search and recovery is no ground to distrust their evidence unless any serious infirmity in the intrinsic merits of their testimony is shown.

**II.7.17.2.** Retraction of a statement means to withdraw or revoke a statement. Very often, persons who give statements under Section 107 or 108, as the case may

be, give intimation to the Customs authorities about their decision to retract the statements given by them.

**II.7.17.3.** The general reasons given for retraction are:

- (1) Statement recorded under coercion, threat and duress.
- (2) Statement recorded by giving inducement.
- (3) Statement dictated by the authorities.

**II.7.17.4.** Belated retraction does not merit consideration. What will constitute a belated retraction will depend upon the fact and circumstances, and the reasons for belated retraction.

**II.7.18. INTERROGATION OF SUSPECTS**

**II.7.18.1.** Whilst the following suggestions will apply to the majority of interrogations, they obviously have to be varied with particular circumstances and suspect. Perhaps, to assist in this performance, suspects could be divided into the following three categories:

- a) Suspects who will confess readily;
- b) Suspects who will confess their part in crimes, only after lengthy and skilful interrogation;
- c) Suspects who decline to answer questions.

**II.7.18.2.** One of the most consistent weaknesses in the interrogation of suspects who readily confess is that interrogators are apt to shorten the interrogation and not all essential questions are not put to cover every aspect of guilt. Additionally, they frequently overlook the fact that although the suspect did confess quite early in the interrogation, he almost invariably made certain denials at the start.

**II.7.18.3.** Before asking any specific questions about a particular crime, remember that the suspect may have committed other offences and that a vague question may lead him to confess a number of other offences.

**II.7.18.4.** The following are rules that should be considered in interrogations:

- (1) Open the interrogation as friendly and firmly as the circumstance may permit.
- (2) Attempt to develop in the suspect's mind impression that you are in possession of substantial evidence to establish his guilt.
- (3) The suspect will be attempting, early in the interrogation, to decide how much evidence you have against him and whether or not you are bluffing on certain aspects.
- (4) Sympathetic enquiries as to whether or not he is able to obtain bail, how his family may fare in his absence, whether they can obtain social services, accommodation, etc., whilst he is in jail, are undoubtedly the most convincing matters which can be put to develop in him the certainty that you have solid evidence against him.
- (5) Not only do these questions conform to your planning, but they are also enquiries which will, in most cases, convey to the suspect that you have a sympathetic and genuine interest in his welfare and the future of his family.
- (6) Be careful not to exaggerate the seriousness of his offence. If possible, take the opposite stand and look for factors, which will reduce the seriousness of his crime and make confession easier for him.
- (7) In difficult cases, direct your questions to establish suspect's presence at the crime scene. This is vital and, having placed him at the scene, you may then question him about his complicity in the crime itself.

- (8) Avoid complicated or double questions.
- (9) Once the interrogation is well under way, keep a constant stream of questions directed to the suspect. Keep talking so that he is forced to think and answer questions fairly quickly.
- (10) Do everything possible to keep pressing on him so that he will go on answering your questions. The more he talks, the more he will lie or the more he will say things, which will establish his innocence or guilt.
- (11) Where he has not answered a question, repeat the question or state quite firmly "Come on now, what do you say about that?"
- (12) Avoid, at all costs, long periods of silence, suspects under pressure are often on the verge of confessing but if allowed time to reconsider will frequently change their minds.
- (13) Remember at all times that whilst he is talking about the crime, he is building up a word picture you can visualize. It may be true or false but in most cases it will be part truth and part falsity.
- (14) Where he is answering questions it is generally best to follow this order:
  - (a) a broad question first;
  - (b) then a narrower one; and
  - (c) a very specific question to remove any ambiguity.
- (15) Do not be too quick to tell the suspect you know he is lying. Allow him to commit himself to a false story at some length, then go back over it and point out some (not all, at this stage) of his lies.
- (16) This method makes him wonder just how much you know or more importantly whether there is anything in fact, you don't know.

- (17) At this stage, ask him to go over his story again, but tell him this time not to waste your time and his by telling you lies.
- (18) By not pointing out all his lies on the first occasion you have retained an important check on the next story he begins to tell you.
- (19) On the second occasion, stop him quickly and firmly at the first direct lie and let him see you are displeased with his false story. If the interrogator does this convincingly the suspect will, in most cases, immediately confess his part in the crime.
- (20) With difficult suspects, the interrogator should first question him about minor facts and surrounding issues; avoid direct questions as to the offence itself.
- (21) Having established the presence at the crime-scene and obtained his agreement to these minor points, gradually work up to the major issue of his part in the crime itself.
- (22) Not only have you now developed valuable evidence but you have made it more difficult for him to deny complicity and perhaps have made it easier for him to confess.
- (23) Having in your possession studies of his previous modus operandi you should be in an excellent position to question him on similarities between the present crime and those committed by him in the past.
- (24) Where suspect has been answering questions but now refuses to do so, a stage has been reached where it can almost certainly be assumed that he is the guilty person.
- (25) If he persists in his refusal to answer, make written notes about his physical reaction at this time. For example: Have his hands started to

shake? Are there tears in his eyes? Have his lips commenced to tremble? Does he generally appear to be agitated or unsettled?

- (26) Do not overlook other questions, which can be put to him even though he still declines to answer.

### **II.7.19. HOW TO RECORD A STATEMENT**

**II.7.19.1.** As a direct result of interrogation, statements have to be recorded. It is significant to note that the Customs Act, 1962 does not prescribe any procedure for recording of statements.

**II.7.19.2.** The absence of a prescribed procedure for recording of statements has resulted in wide variance and disparity in the form and manner in which statements are being obtained. This has also resulted in officers having to face accusations of malpractice, unjustifiable exercise of power, irregularities, illegalities, etc.

**II.7.19.3.** As a matter of convenience and usefulness, it is necessary that all officers follow a uniform manner and format for recording of statements. A systematic and detailed pattern of questioning and recording the statement is necessary to project a profile of fair functioning. Before recording of a statement particularly under Sec. 108 of the Customs Act, 1962 it is mandatory to incorporate the following clauses. The details of which are as under :-

“I am in receipt of your summon no. ....dated..... issued by .....I have been explained the provisions of Sec. 108 of the Customs Act, 1962 and have been warned that giving false evidence in these enquiry proceedings is an offence punishable under Sec. 193 of the Indian Penal Code. Further, I have also been warned that my statement can be used against me in this enquiry proceedings or in any other proceedings which may be initiated against me.”

### **II.7.20. PATTERN OF RECORDING OF A STATEMENT**



- (1) The relevant Act and section should be boldly indicated. e.g. 'Statement recorded under Section 107/108 of the Customs Act, 1962.'
- (2) Full name and address of the person giving the statement.
- (3) Full name and designation of the officer recording the statement.
- (4) If the person giving the statement has been summoned, indicate the reference number and date of issue of summons. If the summons is oral, it should be so indicated and also the manner, whether telephonic or through messenger.
- (5) Date and time of appearance of the person summoned for giving the statement.
- (6) Information about the person.
  - (a) Full Name and aliases if any.
  - (b) Address : (I) Business  
(II) Residential
  - (c) Age. Date of Birth
  - (d) Occupation
  - (e) Names and addresses of partners, if any
  - (f) Annual income
  - (g) Marital status
  - (h) No of Children
  - (i) Languages known – read/write/speak
  - (j) Any known medical complaints

Note : The more background details that can be elicited, the better.

- (7) Why the person is giving the statement.
- (8) Factual details of the case as known to the person.

- (9) How the above facts are known to the person:
  - (a) Personal knowledge
  - (b) Hearsay
  - (c) Documentary evidence
  - (d) Material evidence
  
- (10) If the evidence is hearsay, explanation of the person as to why it is reliable.
  
- (11) If other people are sought to be implicated, get:
  - (a) Full identification
  - (b) Address
  - (c) Age
  - (d) Precise role played
  
- (12) The nature of the violation committed.
  
- (13) Affirmation that all details have been truthfully disclosed and voluntarily given.
  
- (14) Full signature and name to be obtained at the end of each page of statement. Check genuineness of signature.
  
- (15) Date and time of conclusion of statement.
  
- (16) Full name, signature and designation of officer recording the statement.

## **II.7.21. AUTHORISED AGENT**

**II.7.21.1.** In this regard, the expression 'authorised agent' ( of the person summoned ) has not been defined, but Sec. 146 A of the Customs Act defines an 'authorised representative' as hereunder:

- (a) his relative or regular employee; or

- (b) a Custom House Agent licensed under sec. 146; or
- (c) any legal practitioner who is entitled to practice in any civil court in India;

OR

- (d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf.

**II.7.21.4.** However, as it is clear from sub-sec. (3) of sec. 108 that appearance through authorised agent (which expression, it may be assumed, is synonymous with the expression 'authorised representative' as defined in sec. 146A) is not discretionary with the person summoned to appear for examination. The discretion lies with the summoning officer, who may direct the person summoned either to attend in person or by an authorised agent. And Sec. 146A (1) of the Customs Act, 1962 as already seen, makes it imperative for the person to appear personally and not by an authorised representative when he has been directed to do so. Thus, a person summoned to attend personally under sec. 108, for examination, cannot insist for the assistance of a lawyer. And the reason is obvious. As a matter of fact sub-sec. (1) of sec.146A authorises any person who is entitled or required to appear before an officer of Customs etc. in connection with any proceedings under the Act, may appear by his authorised representative, 'otherwise than when required under sec. 108 to attend personally for examination on oath or affirmation' (emphasis supplied). So, here there is a statutory bar for a person directed to appear personally for examination under sec. 108, to insist for appearance through a lawyer. In such a situation the question that arises for consideration is whether such a person directed to appear personally, is entitled to the assistance of a lawyer at the time of his examination by the Customs Officer. The question, as already seen, has been answered in the negative by the Madras High Court in Anil G. Merchant's case, though with some reservation as reported in (1985) 20 ELT 292 (MAD). Article 22 (1) of the Constitution, which provides, inter alia, that a person arrested and detained shall not be denied the right to consult and to be defended by legal practitioner of his choice. But since a person summoned to appear under Sec. 108 of the Customs Act, 1962 is neither arrested nor detained, Article 22(1) of the Constitution cannot be brought in aid by such person. He will be fully governed by Sec. 108 (3) and 146 (1) of the Customs Act, 1962.

### **II.7.22. NATURE OF STATEMENT**

Section 108 of the Customs Act, 1962 is silent about the nature of the statement i.e. whether it should be written or oral, whether the person summoned should give the statement in his own hand-writing or the officer summoning will record the deposition in his own hand-writing. Sub-Sec. (3 ) of Sec. 108 of the Customs Act, 1962 only states that – “ all the persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make a statement..... “ Thus, it is left to the person whether he should write the statement or not. No person can be compelled to make a statement in his own handwriting. The person can choose to answer the question orally.(In the matter of Vitthalnathan Vs. Collector of Customs, Madras High Court).

### **II.7.23. COPY OF STATEMENT – WHEN TO BE GIVEN**

A person who has given a statement to a Customs officer cannot insist that a copy of the same should be given to him immediately. The right to get a copy of the statement occurs only at the stage of departmental adjudication or criminal prosecution in a court of law against the person. During the stage of investigation copies of the statement are not given. But, if the person wishes to keep a note of the submissions made by him he is at liberty to do so. He can separately make a written note of the questions and submissions. The departmental authorities cannot object to this. (Delhi High Court, Cr. M(M) No. 205 of 1983, Cr.M(M) No. 251 of 1983, K.T. Advani Vs. The State).

### **II.7.24. ROLE OF LAWYER DURING RECORDING OF A STATEMENT**

Requiring a lawyer to be present while examining or interrogating a person during investigation is not permitted as held by Supreme Court in the case of-

Poolpandi V/s Supdt. Central Excise in a Criminal Application No. 301 and 302 of 1987.

**II.7.25. SEC. 108 OF THE CUSTOMS ACT, 1962 DOES NOT REQUIRE THAT THE STATEMENT SHALL BE TAKEN ON OATH OR AFFIRMATION**

It was reported in order No. 75/Cal/90-75 in Appeal No. C-389 of 1989 by Shri Sankaraman, Member (T) and T.P. Nambiar, Member (J), CEGAT Calcutta in the case of Md. Alangir Vs. Collector of Customs (Prev.) that -

Under Sec. 108 of the Customs Act, 1962 any gazetted officer of Customs shall have power to summon any person to give a statement and such person so summoned shall be bound to state the truth upon the subject respecting which were examined makes statement. There is nothing in Sec. 108 of the Customs Act, 1962 which requires that the statement should be taken on oath or affirmation.

**II.7.26. INVESTIGATING THE STATEMENT**

**II.7.26.1.** Mere recording of a statement is not sufficient in law. There has to be an Independent confirmation of the version given in the statement. Obtaining the independent confirmation is the fundamental responsibility of the investigating officer. The statement is only a narration of the activities and the people involved in it. It need not represent the truth or the genuine facts. It can be just explanatory fiction, doubtful observation, wrong inference or even suspect evidence. The conclusions in the statement can be superficial or based on unsubstantiated rumors and speculation. The investigating officer has to ensure that he is not duped by outright false and convoluted information. Hence his first duty is to investigate the statement to ascertain the correctness of it.

**II.7.26.2.** The investigation has to be done systematically and scientifically. It should not be forgotten that often falsehoods are asserted and reiterated as truth. Hence the object of any investigation is to reveal the truth.

**II.7.26.3.** The simple and direct way to commence the investigation is to identify the verifiable data given in the statement. Elementary information like names, addresses, telephone numbers and location, are readily verifiable and if found correct begins to give a ring of authenticity to the statement. The statement has to

be evaluated with other evidence and attending circumstances to prove the fact in issue. ( Orient Enterprises Vs. Collector of Customs, Cochin – Order No. 584/1985-A, CEGAT New Delhi).

**II.7.27. Where Suspect refuses to answer**

Very often, suspect, having had legal or other advice, will refuse to answer questions put to him by the interrogator. This situation can be very difficult, particularly as courts and judges vary considerably in their decisions as to the admissibility of questions put thereafter. There is only one safe method and that is for the interrogator to pursue his questioning as vigorously as possible in an attempt to ensure that all conceivable questions are put to the suspect. The following procedure can be of assistance:

- (a) Ask suspect why he refuses to answer.
- (b) Be patient, talk to him quietly and explain to him that your inquiries have brought him under suspicion but he is innocent his answer to questions will undoubtedly assist in clearing him of this suspicion.
- (c) Inform him that you are prepared to go to any lengths to establish his innocence and will interview anybody he wishes, make any inquiries or transport him anywhere to assist.
- (d) If he persists to answer, keep asking questions to cover every aspect of crime.
- (e) Ask him if he has any witnesses or people who can provide him with an alibi or assist in establishing his innocence.
- (f) Try to pin-point the defence he will later put forward and question him now to destroy or nullify its effect.
- (g) Finally, if he has answered, put this question to him:

“Are we take it from your refusal to answer questions that you have in fact no answer to the allegations which I have put to you?”

#### IMPORTANT FEATURES

	SECTION 107	SECTION 108
1.	Examination by any officer of Customs empowered in this behalf by general or special order of the Collector of Customs	Examination only by a Gazetted officer of Customs
2.	No requirement that person summoned is bound to state the truth	Person summoned is bound to state the truth
3.	Not a judicial proceeding	Deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860)
4.	Not a statement made by a person accused of an offence	Not a statement made by a person accused of an offence
5.	Not covered by Section 25 of the Evidence Act	Not covered by Section 25 of the Evidence Act
6.	--	Cannot be considered as an investigation into a criminal offence, by an officer-in-charge of a police station under Chapter XII of Code of Criminal Procedure, which is the test for the application of Section 25 of the Evidence Act
7.	--	Statement not hit by Article 20(3) of the Constitution
8.	Not applicable	If a person does not answer he is liable to be prosecuted under Section 228 IPC
9.	Not applicable	If a person gives false evidence he is liable to be prosecuted under Section 193 IPC for giving false evidence in a judicial proceeding
10.	--	Section 132 of the Evidence Act not attracted
11.	--	Not competent to administer oath to any person making statement
12.	--	Lawyer cannot be present
13.	--	Inducement, threat, coercion, duress not

14.	--	permissible Prolonged custody not permissible
15.	Not applicable	Cannot be treated as a confession recorded by a Magistrate, under Section 164 Cr. P.C.

The above are the prominent aspects of statements recorded under Sections 107 and 108.



**Chapter – VIII**  
**ARREST / PROSECUTION**

*II.08.1. INTRODUCTION*

**II.08.1.1.** *Under Section 104 of the Customs Act, 1962, if an officer of Customs- empowered in this behalf by an order of Commissioner of Customs- has reason to believe that a person has been guilty of an offence punishable under Sections 132, 133, 135, 135A or 136 of the Act, he can arrest the said person. These offences cover false declaration, obstruction of officers, evasion of duty or prohibitions, preparation to indulge in export fraud and Customs Officers not performing their duty. Also under Section 42 of the NDPS Act, 1985, officers of Customs of the rank of Inspector or above are to arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV of the NDPS Act, 1988.*

**II.08.1.2.** If any person is arrested, he should be informed about the grounds of arrest.

**II.08.1.3.** Next, without any delay he should be produced before a Magistrate. The person arrested should not be detained for more than 24 hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

**II.08.1.4.** Section 46 of the Code of Criminal Procedure lays down the procedure for effecting arrest which is as follows :

- (1) In making an arrest, the Police Officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
- (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect that arrest.
- (3) Nothing in this section gives a right to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life.

**II.08.1.5.** In addition to Section 46 of the Cr. P. C., the officers should also study the provisions of Section 41, 49, 50, 51 and 56 of the Criminal Procedure Code.

**II.08.1.6.** As discussed above, the officer must have reason to believe that a person has been guilty of an offence punishable under the Sections referred earlier, otherwise the person cannot be arrested.

**II.08.1.7.** In this context, before going in detail regarding arrest, it is necessary to know the provisions of the Act under which the offences are triable by Courts.

**II.08.1.8.** Chapter XVI of the Customs Act deals with offences and prosecution. Offences under Section 132 to 136 are triable by Courts. By virtue of Sec. 137 of the Act, no Court can take cognizance of any offence under Section 132 to 136 except with the previous sanction of the Commissioner of Customs or of Central Govt. in the case on a complaint filed by an officer of Customs not lower in rank than Asstt. Commissioner of Customs. The Act inter-alia provides two types of action i.e.

(1) Action-in-rem i.e. action against the goods (2) Proceedings in personem, a criminal prosecution. Both the proceedings are independent of each other. Arrest is usually effected by the seizing/investigating Unit whereas prosecution proceedings are attended to by the Prosecution Unit or a Legal Cell of the jurisdictional Commissionerate. The Ministry from time to time issues and reviews guidelines on launching of prosecutions/arrests.

## **II.08.2. PROSECUTION CELL IN THE CUSTOM HOUSES**

Office Order dated 16-04-98 issued by Commissioner of Customs (Prev) Mumbai which discusses various functions of Prosecution Cell and its staff, as reproduced below. Although each Commissionerate may have their own laid functions but broadly speaking the procedures and functions are the same as brought in the said Office Order.

**II.08.2.1.** Where a decision has been taken to prosecute certain offenders under the provisions of Customs Act, 1962 (as amended) the concerned seizing Unit, after enlisting all the relevant documents including statements, panchanamas, receipts, bills, vouchers etc. with due verification and certification of authenticity shall forward the concerned file duly indicating the number of pages on noting / correspondence sides to Prosecution Cell and obtain receipt to that effect for placing the same on the

adjudication file. All such documents shall be the primary documents i.e. originals of the documents which shall be placed in a prosecution file called part II file. Where the seizing unit (particularly Zonal Office, D.R.I.) prefer to withhold the original documents till the completion of prosecution case, they shall take entire responsibility of deputing their officers to Court to follow the day to day proceedings and to assist, if necessary, the Officer deputed by the Prosecution Cell in this regard.

**II.08.2.2. Superintendent (P) /Office Administration:**

The Supdt., Office Administration, Prosecution Cell shall acknowledge the receipt of prosecution file after due verification of the contents of file by the concerned Supdt. He shall preserve the original documents liable to be tendered in the Court during prosecution proceedings separately in his safe custody and keep duly certified Xerox copies in the Court file for day to day functioning. The court file shall be marked to the respective Supdt. (court matters) for further action.

**II.08.2.3.** Supdt. / Office Admn. in consultation with Supdt. Court Co-ordination shall further allocate the work to panel counsel in such a manner that the prosecution cases are evenly distributed among all available Counsels, except in cases where they; have expressed their inability for taking up any court matter. He shall process the P.C. Bills after due verification of their authenticity. Besides assessment of work performance in the court by the panel counsels shall be taken into account while allocating the Court work to them and such assessment of performance shall be reduced in writing and be brought to the notice of A.C./Prosecution for proper appreciation and for contemplating any action in this regard.

**II.08.2.4.** Supdt., Office Administration, shall have to attend general correspondence, and parliament questions, which are based on factual information generated from Prosecution Cell or by collecting from other Section of this Preventive Commissionerate. Primarily on completion of the last working day of each month, total monthly figures shall be duly certified by the Supdt. Office Administration. Sources for compiling statements and office copies of all the statements shall be noted in the file by the concerned staff under the supervision of

the Supdt./office Administration. All matters relating to registers and statements thereto shall properly be co-ordinated between Preventive/Ministerial staff concerned in this regard under the supervision of Supdt. Of Customs/Office Administration, Prosecution Cell and Deputy Office Supdt., Ministerial staff respectively. Where writs have been filed by private parties against Union of India/Preventive Commissionerate on the issues arising out of any actions of particular Section/Department of Preventive Commissionerate, such individual Section/Department, as the case may be shall, in co-ordination with Prosecution Cell, deal/attend/assist during the progression of such Court proceedings till the proceedings reach to its logical conclusions. All the developments of such proceedings, from time to time shall be reduced in writing and be brought to the notice of Asstt. Commissioner/Prosecution.

**II.08.2.5. Superintendent (P)/Court Co-Ordination:**

The Supdt./Court Co-ordination shall keep liaison with the Counsels, Law Ministry, witnesses and all concerned departments and shall arrange meetings between them whenever needed. He shall be looking after issue of notices, summons etc. He shall be assisted by I.Os. posted along with him from time to time and shall also look after general administration.

**II.08.2.6. Superintendent (P)/Court Matters:**

As soon as Prosecution file is received by the concerned Supdt., he shall ensure that :

- (i) a list (index) of all the documents viz. panchanama, statements, Arrest Memo and other documents has been prepared and placed in the file by the Seizing Unit;
- (ii) that all the original documents including purity and disposal certificates required are in Prosecution file;
- (iii) the copy of the remand application with the orders passed by the Magistrate is placed in the file;
- (iv) if the accused remanded is already released on bail, full gist of the bail order mentioning bail amount, surety, etc. and other conditions shall be clearly mentioned in the noting side and also next date of remand. Whenever an accused is released

on bail by the Court with a direction to attend the office daily or on certain days for a specified period, such accused shall directly report to the Investigating Unit. The Supdt. Of the concerned Investigating Unit shall also take necessary action and maintain an attendance register. In case the accused fails to report in terms of the order of the Court, the matter shall be immediately; reported to the Supdt. Prosecution Cell, who shall take action to get the bail of the accused cancelled for non-compliance of the court order. The Supdt./Remand Officer shall also put up a detailed note regarding the extension of remand from time to time in noting side of Prosecution file.

(v) Entry is made in the Remand register when the accused is remanded to judicial custody and if the Prosecution file is received in the Prosecution Cell, on the next date of remand extension, the officer concerned with the investigation, shall accompany the remand officer to brief the Panel Counsel regarding the progress of the investigation. There are instances where Magistrate also insist for the presence of the Investigation Officer to know the progress of the investigation or for any other queries. In the absence of information regarding progress of investigation, there may not be any material available to justify further custody and Magistrate may refuse to extend the custody.

**II.08.2.7.** He shall also ensure that orders that orders for allocation of the case to Panel Counsel is obtained from A.C./Prosecution, and necessary entries are made in the Complaint Register by the Officer attached to him. He shall handover the Xerox copies of the documents to the concerned Panel Counsel for drafting the complaint. As soon as the draft of the sanction for prosecution and complaint is received, he shall verify whether the complaint and sanction for prosecution is factually correct as per the documents and whether the Sections of the relevant Acts are quoted correctly. Thereafter he shall submit the file to the Commissioner /Addl. Commissioner through the A.C./Prosecution for approval and sanction. After the documents are signed, he shall ensure that the vankalatnama is prepared and the complaint filed in the concerned Court.

**II.08.2.8.** Once the complaint is filed in the Court and the trial starts, it should be ensured that the Prosecution Witnesses are called as and when the Panel Counsels desire to examine them. Such witnesses shall go through Prosecution file in the Prosecution Section before tendering evidence in the Court. Wherever

necessary, they will also be briefed by the Panel Counsels. The Court Supdt. Shall also collect the notes of evidence from the Court through the Panel Counsels. Such notes of evidence have to be collected on making application to the Court and on payment of the cost. One copy of such notes of evidence shall be kept in the case file and a copy of the same shall also be given to the panel Counsel so that witnesses could refer to the said notes whenever they are called for examination/cross examination later on. This will help the Panel Counsel to keep a track of the day to day proceedings and Asstt. Commissioner./Prosecution would be in a position to exercise a closer supervision of the day to day developments. The expenditure incurred for getting the notes of evidence will be claimed from Admin. Section under miscellaneous expenditure by the Officer. The Supdt. Shall evaluate the quality of evidence deposed by the departmental witnesses in respect of the document tendered by them. He shall also watch the performance of the Panel Counsel with reference to the document tendered and defend the interest of the department.

**II.08.2.9.** Once the judgement is delivered the Supdt./ Court Officer shall pursue the Panel Counsel:

(a) to submit a written application to the Magistrate to allow a reasonable time in case where the court passes orders directing the department to return the accused's documents immediately and also reasonable time from the execution of court order in case of acquittal.

(b) to apply for the certified copy of the judgement. While obtaining the certified copy of the judgement, the Supdt. / Court Officer shall invariably in each case obtain the Panel Counsels legal opinion on the judgement. In case where the punishment awarded are inadequate or the cases which deserve to be appealed against, the uncertified copies of the judgement shall be obtained immediately. Opinion from the Law Ministry if necessary shall be obtained immediately and file shall be submitted to Commissioner at the earliest so that the department can file the appeal effectively wherever required.

**II.08.2.10.** Where a decision has been taken to file SLP /appeals to Superior Courts in any prosecution case, Supdt. / Court Co-ordination and Supdt. of the concerned Court, in consultation with Panel Counsel and Law Ministry, as the case maybe, shall take all necessary precautions as deemed fit, to pursue the case

till its logical conclusions, besides progress of such case, from time to time, shall be reduced in writing and be brought to the notice of Commissioner through A.C./prosecution.”

[ Office Order dt. 16.04.98 issued by Commissioner of Customs (Preventive), Mumbai, in F. NO.- SD/INT/ADMN/161/98 A]

### **II.08.3. ARREST AND/OR PROSECUTION FOR CUSTOMS OFFENCES**

#### **II.08.3.1. Guidelines on launching Prosecution/Arrests.**

**II.08.3.1.1.** Revised guidelines for launching of prosecution for offences under the Customs Act, 1962, and arrests where warranted, are as follows :

**II.08.3.1.2.** Prosecutions should be considered and launched after very careful consideration of the nature of offence, the role of the person concerned and evidence available to substantiate the guilty knowledge/mens rea. Prosecution may be considered in the following categories of cases :

(i) (a) Cases involving unauthorised importation in baggage/ under Transfer of Residence Rules, where the CIF value of the goods involved is Rs. 5,00,000/- (Rupees Five lakhs) or more ;

(b) Cases relating to importation of trade goods (i.e. appraising cases) involving deliberate misdeclaration/ misclassification with a view to importing banned or highly restricted items or with a view to attempt to defraud revenue or to smuggle goods in the guise of trade consignments and where the CIF value of the offending goods is Rs. 10,00,000/- (Rupees Ten lakhs) or more ;

(c) Other cases involving smuggling of goods and cases of attempted unauthorised exportation/smuggling of currency by outgoing passengers or town seizures, where the CIF value of the goods/currency is Rs. 5,00,000/- (Rupees Five lakhs) or more ;

(ii) The above criteria would, however, not apply in cases of repeat offences or persons indulging professionally or habitually in such violations or where criminal intent is evident in ingenious way of concealment or otherwise, where prosecutions can be considered irrespective of the value of goods/currency involved in such

repeat, professional or habitual offences, etc. However, prosecution may not be considered in petty repeat violations so long as cumulative value of the offending goods/currency is not more than rupees five lakhs.

(iii) The above criteria would also not apply in the cases involving offences relating to very sensitive items like narcotic drugs and psychotropic substances, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, launching of prosecution should be considered invariably, irrespective of the value of the offending goods involved.

It may be noted that considering the liberalisation in Gold/Silver import policy since 1991, these items have been taken out of the list of sensitive items as per earlier guidelines where prosecution was considered irrespective of value limit. Prosecution for offences relating to these items will now be covered by guidelines at (i) & (ii) above.

(iv) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs (normally visiting India for travel/ business trips etc.) detected at the time of departure, exceeding the value limit of rupees 5 lakhs as prescribed under sub-para (i) (c) above, who claim the currency having been legally acquired and brought into India but inadvertently not declared, the arrest and prosecution need not be considered in routine. The status & business standing of the foreign nationals/ NRIs the manner and place of recovery, corroborative evidence if any to substantiate the claim of bonafide & proper acquisition but inadvertent non-declaration, and other attendant factors may be considered immediately by the Commissioner concerned and a decision taken whether the case involves criminal intent warranting arrest and launching of prosecution or not. Where the prosecution is not considered called for, the case can be adjudicated on the spot by the proper officer and suitable order for confiscation/ / fine / penalty etc. passed.

(v) Except in respect of cases covered by sub-para (i) (b) above, in all other cases, prosecution may be launched after due sanction by the concerned Commissioner of Customs. Prior concurrence of the Chief Commissioner will be essential for prosecutions under category covering by (i) (b) above.

#### **II.08.3.2. Arrests in Customs offence cases :**



(i) Persons involved in customs related offence cases who may be liable to prosecution should not be arrested in routine unless exigencies of certain situations demand their immediate arrests. Thus, at times, prior to prosecution, arrest (s) may be necessary to ensure proper investigations and penal action against the person (s), as otherwise the person involved in the offence may hamper investigations or disappear from the scene/area – such as in cases involving outright smuggling by Sea/Air/Land route.

(ii) Arrest should be made only when it is intended to prosecute the offenders and the monetary limits or conditions provided for prosecution would apply equally to arrests.

(iii) Though under Sec. 104 of the Customs Act, Commissioners of Customs have been empowered to delegate to an officer of Customs by general or special order, powers of arrest of persons guilty of offence punishable under sec. 135, Government would like extreme circumspection and care in exercising these powers and ordering arrests. In all commercial fraud cases in relation to regular imports or exports, before arresting any persons (s) the Commissioner/ADG concerned should be approached by the Investigating Officer and the Commissioner /ADG should be personally satisfied that there are sufficient grounds warranting arrest of the persons (s). These grounds/reasons should also be recorded by the concerned Commissioner / Additional Director General in writing on file before the arrest is ordered and effected by the proper officer.

(iv) As far as possible, in other than commercial fraud cases also warranting prosecution under Sec. 135, where arrest is considered necessary Commissioner's / ADG's prior clearance and approval for arrest may be taken. However, there could be situations, for example in outright smuggling cases in remote areas (and sometimes even in town seizure or international passenger clearance offence cases) where it may not be administratively possible to get prior permission of concerned Commissioner/ADG before effecting arrest. In such cases, the decision to arrest a person in accordance with the guidelines - taking due note of the offence against the person which has come to light in investigations carried out, should be taken at the minimum level of the concerned Assistant Commissioner / Assistant Director – recording the reasons in writing. Further, in such cases, the concerned Assistant Commissioner/Assistant Director or other higher officer (lower than Commissioner/ADG) who has ordered arrest, should immediately after arrest

furnish a report incorporating reasons for arrest, to the jurisdictional Commissioner/ADG and his satisfaction for the arrest made should also be kept on record in writing.

The following aspects of earlier instructions, (as modified where necessary) may also be kept in view while considering launching of prosecution for offences under the Customs Act, 1962:-

(i) Prosecutions should not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law. Before launching any prosecution, it is essential that the department should have sufficient evidence to prove that the person company or individual, against whom prosecution is being considered, had guilty knowledge of the offence or had fraudulent intention of committing the offence, or in any manner possessed mens rea which would indicate his guilt. It follows, therefore, that in the case of Public Limited Companies, prosecution should not be launched indiscriminately against all the Directors of the Company, but should be restricted to only such of the Directors like the managing Director, Director in charge of marketing and / or Sales, Director (Finance) or such other Directors who are concerned with the import/export of the goods. The intention should be to take recourse to the prosecution only against those persons, who have taken active part in committing, or have connived at, the offence relating to either of smuggling or of Customs Duty evasion or of misdeclaration of value, quantity etc. For this purpose, the Commissioners should go through the relevant case file thoroughly and ascertain for themselves the definite involvement of different partners/directors/executives/officials, against whom reasonable evidence about their involvement in the offence exists and should be proceeded against, while launching the prosecution. For example, the nominee Directors of the Financial Institutions, who are not concerned with day to day matters, should not be prosecuted, unless there is a definite evidence to establish their active involvement. Prosecution should be launched only against those Directors, Partners, Officials etc., who are found to have guilty knowledge, fraudulent intention of mens rea necessary to bind them to criminal liability ;

(ii) One of the important considerations for deciding whether prosecution should be launched, is the availability of adequate evidence. Prosecution should be

launched against top management only if there is adequate evidence/material to show their involvement in the offence and after proper application of mind at the level of Commissioners/Chief Commissioners ;

(iii) Normally, adjudication proceedings should be completed before launching prosecution. However, if the party deliberately delays the adjudication proceedings or in any case it is not possible to complete the adjudication proceedings within a reasonable time limit, prosecution may be launched even during the pendency of the adjudication proceedings, as undue delay could weaken the department's case. However, in straight cases, where persons, including foreigners, are caught red handed and protracted investigations are not to be carried out, prosecution may be launched immediately after the seizure of the goods;

(iv) Prosecution should not be kept in abeyance merely on the ground that the party has gone in appeal/revision. However, in order to ensure that the proceedings in appeal/revision are not unduly delayed, because the case records are required for purposes of prosecution, a parallel file containing copies of the essential documents relating to adjudication should be maintained. It is necessary to reiterate that in order to avoid delays, the Commissioners should indicate, at the time of passing the adjudication order itself, as to whether they consider the case fit for prosecution, so that it could be further processed for launching prosecuting or for being sent to the Chief Commissioner for prior approval, wherever necessary.

#### **II.08.3.3. Procedure for launching prosecution :**

(i) In all such cases, where prior approval of Chief Commissioner is necessary for launching prosecution i.e. in cases covered by para 2 (i) (b) above, an investigation report for the purpose of launching prosecution (as per Annexure- I), should be carefully prepared and signed by the Assistant Commissioner concerned. The investigation report, after careful scrutiny (for incorporation of all relevant facts) and duly endorsed by the Commissioner, should be forwarded to the Chief Commissioner for approval, within a month of the adjudication of the case. A criminal complaint in a Court of Law in such cases, should be filed only after the approval of jurisdictional Chief Commissioner has been obtained. The Chief Commissioners should ensure that a decision about launching of prosecution or otherwise, is taken after careful analysis of evidence available on record and

communicated to the Commissioners, within a month of the receipt of the proposal from the Commissioners;

(ii) In all other cases, where prior approval of Chief Commissioner is not required, the decision about launching of prosecution or otherwise should be taken by the Commissioner after careful application of mind and analysis of evidence brought on record. This should be completed within a month of adjudication of the case (unless it is decided to go for prosecution even prior to adjudication in certain category of cases/particular case, mentioned earlier);

(iii) It is hardly necessary to emphasize that the prosecution once launched should be vigorously followed. The Commissioners should monitor cases of prosecution at monthly intervals and take corrective action, wherever necessary, to ensure that the progress of prosecution is satisfactory;

(iv) With a view to ensure that the prosecutions have a deterrent effect, it is necessary that convictions should be secured with utmost speed. This can only be done by regular monitoring of the progress of the prosecution;

(v) It has been observed that the delays in the Court proceedings occur due to the non-availability of records required to be produced before the Magistrate. As a matter of practice, whenever a case is taken up for seeking the approval of the Commissioner or Chief Commissioner, as the case may be, for launching prosecution, an officer should be nominated/designated, who shall immediately take charge of all documents, statements and other exhibits, that would be required to be produced before a Court. The list of exhibits etc. should be finalised in consultation with the Public Prosecutor at the time of drafting of the complaint. Such exhibits should be kept in the safe custody;

(vi) Once conviction is obtained in a prosecution case, the Commissioner responsible for the conduct of the prosecution, should study the judgement and where it is found that the persons have been let off with light punishment than what is envisaged in the Act, the question of filing appeal under the law should invariably be examined with reference to the evidence on record, within the stipulated time. This is equally applicable in cases in which a Court orders acquittal without recording sufficient reasons in the judgement even though adequate evidence is available and was provided before the Court;

(vii) Section 135-B of the Customs Act, 1962, grants the power to publish name/place of business etc. of persons convicted under the Act, by a Court of law. It

is observed that this power is being exercised very sparingly by the Courts. In all cases in respect of all persons, who are convicted under the Act, the department should make a prayer to the Court to invoke this section.

(viii) A Prosecution Register in the form as Annexed to this chapter, should be maintained in the prosecution cell of the Commissionerate headquarters/Custom House.

Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in investigations of important cases of smuggling/duty evasion and to provide guidance and support to the investigating officers at the stage of investigation itself.

**[ Ministry's letter F. No. 394/71/97-CUS (AS) , dated the 22<sup>nd</sup> June, 1999]**

## ANNEXURE – I

INVESTIGATION REPORT FOR THE PURPOSE OF LAUNCHING PROSECUTION  
AGAINST \_\_\_\_\_

## COMMISSIONERATE \_\_\_\_\_

1. Name & address of the Accused :
2. Nature of offence including commodity :
3. Charges :
4. Date/Period of offence :
5. Amount of duty Evasion/value of contraband goods involved :
6. Particulars of persons proposed to be prosecuted :
  - (a) Name
  - (b) Father's name
  - (c) Age \_\_\_\_\_ Sex \_\_\_\_\_
  - (d) Address
  - (e) Occupation
  - (f) Position held in the company/firm
  - (g) Role played in the offence
  - (h) Material evidence available against the accused (Please indicate separately documentary and oral evidence)
  - (i) Action ordered against the accused in adjudication proceedings
7. Brief note as to why prosecution is recommended

**NOTE**

(A) The proposal should be made in the above form in conformity with the guidelines issued by the Ministry. With regard to column 3 above, all the charging sections in the Customs Act, 1962 and other allied Acts should be mentioned. If the provision for conspiracy as under Section 120-B of IPC is sought to be invoked, this fact should be clearly mentioned. With regard to Column 6, information should be filed separately for each person sought to be prosecuted .

(B) A copy of the show cause notice as well as the order of adjudication should be enclosed with this Report. If any appeal has been filed against the adjudication order, this fact should be specifically stated.

(C) Where prosecution is being recommended even prior to completion of adjudication, as per guidelines, brief reasons therefor be also indicated in the brief note mentioned at Sl. No. 7 above.

**ANNEXURE – II****PROSECUTION REGISTER**

1. SERIAL NUMBER
2. DIVISION/PREVENTIVE UNIT/APPRAISING GROUP
3. FILE NUMBER
4. DATE OF DETECTION
5. NAME OF ACCUSED
6. NATURE OF OFFENCE
7. AMOUNT OF CUSTOMS DUTY EVADED/VALUE OF CONTRABAND GOODS SEIZED
8. PERIOD OF EVASION, DATE OF SEIZURE
9. CRIMINAL COMPLAINT NUMBER
10. DATE OF SANCTION OF PROSECUTION
11. DATE OF FILING OF COMPLAINT
12. DATE OF ISSUE OF PROCESS
13. NAME OF COUNSEL
14. DATE OF JUDGEMENT
15. DATE OF APPEAL AGAINST THE JUDGEMENT & COURT IN WHICH APPEAL FILED

***II.08.3.4. Requirements to be followed in all cases of Arrest***

The Honourable Supreme Court in the case of D. K. Basu v/s. State of West Bengal and others have envisaged certain requirements to be followed in all cases of arrest or detention. In line with the said requirements, following preventive measures should be followed in all cases of detention or/and arrest.

- (1) The officer carrying out the arrest shall prepare an 'Arrest Memo' at the time of arrest and the same shall be attested by atleast one witness. The witness



may be either member of the family of arrestee or respectable person of the locality. The 'Arrest Memo' shall also be countersigned by the arrestee with date and time.

- (2) The person who has been detained or arrested should be allowed to inform one friend or relative or other person known to him or having interest in his welfare, as soon as practicable, unless the attesting witness of the 'Arrest Memo' is himself such friend or relative of the arrestee, about his arrest and place where he is kept.
- (3) The time, place of arrest and venue of the custody of an arrestee must be notified, where his friend or relative lives outside & district or town through the Legal Aid Organisation in the District, telegraphically within a period of 8 to 12 hours after the arrest.
- (4) The person arrested must be made aware of this right to have some one informed of his arrest or detention as soon as he is put under arrest or is detained. He should be made aware of this right in writing and acknowledgement taken.
- (5) If requested by the arrestee, he should also be examined at the time of his arrest and major and minor injuries, if any, present on his/her body must be recorded at that time. Such 'Inspection Memo' must be signed by the arrestee and the officer effecting the arrest and its copy be provided to the arrestee.
- (6) The arrestee should be subjected to 'Medical Examination' by a trained Doctor every 48 hours of his detention in custody by a Doctor on the panel of the approved Doctors appointed by the Director, Health Services of the concerned States.
- (7) Copies of the all the documents including the 'Arrest Memo' referred to above should be sent to the CMM for his record.
- (8) The arrestee may be permitted to meet his lawyer during interrogation, though not through-out the interrogation. 'Lawyers Register' may be maintained to indicate the name of lawyer, whom did he meet, starting and closing time of meeting and duration of meeting. The arrestee may be asked to give in writing if he wants to meet advocate and whether the lawyer meeting him is his lawyer Signature of the lawyer be obtained in the said Register.
- (9) An 'Arrest Register', should be maintained having following columns;

- (j) Name, father's name, address with telephone Nos. and age of arrestee.
- (ii) Name of officer (s) handling interrogation, with specific time of interrogation by the officer.
- (iii) Name of officer (s) who is causing the arrest.
- (iv) Name of officer who informed the arrestees friend, relative etc. about arrest, time and mode of such communication as also the name of such friend, relative etc. alongwith address.
- (v) In case the person arrested does not have friends, relative etc. in the place of arrest, the time date and mode of informing Legal Aid Organisation about the arrest.
- (vi) If arrestee is examined by the Doctor, his name, address and telephone number and date and time of examination.
- (vii) Report of examination.
- (viii) Date and time of the submission of documents to CMM.
- (ix) The officer (s) handling interrogation should bear accurate, visible and clear identification of name and designation.

[ Excerpts from DRI MUMBAI, Circular No. DRI/BZU/B/22/97 of 01/12/97 ]

**The Central Govt substituted Sub-section (1) of Sec 135 of the Act W.E.F. 11-05-07 by Finance Act 2007 (22 of 2007) to make the provisions more effective.**

**The said provisions are as under:-**

**SECTION 135. Evasion of duty or prohibitions.** – [“(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 thirty 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 thirty 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.”]

**The Hon'ble High Court at Delhi in the recent case of Indarjit Nagpal Vs Directorate of Revenue Intelligence (DRI)- 2006(193) ELT 408(Del.) discussed the issue as under:-**

“Table II of the First Schedule to the Code of Criminal Procedure, 1973 incorporates Classification of Offences Against - other laws. It reads thus :

**II - Classification of Offences Against - Other Laws**

Sr.No.	Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
	1	2	3	4
i)	If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable	Non-bailable	Court of Session
ii)	<b>If punishable with imprisonment for 3 years, and upwards but not more than 7 years.</b>	<b>Ditto</b>	<b>Ditto</b>	<b>Magistrate of the first class.</b>
iii)	If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate

The offence under Section 135(1)(ii) of the Customs Act is punishable with imprisonment extending to three years or with fine or with both. Learned Senior Counsel for the petitioner sought to maintain that the offence punishable under Section 135(1)(ii) would fall under Entry 3 of Table II and borrows support to his contention in this regard from the aforesaid decision of the Bombay High Court in *Subhash Chaudhary* (supra). Having gone through the decision in *Subhash Chaudhary* (supra), it is difficult to subscribe to the view taken therein as the same would appear to suffer from inherent contradictions. The offence punishable under Section 135(1)(ii) providing for punishment extending to three years clearly indicates that the same is punishable with imprisonment for a period up to 3 years. In that view of the matter, the same cannot be pleaded to fall under Third Entry of Table II. In *Mohan Lal Thapar* (supra), the plea if an offence under Section 135(1)(ii) is a bailable one was examined by this Court and answered in negative. Similar view has been taken by the Hon'ble High Court at Delhi in the following recent cases:

(a) Lalit Goel Vs Commissioner of Central Excise, Delhi-I - 2008(224) ELT 216(Del.)

(b) Mohan Lal Thapar Vs Inspector of Customs, New Delhi- 2002(143) ELT 44 (Del.)

#### **II.08.4. Compounding of offences under Customs and Central Excise Acts**

Sub –section (3) has been inserted in Section 137 of the Customs Act 1962 so as to provide for compounding of offences under Chapter XVI of the Act by Chief Commissioner of Customs on payment of compounding amount prescribed by the rules (Inserted by S.71 of the Finance Act 2004 (23 of 2004). The Ministry has issued the following guidelines for compounding of offences

##### **II.08.4.1. Guidelines for compounding of offences under Customs and Central Excise Acts**

**II.08.4.1.1.** The Central Government has brought into force the Customs (Compounding of Offences) Rules, 2005 and Central Excise (Compounding of Offences) Rules, 2005 with effect from 30th December, 2005, the date of publication of these rules in the official gazette. Notification No.114/2005 Customs (N.T.) and No. 37/2005-Central Excise (N.T.) both dated 30.12.2005 have been issued in this regard. CIRCULAR NO. 54/2005-Cus dated 30th December, 2005 issued in F.No. . **450/67/2003-Cus.IV lays down guidelines for compounding of offences under Customs and Central Excise Acts**

**II.08.4.1.2.** The purpose of compounding of offences against payment of compounding amount is to prevent litigation and encourage early settlement of disputes. Considering the wide range of offences listed in the relevant Chapter of the Customs Act/ Central Excise Act, Board has decided to classify these offences as (i) technical offences; and (ii) substantive or non-technical offences for the purpose of compounding. 'Technical offences' are those offences that can be compounded more than once and would be accorded a more liberal treatment. However, 'Substantive or non-technical offence' are offences, where it has been decided not to allow compounding for the second time. For the purpose of compounding, 'Substantive or non-technical offence' would mean offences covered

under section 135 and 135A of the Customs Act. Similarly under Central Excise Act this would refer to offences covered under sub-section (1)(a), (1)(b), (1) (bb), (1) (bbb), (1) (bbbb) and (1)(c) of section 9. On the other hand 'Technical offence' would mean offences covered under section 132, 133 and 134 of the Customs Act and section 9(1)(d) of the Central Excise Act. Accordingly compounding for substantive offence shall be allowed only once.

**II.08.4.1.3.** It has also been decided by the Board, that considering the serious implications of certain offences mentioned below, these shall not be considered for compounding and any applications received from one or more categories of the following persons should be rejected.

(i) Any person who along with offence under Customs Act, has also committed or has also been accused of committing an offence under any of the following Acts:-

- (a) Narcotics Drugs and Psychotropic Substances Act, 1985;**
- (b) Chemical Weapons Convention, Act, 2000;**
- (c) Arms Act, 1959**
- (d) Indian Penal Code**
- (e) The Wild Life (Protection) Act, 1972**

(ii) Any person who is involved in cases of smuggling of goods falling under any of the following categories,-

- (a) Special Chemicals, Organisms, Materials, Equipments & Technologies (SCOMET), as specified in Appendix-3 to Schedule 2 of ITC (HS);**
- (b) Prohibited items for import or export as specified in the ITC (HS) Classifications of Export and Import items, 2004-09 issued under section 3 of the Foreign Trade (Development and Regulation) Act, 1992;**

**(c) Any other goods or a document, which is likely to affect friendly relations with any foreign state or is derogatory to national prestige.**

(iii) Any person who has already exercised the option of compounding of an offence in respect of goods of value exceeding rupees one crore in the past.

(iv) Any person who has been convicted under the Act by an order issued subsequent to the date of publication of the Customs/ Excise (Compounding of Offences) Rules in the official gazette.

**II.08.4.1.4.** While the Compounding of Offence Rules have been made as simple and unambiguous as possible, it would be worthwhile to clarify a few provisions as follows:

(i) Offence committed by officers of Customs/ Central excise does not merit compounding as it is a matter between the State and its employee. Accordingly the definition of the applicant excludes the departmental officers.

(ii) As the Chief Commissioner has to decide about the eligibility of the applicant and allow compounding in respect of an application filed before him on the basis of certain facts given by the applicant, it is provided for verification of such facts and call for any other facts or information available on record from the reporting officer.

**II.08.4.1.5.** The Chief Commissioners have been empowered to compound offences before or after filing of the complaint subject to the above general guidelines. While there would be no difficulty in cases where complaint has not been filed by the department, as regards existing cases pending in the court, the following procedure may be followed. No such application for compounding shall be processed unless the applicant within 30 days of filing such application, files an affidavit before the Court before whom such prosecution is pending undertaking to comply with the provisions of these rules and submit a copy of such affidavit to the compounding authority. On receipt of such affidavit, the compounding authority shall examine the application in accordance with the above guidelines and pass an

appropriate order under sub-rule (3) to rule 4. A copy of such order shall also be forwarded to the Court. After payment of compounding amount as per the above order, the reporting authority shall move an application before the said court informing about the compounding of offence and requesting the court to dispose of the case accordingly. If the court accepts the order of compounding of offence and disposes of the case, then the order of compounding authority becomes final. However, in cases where the Court rejects the request of the department for grant of immunity from prosecution by compounding of offences, then the compounding amount paid by the applicant as per order of the compounding authority shall be refunded to the applicant.

**II.08.4.1.6.** In order to make best use of compounding of offence, assesses at the time of intimation/ initiating action for launching of prosecution should be given an offer of compounding. It may however be clarified that the application for compounding shall be decided on merits and in the absolute discretion of the Chief Commissioner. The cases where the Chief Commissioner is not inclined to accede to applicant's request for compounding as detailed in para 3 above, may be rejected informing the grounds accordingly.

**II.08.4.1.7.** Adequate publicity may be given to the Compounding of Offence Rules and these guidelines so that large numbers of cases are compounded resulting in reduction in number of cases pending in the courts. All the applications for compounding of offences must be disposed of within 6 months. The performance of the zone in realisation of compounding amount also may be indicated suitably in the monthly report to the Directorate of Data Management.

**II.08.4.1.8.** These Compounding of Offences Rules and guidelines may be brought to the notice of all concerned. In case of any doubt regarding any provision of the guidelines, rules reference may be made to the Board.

(CIRCULAR NO. 54/2005-Cus dated 30th December, 2005 issued in F.No. .  
**450/67/2003-Cus.IV** )



#### **II.08.5. GUIDELINES FOR APPOINTMENT OF STANDING COUNSELS FOR HANDLING DEPARTMENT CASES BEFORE HIGH COURTS**

**Sub: Powers assigned to CBEC for appointment of Standing Counsels to handle litigation of Indirect Taxes before various High Courts - guidelines regarding mechanism of appointment of Counsels and their terms and conditions - Reg.**

Central Board of Excise & Customs has been assigned the powers to appoint Standing Counsels to handle the litigation of Indirect Taxation before the various High Courts / Tribunal / BIFR / AAIFR / DRT and other statutory bodies / authorities and also to regulate their terms and conditions of engagement etc.

2. The procedure for appointment of Counsels and renewal of their terms has been prescribed by specifying the requisite qualification and terms and conditions of their engagement which is annexed as Annexure-I. The Schedule of fee and allowances etc. is annexed as Annexure-II

3. This issues with the concurrence of Ministry of Law & Justice vide their Dy.No.3513/2007-Judl. Dated 22.11.2007 and the Integrated Finance Unit (IFU) Dy.No.3112/2007.

**ANNEXURE - I****1. Category and qualification of Counsels :**

Counsels are engaged by the department for representing the department before different High Courts/other judicial bodies in cases relating to the indirect taxation. The Counsels engaged by the department will fall into three categories, viz-.

**a. Junior Standing Counsels****b. Senior Standing Counsels****c. Standing Counsels**

Qualifications of each category of counsel will be as under:

**A. Junior Standing Counsel :** In order to be eligible for appointment as Junior Standing Counsel a person should

i. be enrolled/registered as an advocate with the High Court

II. have a minimum experience of three years of handling preferably Customs and Central Excise and Service Tax matters before High Courts or Tribunals

OR

Have been an officer of the Custom & Central Excise Department who retired/resigned from the post of Additional Commissioner of Custom/Excise or below and is enrolled/registered as an advocate in the High Court. Provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

**B. Senior Standing Counsels :** In order to be eligible for appointment as Senior Standing Counsel a person should

i. be enrolled/registered as an advocate with the High Court

ii. have a minimum experience of five years of handling preferably Customs and Central Excise and Service Tax matters before High Courts or Tribunals

OR

Have been an officer of the Custom and Central Excise Department who retired/resigned from the post of Commissioner of Customs / Central Excise or above or retired/resigned as Member/Vice President/President of CESTAT/Settlement Commission and is enrolled/registered as an advocate in the High Court. Provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

**C. Standing Counsels :** In a station where counsels do not have sufficient experience to be appointed as Senior Standing Counsels, the senior most among the panel of Junior Standing Counsels of the Department at that station may be designated by the Chief Commissioner of Custom/Central Excise as the Standing Counsel while other Counsels should be categorized as Junior Standing Counsels.

The Standing Counsel so designated shall perform the function of arguing cases before the Hon'ble High Court/CESTAT/other forums in the absence of a Senior Standing Counsel.

2. Appointment of Counsels .

2.1 For the purpose of appointment, the Chief Commissioner of Custom/Central Excise will call for applications in Proforma -A & A-I ( as applicable), either by advertisement in local newspapers, or from the Bar Council of High Court or otherwise. Terms and conditions of appointment should be in accordance with Annexure I & II as enclosed.

2.2 Particulars of the applicants' expertise in handling indirect tax matters by the applicant will be examined by the Chief Commissioner of Custom/Central Excise

matters and an evaluation report along with recommendation of the Chief Commissioner concerned will be sent to the Board in Proforma -B

2.3. The First appointment of each Counsel shall normally be for a period of three years.

### **3. Performance Review :**

The following procedure shall be adopted for reviewing performance of the Counsels appointed by the department:

a. The Commissioner of Customs /Central Excise having jurisdiction over a case shall submit a half yearly report to the Chief Commissioner in Proforma-C in respect of the cases represented by the Counsels.

b. On the basis of the reports received from the Commissioners, the Chief Commissioners will review the performance of the appointed Counsels every year before 30 th June of each year and send an annual report to the Board in Proforma-D .

### **4. Renewal of appointment :**

4.1 Proposals for renewal of terms of the Counsels should be submitted to the Board at least 3 months before the expiry of the existing term.

4.2 The renewal of a term of a Counsel can be made for a period of three years if his performance is found to be satisfactory. Before making recommendation for renewal of appointment of the Counsel, the Chief Commissioner should necessarily make an evaluation of the performance of the Counsel during the preceding term and forward it to the Board alongwith the proposal for renewal in Proforma -E.

### **5. Allocation of cases to Counsel:**

The Chief Commissioner of Customs/Central Excise will be overall in charge of entire litigation work on behalf of the Commissionerates falling within his jurisdiction. In respect of cases taken up by the DGDRI/DGCEI, the DG concerned will be the incharge. Allocation of cases to the Counsel may be made by the Chief

Commissioner/Director General or by the Commissioner/Director authorized by them.

#### **6. Termination of appointment/resignation:**

The appointment/empanelment of the Counsel would be terminable on one month's notice in writing by either side without assigning any reason.

#### **7. Duties of the Counsel**

The Counsel shall:

(i) appear in the High Court in the cases assigned to him and also appear, if so required on behalf of the Department, in other High Courts, Tribunals, BIFR , AAIFR/ DRT / other Tribunals/ Settlement Commission, Commissioner (Appeals) and other courts and statutory bodies;

(ii) give legal advice to the Department on such civil, criminal and revenue matters pertaining to indirect taxes and such other matters arising in the course of administration of the Department as are referred to him by the officers of the Department including:

(a) examination and settling of drafts of legal nature;

(b) drafting of applications, petitions etc. to be filed in courts of law;

(c) prompt removal/curing of defects in appeals/petitions filed, as may be

pointed out by the registry.

(iii) when any case attended to by him is decided against the Department, give his opinion regarding the advisability of filing an appeal from such a decision not later than 5 working days of the order( kuchha copy).

(iv) apply for the copy of the judgement of the Court in a case attended by him on the same day or the next day and provide the same within 10 days of the receipt of the order (excluding the time taken by the Court in preparation of the copy);

(v) if required, render all assistance to the Law Officers, Advocate General of the State Government, Special or Senior Counsel, who may be engaged in a particular case before the Supreme Court, High Courts, Tribunal, etc;

(vi) keep the department informed of the important developments in the case from time to time particularly with regard to drafting, filing of papers, dates of hearing of the case, order of the Court on the date of its pronouncement , supplying copies of judgement etc;

(vii) furnish to the Department monthly statement about the cases represented by him before the High Court or any other authority.

(viii) perform such other duties of legal nature, which may be assigned to him by the Department.

## **8. Right to private practice**

The Counsel will have the right of private practice, which should not however, interfere with the efficient discharge of work of the Department but he shall not advise, hold briefs or appear against the Department before any authority, tribunal or court in matters under the statutes relating to indirect taxes.

If the counsel happens to be a partner of the firm of lawyers or solicitors, it will be incumbent on the firm, not to take up any case against the Department in the same High Court, before any authority, tribunal or any case arising in other courts out of those cases e.g. appeals and revision in the High Court or the Supreme Court.

## **ANNEXURE - II**

### **1. Schedule of Fees and allowances**

The fees and allowances for Senior Standing Counsels are given hereunder: The Standing Counsels and Junior Standing Counsels shall be entitled to only 1/3 rd of the amount specified against each item of work (except item no. 7). The Junior Standing Counsel shall not be entitled to retainership payable to Sr. Standing Counsel and Standing Counsel mentioned at S.No.7 below.

1. For appearance in the High Court Appeals under section 130/130A of the Customs Act 1962/Section 35G/35H of Central Excise Act, 1944 /Finance Act 1994/ Civil or Criminal Writ Petition under Articles 226 and 227 of the Constitution/ orders made in such Petition, including appearance at admission Stage/ for cases before other Authorities	<b>Rs.4500/-</b>
However, for each substantial and effective hearing, following the first hearing ,an additional fees of Rs.2000/- per substantial and effective hearing may be paid as refresher fees.	
2. Certificate of fitness	Rs.1500/- (for each application)
3. For Civil Miscellaneous Application	Rs. 1500/- per case
4. For Civil or Criminal revision Petition	Rs. 2100/- per case
5. For drafting pleadings, written statements in suits,counteraffidavits/returns/answers pleading to the writ petition, grounds of appeal, etc. application for leave to appeal to Supreme Court ;	Rs. 1500/- per case
If substantially identical affidavits, written statements etc., are drafted in connected cases, only one drafting fee will be payable in the main case and no separate drafting fee will be payable in connected cases.	
6. Written opinion Other than what is referred in Para 7(iii) of Annexure I	Rs. 900/- per case

## **7. Retainership**

The senior Standing Counsel and Standing Counsel will be entitled to a Retainership of Rs. 6,000/- per month (which includes charges for staff, office rent, postage and all other establishment charges).

## **8. Clerkage**

Clerkage at the rate of 10% of the hearing fee subject to a maximum of Rs.3,600/- in a case or batch of cases before the High Court.

## **9. Out of pocket expenses**

The amount required for court fees at the time of filing a case and other miscellaneous expenses should be paid to the Counsel in advance by the Commissioner concerned. An account of the expenses incurred should be rendered to the Commissioner while presenting the final bill.

## **10. Perquisite**

The reimbursement of telephone expenditure, subject to a maximum of Rs. 1,000/- per month, shall be made by the Commissioner for calls that have been made in connection with Departmental litigation matters only.

## **11. For appearance before any other Courts, CESTAT, BIFR /AAIFR/ DRT /other Tribunals and other Statutory bodies and authorities .**

(a) at headquarters: same as payable for appearance before the High Court.

(b) out of headquarters: when the Counsel is required to go out of headquarters in connection with any litigation matter e.g. for conference with a Senior Counsel/ Special Counsel or with the Law Officer or for appearance in any Courts/Tribunal/other Statutory Bodies etc. outside the headquarters, he will be entitled to a daily fee of Rs.3,600/- per day for the days of his absence from the Hqrs. including the days of departure from, intervening holidays and arrival back at the headquarters. However, no fee will be paid for the day of departure if he leaves



headquarters after court hours and for the date of arrival if he arrives at the headquarters before the court hours..

(c) travel/hotel expenses : in addition to the daily fee, the Counsel will be entitled to travel expenses for travel by air (economy class) or first class AC by train. Road mileage for the journey from his headquarters to the airport/railway station and vice versa and from the airport/railway station to the place of his stay out of headquarters and vice-versa will be paid at the rates admissible to Class I officers of the Central Government (having basic +NPA +SI in the pay range Rs. 8000/- to Rs. 16399/-). He will also be paid a lump-sum amount of Rs. 600/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to actual expenses for stay in hotel, subject to maximum for Rs.1,200/- per day.

#### **12.1 General**

The rates specified above are primarily applicable to Central Excise/Customs/Service Tax cases but will apply mutatis mutandis to cases relating to other matters assigned by the Department. In all cases effective appearance is necessary for the Counsel to claim fee.

12.2. No fee will be payable in cases where no legal work is required to be done. For example, cases in, which the interest of the Department is to be watched pending instructions, the cases involving transmission of records to the Supreme Court, inspection of the Court record for ascertaining the position of the case or other information needed.

12.3 If the Counsel appears at the instance of the Union of India or for parties other than the Union of India whose scales of fee are not inconsistent with that of the Union of India, he will be entitled to only one set of fees.

12.4 Appeals, revision or petitions arising from one common judgement or order will be considered together as one case if they are heard together.

#### **12.5. Uncontested matters .**

In uncontested cases, the fee shall be 1/3 rd of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining 2/3 rd of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing arguments on both sides. The case shall be deemed to be uncontested if the court decides that the case is a covered one. For example if the court follows its own judgement or judgement of the Supreme Court, the case is considered to be a covered one. In case of any dispute, the Chief Commissioner/Director General/Commissioner/Director shall decide whether the case is uncontested or not.

#### **12.6 No fees for adjournment**

No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the case has been adjourned at his request due to the reasons personal to him.

#### **12.7 Late submission of certified copies of the judgement:**

30% of the fees payable to the Counsel shall be deducted if the Certified copy of the judgement is not handed over to the Commissioner/Director of the Department within ten days (excluding the time taken by the Court) from the date of judgement.

12.8 Where there are two or more cases ( but not more than 10 cases) involving substantially identical questions of law or facts, one such case will be treated as the main case and the others as connected cases. The fees in such cases will be regulated as provided in succeeding paras, irrespective of the fact whether or not such cases are heard together.

12.8.1 When the Counsel files separate and materially different affidavits, applications or grounds of appeal etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fees in the main case and Rs.200/- for each of the connected cases.

12.8.2 When the main case has been heard as in para 12.8.1, but in the connected cases either affidavit or grounds of appeal or petition similar to the one in the main

case has been drafted, the Counsel shall be paid the full fees in the main case and Rs 150/- only in each of the connected cases.

12.8.3 When substantially different affidavits are drafted in connected but uncontested cases, the Counsel shall get 1/3 rd fees in the main case and Rs. 300/- in each of the connected cases.

12.8.4 When the Counsel has drafted the affidavit, petition or ground of appeal in the main uncontested case and has not drafted them in the connected but uncontested cases or the drafts in the connected but uncontested cases are substantially similar to the one in the main case, the Counsel shall get 1/3 rd fees in the main case and Rs.150/- in each of the connected cases.

12.9 The fees to the Counsel will be paid on presentation of a stamped receipt, and on submission of copy of the document drafted, if it is a drafting fee and submission of minutes or gist of proceedings, or a copy of order/judgement where it is necessary in case the claim is for appearance fee. The Counsel shall submit his bills within three months from the date on which the fees have accrued.

12.10 The fees will be payable in two stages, 1/3 rd fees after substantial work has been carried out and the remaining 2/3 rd fees after the case has been decided. If the high court decides that no question of law is involved only 1/3 rd of the fees shall be payable to the Counsel.

12.11 Where during the pendency of a proceeding, there is a change of Counsel, a fee commensurate to the work carried out by the outgoing Counsel, not exceeding 1/3 rd of the total fee admissible for the case, may be paid to him. In such an event, only the balance of fee payable in the case will be paid to the new Counsel after completion of the case.

12.12 When the Counsel does not argue the case himself but only assists the Law Officer or any other special Counsel, he will be entitled to the same fee as is payable to him as if the case has been argued by him,

12.13 No fee will be admissible for preparation of cases but the Government may consider payment of separate fee for preparation in special cases involving arduous work.

12.14 When cases argued before a single judge are referred to a division bench or to a full bench, separate fee at the prescribed rates will be paid for appearance before each bench.

13. The various terms used in these guidelines will have the following meaning:

#### **13.1. Substantial and Effective hearing**

A Substantial and effective hearing is one in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute a substantial and effective hearing.

#### **13.2 Uncontested case**

Cases shall be deemed to be uncontested if these are withdrawn by the plaintiff/appellant or are dismissed in limine or are otherwise decided by the Court ex-parte. Covered cases shall also be deemed to be uncontested cases.

#### **13.3 Covered cases**

Where an identical issue stands decided by the same High Court or by the Supreme Court and the judgement in the relevant case is squarely based on such earlier decision of the same High Court or by the Supreme Court, the case shall be deemed to be a covered case.

#### **13.4 Substantial work**

Hearing of applications u/s 130/130A of the Customs Act/Sec 35 G/Sec 35 H of the Central Excise Act and the Finance Act,1994 shall be treated as substantial work. Where a case has been admitted by the court after hearing of preliminary objections or filing of affidavits/counter affidavits etc. by the counsel, substantial work will be deemed to have been carried out.

**13.5 Monthly fixed cost**

Charges such as retainership fees, telephone charges and such other fixed charges, if any, payable to a Counsel shall be borne by one Commissioner only, so nominated in this regard by the Central Board of Excise and Customs .

**Proforma - A****Particulars to be furnished by an advocate/other eligible person applying for appointment as Jr./Sr/Standing Counsel.**

1. Name of the person
2. PAN - Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence
6. Permanent address
7. Educational Qualification
8. Category of counsel for which applied (Jr. Standing Counsel/ Sr. Standing Counsel)
9. Date of enrollment in High Court as counsel.
10. Date of empanelment as member of Bar Council of High Court.
11. If partner in a firm, name/names of the firm and other partners.
12. Number of cases relating to indirect taxes dealt with during last 3 years as an Advocate.
13. Number of cases published in Journals/Newspapers, etc.
14. Income from professional practice ( copy of the latest IT return to be attached)

**Verification**

I , D/o/S/o , do hereby declare that what ever has been stated in the above application is true to the best of my knowledge and belief.

Signature.

Dated :

Place :

Applicant to submit documentary proof with respect to aforesaid items/Information.

**Proforma A-I****Proforma for application by officers who have retired from the Custom and Central Excise Department or retired/resigned as Member /Vice President/ President CESTAT/ Chairman /Member of Settlement Commission**

1. Name of the person
2. PAN - Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence
6. Permanent address
- 7\*. Educational Qualification
8. Date of joining Customs and Central Excise Department
9. Designation and office address of the last post held
10. Date of retirement/resignation from the service
- 11\*.Date of enrolment in High Court as Counsel
12. Date of empanelment as member of Bar Council of High Court.
13. If a partner in a firm, name/names of the firm and other partners.
14. Category of counsel for which applied (Jr. Standing Counsel/Sr. Standing Counsel).

### **Verification**

I D/o/S/o do

hereby declare that what ever has been stated in the above application is true to the best of my knowledge and belief. I further declare that I have not been removed from the service due to any disciplinary proceeding and no disciplinary proceedings under service rules or Pension Rules are pending against me as on date.

Signature

Dated:

Place :

\* Applicant to submit documentary proof with respect to aforesaid items/information

### **Proforma- B**

#### **Particulars/evaluation report of a person applying for appointment as Jr./Sr./Standing Counsel .**

1. Name :
2. Date of enrollment in High Court as counsel :
3. Date of empanelment as member of Bar Council of High Court. :
4. Number of cases relating to Indirect Taxes dealt with during last 3 years as an Advocate. :
5. Number of cases published in Journals/ Newspapers etc.
6. Income from professional practice
7. Chief Commissioner of Custom/ Excise recommendations based on the cases dealt by the applicant with regard to flair relating to Indirect Tax knowledge emanating from the presentation by the Counsel and other factors.

(Chief Commissioner of Customs / Central Excise)

**Proforma - C**

**Half yearly Proforma report to be sent case wise by jurisdictional CCE/CC /ADG to the jurisdictional Chief Commissioner of Customs/Central Excise / Director General in respect of cases represented by a Standing Counsel**

**Report for the Period from ----- to----- 200 .**

1	Name of the Case	
2.	Name of Sr. Standing Counsel representing  The case	
3.	Name of Jr. Standing Counsel representing  The case	
4.	Court/Tribunal before which proceedings are pending	
5.	Issues involved	
6.	Revenue involved (Rs.in Lakhs)	
7.	(a) Whether proceedings are pending/case has been decided, if yes the out come, in brief  (b) Number of adjournments taken	
8.	Comments of Commissioner of Customs/ Excise (if any), about quality of Drafting, interest taken by the Counsel(s) (at Column 2 & 3)/time devoted in interaction with the departmental officers, overall representation of the case	

**(Name and Seal of the Commissioner/ADG indicating the jurisdiction)**



**Proforma - D****Annual performance report of the appointed Counsels**

1.	Name of the Chief Commissionerate	
2.	Name of the Counsel	
3.	Category	
4.	Date of Birth	
5.	Date of Appointment & CBEC's ref.no.	
6.	Date of Expiry of Tenure	
7.	Ref. No. of CBEC's Sanction letter vide which last renewal was granted	
8.	Number of appeals handled during the period under report	
9.	Number of appeals out of 8 above decided by the High Court  a. in favour of the department  b. against the department	
10.	Number of Writ Petitions handled during the period under report	
11.	Number of Writ Petitions out of 10 above decided by the High Court  a. in favour of the department  b. against the department	
12	Number of cases/appeals handled before the CESTAT/other courts	

13.	Number of cases out of those in Col.12 above, decided  a. in favour of the department  b. against the department	
14	General Assessment of overall performance of the Counsel	

( Chief Commissioner of Customs / Central Excise )

**Proforma - E.**

**Evaluation report on the performance of the Standing Counsel for the period --  
--- to -----for the purpose of renewal of appointment**

**Part - I**

1.	Name of the Chief Commissionerate	
2.	Name of the Counsel	
3.	Category	
4.	Date of Birth	
5.	Date of 1 st Appointment	
6.	Date of Expiry of Tenure	
7.	Ref. No. of CBEC's Sanction letter vide which appointment/ last renewal was granted.	

**Part-II**

8.	Number of references handled during the period under report	
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9.	Number of references decided by the High Court  a. in favour of the department  b. against the department	
10.	Number of Writ Petitions handled during the period under report	
11.	Number of Writ Petitions decided by the High Court  a. in favour of the department  b. against the department	
12.	Number of cases/appeals handled before the CESTAT/other courts.	
13.	Number of cases out of those in Col.12 above, decided  a. in favour of the department  b. against the department	

### Part -III

**(To be filled by the Chief Commissioner of Customs/ Central Excise/Director General)**

14.	Are you satisfied with the performance of the Counsel	
15/	Does he/she take keen interest in his work and is generally alert and responsive in Department's interest in various litigation entrusted to him/her. Specific comments should be given about his/her promptness in  • Informing the department from time to time regarding hearing of	

	cases, supply of copies of judgement etc.  • Taking steps for vacation of stay	
16.	Would you recommend his/her continuance	
17.	Any other remarks regarding performance of the counsel.	

### **Chief Commissioner of Custom/Central Excise/Directors General**

(F.No.278A/43/2007-Legal Dated : December 5, 2007)

**II.08.6.** Boards Guidelines for submitting proposals to file SLP in Supreme Court against the High Court's order in all Anti-Smuggling related matters is reproduced below:

On scrutiny of the proposal submitted by the Commissionerates from time to time for filing SLP in the Supreme Court against the High Court's order in respect of anti smuggling cases booked under Customs Act, 1962 and NDPS Act, 1985 by the officers of the Customs Department or DRI etc., it is seen that often the documents relevant to filing SLP in the Supreme Court are not furnished by the field formations under the CBEC. Moreover the proposals are sometimes sent by the field formations much after the limitation period on the expiry of the last date of filing SLP and without the reasons of delay which have to be submitted to Supreme Court. Due to delay in receipt of proposal from the field formations to file SLP, there is no time to pursue the case with Ministry of Law as well as with Supreme Court, to file SLP well in time. To avoid this delay in submitting the proposal you are requested to furnish the following documents alongwith proposal for filing the SLP in the Supreme Court:-

- (i) Proposal should enclose brief facts of the case giving details of seizure, adjudication, court cases etc.

- (ii) Certified copy of the High Court's order. In case certified copy of the order is not available, a dasti copy alongwith date on which application for certified copy was made.
- (iii) Copy of the Lower Court's order.
- (iv) Opinion of the Deptt. Counsel or senior Govt. Advocate.
- (v) Copy of the opinion taken, from the concerned Law Sectt Branch, Ministry of Law. In case opinion of regional Ministry of Law branch not taken, reasons therefor.
- (vi) Proposal should be duly recommended by concerned Commissioner and must be send to the Ministry within 3 weeks of date of receipt of order. In case of delay, day wise explanation for delay must be given separately.

These guidelines may be followed strictly.

[ M.F.,D.R., letter F.NO. 591/41/96 – CUS(AS) Dt. 05-09-97 ]

**II.08.7. Precautions to be taken by the field formations while forwarding Civil Appeals/ SLPs etc. to be filed in Supreme Court to avoid Departmental Cases falling in defect category; resulting into delays and dismissal of Departmental Appeals – Regarding.**

**II.08.7.1.** Limitation period as provided under the relevant statute is required to be followed for filing Civil Appeals and Special Leave Petitions etc. in the Supreme Court. It has, however, been experienced that in some cases, where department happens to be the petitioner, field formations, while sending the proposals to the concerned cell of the Board Office do not forward the complete documents in support of the departmental appeal and also do not follow the procedure as set out by the Hon'ble Supreme Court with regard to proper filing of appeals.

**II.08.7.2.** An appeal, which is filed in the Filing Section of the Supreme Court does not automatically become ripe to be submitted to the Hon'ble Court for disposal. The appeal so filed is first examined by the concerned Section of the Supreme Court about its completeness from all angles. If any deficiency is noticed by the Registry of the Supreme Court, the appeal is converted into defective one. Unless the defect(s) as pointed out by the registry are cured, appeal is not submitted to the Court for disposal. In that scenario, there is a chance that defects may remain uncured if, Panel Advocate fails to check the defect and convey it to the concerned cell/field formation sending the proposal. As the process may take a considerable time in curing the defect, the appeal on which, though cognizance may be taken by the Court, may be dismissed on account of delay.

**II.08.7.3.** In this regard, it is correct that there may be certain defects, which relate to procedures, which can be cured by the Panel Advocate filing the appeal. However, at the same time as the experience of this office shows that a number of

defects pertain to the field formation sending the appeal proposal. Some common defects have been listed in the Annexure 'A' for the guidance of the field formations so that while forwarding the proposals, such type of deficiency may not occur in departmental appeal and timely cognizance is taken by the Supreme Court without dismissal of the appeal on delay/default angle. The list as annexed is illustrative only.

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#### ANNEXURE 'A'

1. Whether details of the impugned order and the other orders passed by Court, Tribunal, Commissioner (Appeals) and other Adjudicating Authorities, as the case may be, have been correctly and uniformly mentioned in all the documents.
2. Whether the names and addresses of the parties and their representation are complete and set out properly.
3. Whether the cause title of the appeal / petition corresponds to that of the impugned judgment and names of party therein. In case matter falls under newly created Commissionerate / Directorate, it is to be ensured that correct name of the appellant is shown in the documents. However, for change in the cause title, request from the commissioner is required to be sent to the Board office and to this Directorate.
4. Whether the prescribed court fee has been paid after due valuation of the appeal(s).
5. Whether proper Vakalatnama has been executed in favour of Government Advocate in respect of parties appeal.
6. Whether the annexure referred to in the petition / list of dates are true copies of the documents before the court of law.
7. Whether any document, which is in the language other than English, has been properly translated.
8. In case petition / appeal is time barred, whether statement of reasons of delay, if any has been furnished.

9. In case a party in the Court of law has died, whether application for bringing LRs on record indication the date of death, relationship, age and addresses has been furnished.
10. Whether all papers, on which petition / appeals is based have been properly sent and the same are legible.
11. If respondent is a company, whose name has changed, whether certificate of incorporation issued by the Registrar office has been furnished.

(Copy of Board's letter F.No. 1080/2/DLA/FM-Meeting/2005/2388 dated 08.07.2005 )

### ***II.08.8. PROCEDURE FOR COMPLAINT CASES***

Chapter XIX of the Code of Criminal Procedure 1973, regulates the procedure for trial of warrant cases by Magistrates. There are two types of cases, namely (i) cases instituted on a police report (ii) cases instituted other than on a police report. All offences (except those under Section 132, 133, 134 of the Customs Act) fall under category (ii) above, as they are warrant cases and the punishment provided thereunder over two years. Offences under Section 132, 133 and 134 are summons cases as the punishment provided is less than two years for which the procedure is laid down in Chapter XX (Sections 251 to 259 of the Code of Criminal Procedure). Generally, the Customs cases are tried in the Courts of Chief Judicial Magistrates or Chief/Additional Chief Metropolitan Magistrates who are First Class Magistrates and are competent to award imprisonment upto 7 years.

Chapter XXI of the Code of Criminal Procedure deals with summary trials but the provisions contained therein with regard to the punishment would not apply to the offences under the Customs Act tried summarily. (Section 138 of Customs Act, 1962).

### ***II.08.09. Various stages of Prosecution case***

A complaint case has generally four stages as under :

- (i) After the accused person appears in the court and is released on bail, the prosecution starts with the recording of their evidence mainly of eye-witnesses. Besides, the complainant is required to prove the factum of the complaint having filed by him, the sanction accorded by the Commissioner etc. In case, he has also taken part in the seizure or investigation of the case, the factum or recovery and

recording of the statements etc. would also be got proved through him. The accused is given an opportunity to cross examine the witnesses and if necessary, the prosecution can re-examine them. The prosecution thereafter closes its case for consideration of the charge against the accused. After arguments for charge on both sides, the court decides whether there is a prima facie case made out for framing of a charge or not against the accused. A charge is always framed by the court in writing and is explained to the accused who is asked if he pleads guilty to the charge. If he pleads guilty, Court would pronounce the judgement and convict the accused then and thereby imposing the punishment, arranged by law. If he does not plead guilty to the charge and claims to be tried he is asked, if he would like to cross-examine any of the witnesses already examined before charge, who would then accordingly be summoned by the Court, if no charge is made out, the court would straightway discharge the accused.

(ii) **Trial stage** – After framing of the charge, the trial of the case begins. After completing the cross-examination of the witnesses already examined before the charge and summoned at the instance of the accused, the remaining prosecution evidence is recorded, of course by giving an opportunity to the accused to cross-examine and the prosecution to re-examine the remaining witnesses. Thereafter, the prosecution closes its case.

(iii) **Defence stage** – The accused is first examined by the Court to personally explain the circumstances appearing in evidence against him and then asked to lead his defence. He is not examined on oath. However, the accused person can also be a witness in his defence at his own request in writing, when he can be cross-examined by the prosecution also.

(iv) **Final arguments and judgement** :- After the close of the defence evidence, the court hears the final arguments advanced by both sides who are also permitted to file written arguments in support of their case. After hearing arguments, if the Court finds the accused not guilty, it shall record the order of acquittal. If it finds the accused guilty, it shall after hearing the accused on the question of sentence, pass sentence on him according to law.

(v) **Appeals** :

(a) Chapter XXIX of Code of Criminal Procedure deals with an appeal against conviction awarded by the Chief/Additional Chief Judicial Magistrate or Chief/Additional Chief Metropolitan Magistrate which would lie in the court of



sessions. Where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal except to the extent or legality of the sentence. No appeal shall also lie in petty cases, i.e. if the Magistrate passes a sentence of imprisonment for a term not exceeding 3 months or a fine not exceeding Rs. 200/- or both.

- (b) The State Government may in any case of conviction on a trial held by any Court other than a High Court, direct the public prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.
- (c) An appeal against acquittal may be filed by the State Government, which may direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than High Court.
- (d) The complainant can also file an appeal in the High Court against the acquittal after obtaining special leave to appeal from the High Court. Where the case has been investigated by Delhi Special Police Establishment or any other agency empowered to make investigation under any Central Act, the Central Government may also direct the Public Prosecutor to present an appeal in the High Court against the acquittal.
- (vi) **Revisions** :- Chapter XXX of Code of Criminal Procedure deals with Revisions. The High Court or the Sessions Court may call for and examine the record of any proceedings before any interior court situated within its or his local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any; finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court and may, when calling for such record, direct that the execution of the sentence or order be suspended and if the accused is in confinement that he be released on bail on his own bond pending the examination of the record. The powers of revision shall not be exercised in relation to inquiry, trial or other proceedings.

#### **II.08.10. Procedure for filing Appeals, etc.**

Immediately after the judgement of the trial court is pronounced, a certified copy of the judgement should be obtained and got examined from the departmental

counsel whether it is a fit case for filing an appeal, if there is an acquittal or for filing an appeal against the inadequate punishment awarded by the trial court. All such cases should be examined critically and decision taken promptly in the matter of filing the appeal or otherwise, as advised. In important and complicated cases, the advice of the Ministry of Law should invariably be taken. The decision to file the appeal or not, be taken by the Commissioner and the appeal should be filed within the limitation period.

#### **II.08.11. Limitation for filing of the Appeals against conviction / acquittals**

The Limitation Act, 1963 applies for computing the period for filing of appeals against conviction /acquittal/inadequate punishment awarded by the trial courts. While computing the said period, the time taken for obtaining the certified copy of the judgement is however, excluded:

- |       |   |          |
|-------|---|----------|
| (i)   | Limitation for filing appeal against conviction :   | 30 days  |
| (ii)  | Limitation for filing appeals against acquittal :   | 30 days  |
|       | (a) Where appeals are filed by State or Central Government  | 90 days  |
|       | (b) Where special leave is obtained and a regular appeal is filed by the complainant from the date of obtaining the Special leave | 30 days. |
| (iii) | Appeal against the inadequate punishment  | 90 days  |

#### **II.08.12. Intimation regarding arrest/prosecution of foreign nationals – req.**

Intimation regarding the arrest, imprisonment or custody pending trial or detention in any other manner of a foreigner is required to be sent to the Joint Secretary (CPV), Ministry of External Affairs, Patiala House, New Delhi within 24 hours of such arrest, with a copy to the Ministry of Home Affairs (Foreign Division), 26, Man Singh Road, Jaisalmer House, New Delhi, for information. Such intimation is not required to be sent to the Ministry of Finance.

**II.08.13. Grant of Exit Permission to Foreigners arrested and prosecuted under various laws**

**The issue regarding grant of exit permission to foreigners arrested and prosecuted under various laws has recently been taken up by the Ministry of Home Affairs with all concerned administrative ministries.**

The modalities and procedures have been worked out and it is decided that in all cases of foreign nationals arrested and prosecuted in the trial court the following procedure may be followed so that there is no undue delay in taking a decision to hold back the foreigners in the country :-

- (a) All the enforcement agencies would immediately inform the foreigners division of MHA about the arrest of a foreigner and also the follow up action which is to be taken against him. Communication shall be addressed to Chief Documentation Officer, Room No. 10, Foreigners Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi. 110 003.
- (b) All the enforcement agencies shall within a period of 10 days of the receipt of the certified copy of the judgement/order decide the question of filing an appeal to the next higher court. The decision taken in this regard may be communicated to Ministry of Home Affairs (Foreigners Division) and to the nodal Ministry concerned.
- (c) Copy of the exit permission given by MHA shall be endorsed to the prosecuting agency/nodal agency.

**[ M.F.,D.R., Letter No. 394/125/96-CUS (AS) dt. 12/06/97 ]**

**Model Remand Application**

**IN THE COURT OF THE CHIEF METROPOLITAN MAGISTRATE,.....**

Application No.

Shri

.....

Applicant

Customs Officer,

**APPLICATION UNDER SEC. 104 OF THE CUSTOMS ACT, 1962**

MAY IT PLEASE YOUR WROSHIP

I, ..... the abovenamed applicant, beg to state the following on solemn affirmation :

- 1 That on ..... (Facts of the case)
  
- 2 (Gist of the Statement)

In the aforesaid circumstances, Shri ..... appears to have committed an offence, punishable under the provisions of the Customs Act, 1962. Therefore, he was arrested under Section 104, of the Customs Act, 1962, on .....and was lodged at ..... Police Station for safe custody.

Today, I beg to produce him before Your Worship and pray that he be remanded to Judicial Custody till ..... as further investigations are in progress.

It is further prayed that the passport of Shri  
..... may be ordered to be retained with the  
Customs Department, till the case against him is over.

Solemnly, affirmed at .....

Dated .....

Office Seal

(Signature of the Applicant)

**Model Application to Court for Examination Warrant**

**IN THE COURT OF THE CHIEF METROPOLITAN  
MAGISTRATE,.....**

Application                      No.                      R.A.

...../.....

Shri .....

..... Applicant

Preventive Officer of Customs

APPLICATION FOR EXAMINATION WARRANT

MAY IT PLEASE YOUR WORSHIP

I, ..... the applicant  
abovenamed, beg to state the following on solemn affirmation.

That on  
.....Shri..... was arrested  
by this Department in connection with smuggling. He was produced before your  
Worship and was not granted bail.

As he is required for interrogation in the Custom House, it is prayed that  
Examination Warrant may be issued against accused  
Shri.....on .....

For this act of Kindness I shall ever pray.

Solemnly affirmed the aforesaid at  
this ..... day of .....

OFFICE SEAL

(Signature of Applicant officer)

## CHAPTER – NINE

### NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES

#### II.9.1. INTRODUCTION

**II.9.1.1.** Since the dawn of history, mankind has been pre-occupied with the discovery, acquisition and use of substances – first natural and later man-made – believed to be capable of having a positive influence on mood, behaviour and health. The most ancient of these substances are opium from the poppy plant; cocaine from the leaf of the coca bush; and cannabis from the hemp plant.

#### II.9.2. DRUG TRAFFICKING

**II.9.2.1.** DRUG TRAFFICKING is the most heinous and yet the most lucrative crime today which has engulfed almost every part of the world. Over the last two decades, the problem has assumed menacing proportions and intense concern has been demonstrated by the world community. Every nation has taken steps to fight the drug menace by taking legal, administrative and preventive measures. Problem is also being tackled by social means by building awareness, counseling, treatment, rehabilitation of drug addicts, etc. India, geographically is flanked by Golden Crescent and Golden Triangle - the two main sources of opiates in the world - and Nepal, which is the major source of cannabis. Thus, over the years, India emerged as a major transit country for the movement of narcotic drugs from these areas to other parts of the world. The problem of drug trafficking assumed alarming proportions somewhere in early eighties. Consequently, steps were taken by the Indian Government to meet this challenge and as a first measure, the **Narcotic Drugs & Psychotropic Substances Act, 1985**, also known in short as **NDPS Act**, was enacted by repealing the erstwhile laws.

**II.9.2.2.** Under the NDPS Act, no person can cultivate coca plants, opium poppy and cannabis plants or extract opium, charas and ganja from such plants. The production of opium derivatives such as morphine, heroin and other intoxicating psychotropic substances, except for medical or scientific purposes, is a crime. Possession of these drugs and trafficking for commercial gains in such drugs is also a crime. Any person committing such offences can be punished with imprisonment ranging from **ten to thirty years** and also **fined from rupees one lakh to three**

**lakhs.** To make the law more deterrent and to further strengthen the hands of enforcement agencies, the **Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988** was brought in, under which the drug traffickers can be detained for a period of one to two years so as to prevent them from indulging in such illegal activities.

**II.9.2.3.** To make a real dent in these activities and also to give a final blow, further amendment was made in the Act to provide for the forfeiture of the properties from earnings related to drug crimes which became operative in 1989. This amendment also brought in the provisions to award death sentences in certain categories of drug offence. A new Chapter V-A was incorporated in the Act, which provides for tracing, identifying, seizing/freezing and forfeiture of the movable and immovable properties acquired from ill gotten funds by the drug traffickers. Offenders are of following three types who:

(a) have been convicted for an offence under NDPS Act, punishable with imprisonment for a minimum term of 10 years or more (b) convicted abroad for similar offences. (c) or against whom an order of detention under PITNDPS Act, 1988 has been made.(Section 68A to 68Z)

The Act also provides for forfeiture of illegally acquired properties of the drug traffickers held in the names of their **relatives, associates or even friends and servants.** [Section 68(a to f)].

**II.9.2.4.** The forfeiture of the properties acquired out of the earnings from drug related crimes can be ordered by a **Competent Authority**, who is appointed by the government under **Section 68-D** of the NDPS Act for this purpose. Powers have been given to the Officers of the Departments of Police, Customs, Central Excise, Border Security Force, Revenue Intelligence, Narcotics Control Bureau etc. to investigate and inquire into the drug offences and enforce the provisions of NDPS Act under **Section 53** thereof. These Officers have also been empowered under **Section 68-E** to take all the steps necessary for tracing and identifying any property illegally acquired by drug trafficking. If there is reasonable belief that any such property is illegally acquired, then the same can be seized or frozen by the enquiry officer under **Section-68-F** of the Act. However, such an order of seizing or freezing of the illegally acquired property shall be communicated to the Competent Authority **within 48 hours** of its being made. Further, an order will have effect only when it is



confirmed by the Competent Authority by an order **within 30 days** of its being made. Thereupon, the Competent Authority will initiate the forfeiture proceeding under **Section 68-H & 68 I** of the said Act.

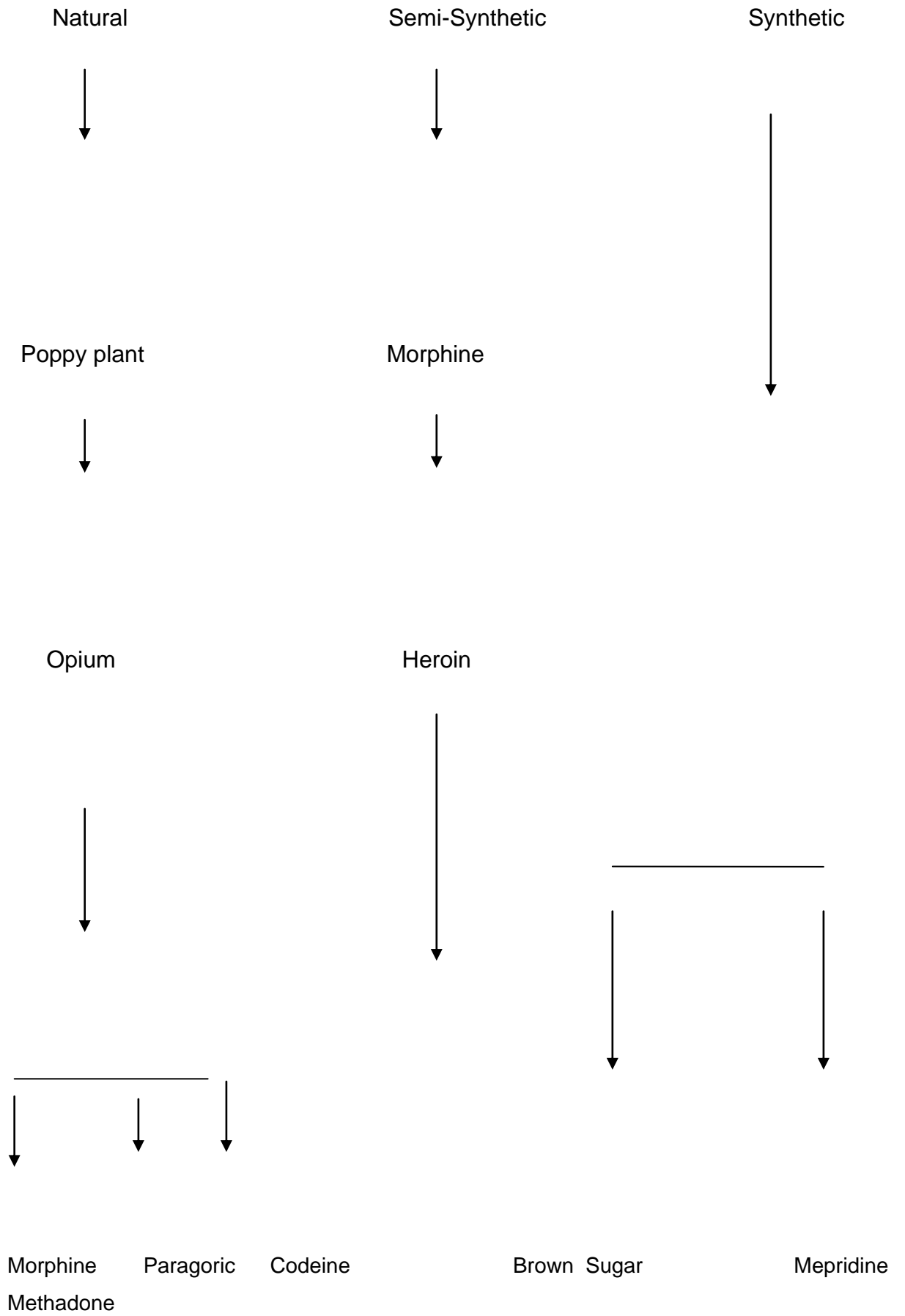
**II.9.2.5.** For the successful culmination of the forfeiture provisions, it is imperative that the Central and State enforcement agencies implementing the provisions of NDPS Act, while dealing with such cases, take simultaneous action to identify and locate the illegally acquired properties by the traffickers as well as their relatives and associates, right from the time intelligence is collected in respect of drug trafficking and gather all relevant details relating thereto at that stage itself. It is also essential that in the course of investigation, all possible evidence and material is collected to establish a prima facie nexus between the properties in the hands of relatives and associates with the illegal earnings of the drug traffickers. On completion of the investigation, a report should immediately be sent to the **Competent Authority, SAFEMA (FOP) Act & NDPS ACT.**

### **II.9.3. ( A ) NARCOTIC DRUGS**

**II.9.3.1.** Drugs are classified under three broad categories. (1) narcotics of natural origin, (2) semi-synthetic narcotics and (3) synthetic narcotics.

#### **NARCOTIC ANALGESICS**





(Impure Heroin)

Pethidine

## **II.9.4. ( B ) PSYCHOTROPIC DRUGS & SUBSTANCES**

**II.9.4.1.** The expression “psychotropic” is composed of two separate words ‘psychosis’ and ‘tropic.’ Psychosis means a mental or personality disorder sufficiently severe to disrupt the individual’s personal and social life and normally demanding special treatment and hospitalization. Tropic means pertaining to or characteristics of or, occurring in the tropics, that is; the regions falling between the corresponding parallels of latitude on the terrestrial globe, one: tropic of cancer about  $23\frac{1}{2}^{\circ}$  N and the other, tropic of capricorn, about  $23\frac{1}{2}^{\circ}$  S of the equator being the boundary of torrid zone. These drugs usually occur in nature in the torrid zone.

**II.9.4.2.** Psychotropic substances mean drugs that have a short term effects on the nervous system, particularly that change the levels of consciousness and/or variations of mood without general stimulation or depression of the Central Nervous System (CNS).

**II.9.4.3.** Schedule I of the Narcotic Drugs and Psychotropic Substances Rules, 1985 contains a list of drugs whose import into and export from India is prohibited (vide Rule 53) and their manufacture, possession, transport, import inter-State and export inter-State, sale, purchase, consumption or use are prohibited vide Rule 64 of the N.D.P.S. Rules (Central).

**II.9.4.4.** Schedule II of the Rules contains a list of drugs which shall not be imported into India without an Import Certificate (in respect of the consignment) issued by the Issuing Authority, in Form No.4 appended to tNDPS rules. Their transit through India is also not allowed unless such consignment is accompanied by a valid Export Authorisation in this behalf issued by the Government of the exporting country (Vide Rule 57). Similarly they cannot be exported out of India without an

export authorisation in respect of the consignment issued by the Issuing Authority in Form No. 5 .

Schedule III of the N.D.P.S. Rules contains a list of drugs of psychotropic substances which may be exported out of India after the exporter files the original and duplicate copies of the declaration in Form 6 to the Narcotics Commissioner. Full details regarding the procedure is given in Rule 58(3) of the Rule.

#### **II.9.5. Cannabis Hemp**

The hemp drugs commonly used in India, are all derived from the plant cannabis sativa or cannabis indica which grows all over the country. Bhang, Sidhi, Sabji or pahariya, all are the dried leaves and small stalks; ganja is the flowering twig, charas is the resin exudate obtained from the cannabis plant (branches and leaves) and majoon is a form of sweet meat containing a quantity of Bhang.

#### **Constituents of Cannabis**

Cannabis has four main constituents. They are :

1. Cannabinol
2. Cannabidiol
3. Cannabidiolic Acid and
4. Tetra-hydro cannabinol

Out of these, tetra-hydro cannabinol is mainly responsible for the physiological properties. Tetra-hydro Cannabinol is an oily liquid from which two main isomers may be crystallised.



cannabis indica

### **II.9.5. Marijuna**

It is a drug that comes from the Indian hemp plant (*cannabis sativa*). The plant grown very wild in diverse conditions. There are both male and female plants. Marijuna is the mixture of ground leaves, stems and the seeds of the female plant. The ingredients are crushed and chopped. It can be smoked in a pipe or rolled into a cigarette. At times it is mixed with tobacco. It has a sweet odour while smoking otherwise it smells like burnt rope.

### **II.9.6. Hashish**

This also comes from the hemp plant and is prepared from the flowering tops. When the cannabis plant is ripe, a sticky yellow resin covers the flowering tops and some of the leaves close to it. The resin contains the ingredients that causes the intoxicating effect. On account of presence of resin in greater concentration in Hashish, it is stronger than marijuna. [*Hashis and Marijuana are also referred to as: "Hash", "pot", "hemp", "joint sticks", "grass", "weed", "Mary Jane", "shit", "bhang", "tea", "Acapulco gold", "charas", "ganja", and "kif".*]



*Cannabis sativa*

### **II.9.7. Ganja**

Ganja are the dried flowering tops of the female plants matted together with resin. It is smoked along with tobacco like charas which is the crude resin extracted from the flowering heads by rubbing these in hands and scraping off the resin left adherent to the palms.

### **II.9.8. Marihuana**

American hemp (*cannabis Americana*) is known as marihuana. It produces symptoms similar to the hemp plant of India. The only difference is in effect as compared to that of the Indian product. Its preparation is known as muggles and is smoked in Mexico and U.S.A.

#### **II.9.9. Cocaine**

Cocaine is derived from the leaves of *Erythroxylon coca* which is a native of South America. Cocaine is the methyl benzoyl ester of ecgonine, a base similar to topine and, therefore, saponifies readily. The official preparation of cocaine is cocaine-hydrochloride which occurs in the form of colourless to white crystal or as a quantity of white powder. Although, it is soluble in water but dissolves readily in organic solvents as well. It is insoluble in ether.

Cocaine hydrochloride is used therapeutically as a local anesthesia. It is believed to be an antifatigue agent and produces hallucinations.



Cocaine

#### **II.9.10. Ketamine**

Ketamine drug was developed in 1962. Street terms for Ketamine : jet, super acid, special “K” , green, K, cat Valium, etc. It comes in a clear liquid and a white or off-white powder form. Ketamine is a tranquilizer most commonly used on animals. The liquid form can be injected, consumed in drinks, or added to smokable materials. The powder form can be used for injection when dissolved. In certain cases, it is being injected intramuscularly. Ketamine, along with the other “club drugs” , has become popular among teens and young adults at dance clubs and “raves”. Use of the drug can cause delirium, amnesia, depression and long term memory and cognitive difficulties. Due to its dissociative effect, it is reportedly used as a date-rape drug.

### II.9.11. **Controlled Substances** :

Controlled substances may not necessarily be narcotic drugs or psychotropic substances but may altogether form a different category, for instance, those used in the manufacture of heroin. Acetic Anhydride is one such chemical which is used in the manufacture of heroin.

Acetic Anhydride is an important industrial Chemical which has been notified as an essential commodity under Section 3 of the Essential Commodity Act, 1955. In order to prevent this substance from being diversified to the illicit manufacture of heroin, it could be most appropriate to cover this substance as controlled substance under the N.D.P.S. Act.

### II.9.12. **Precursor Control in India**

**II.9.12.1.** Chemicals frequently used in the manufacture of illicit narcotic drugs and psychotropic substances are referred to as precursors. These chemicals have a large number of legitimate uses and a small fraction of the total production is sufficient to meet the requirements of the illicit drug industry.

**II.9.12.2.** The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (1988 Convention for short) identifies the following 23 precursors as the chemicals which need to be controlled.

<b>Table I</b>	<b>Table II</b>
Acetic Anhydride	Acetone
Potassium permanganate	Anthranilic acid
N -acetylanthranilic acid	Ethyl ether
Ephedrine	Hydrochloric acid
Ergometrine	Methyl ethyl ketone
Ergotamine	Phenylacetic acid
Isosafrole	Piperidine

Lysergic acid	Sulphuric acid
3,4-methylenedioxyphenyl-2-propanone	Toluene
1-phenyl-2-propanone	.
Piperonal	.
Pseudoephedrine	.
Safrole	.
Norephedrine	.

- Section 25 A of the NDPS Act, 1985 provides punishment for any contravention of the Order made under section 9 A. An offender is liable for rigorous imprisonment, which may be extended to 10 years, and fine, which may extend to one lakh rupees. The court may impose a fine exceeding one lakh rupees after recording the reasons thereof.

### **II.9.13. ENFORCEMENT**

**II.9.13.1.** Given India's size and the federal nature of our polity, a number of agencies both at the Centre and in the States have been empowered to enforce the provisions of the NDPS Act. These agencies include the Department of Customs and Central Excise, the Directorate of Revenue Intelligence, the Central Bureau of Narcotics and the Central Bureau of Investigation at the Central level and State Police and Excise Departments at the State level.

**II.9.13.2.** Section 4(3) of the Act envisages the creation of a Central Authority to coordinate the activities of the various Central and State agencies involved in drug law enforcement, to implement India's obligations under various international conventions, and to coordinate with international organizations and authorities in foreign countries in the prevention and suppression of the illicit traffic in narcotic drugs and psychotropic substances. In terms of this provision, the Narcotics Control Bureau was set up by the Central Government in 1986 with the broad remit to coordinate drug law enforcement nationally.



**II.9.13.3.** The empowerment of a large number of agencies under the NDPS Act ensures that India's drug laws are enforced effectively on the ground. The NCB basically functions as the national coordinator international liaison and as the nodal point for the collection and for dissemination of intelligence. This system assures coordinated implementation within the parameters of a broad national strategy.

**II.9.14. INVESTIGATIVE PROCEDURES**

Chapter V of the NDPS Act (Sections 41 to 68) sets out the powers as well as the procedures for the investigation of offences under the Act. This Chapter empowers officers duly authorized by the Central Government or a State Government to issue warrants, to enter and search premises, to stop and search conveyances, to seize narcotic drugs and psychotropic substances, to take statements and to arrest persons suspected of having committed an offence, punishable under the Act.

The power to issue search and arrest warrants, is in terms of Section 41, been vested both in Magistrates as well as in specially designated (Gazetted) officers of the Central and State Governments. This is designed to ensure both timely and effective action in response to any information. In addition, both the Central and the State Governments are authorized to entrust any Officer duly empowered under the Act with the powers of an Officer-in-Charge of a Police Station for the investigation of offences under the Act. It needs to be noted, however, that while the powers to search, seize, arrest etc., are inherent in the Act, all these are subject to both the substantive and procedural safeguards mandated by the Code of Criminal Procedure, in relation, inter-alia, to the presence of independent witnesses at a search, the drawing up of search lists or panchanamas, and the constitutional obligation to produce an arrested person before a Judge within 24 hours from the time of arrest etc.

**II.9.15. OFFENCES AND PENALTIES**

**II.9.15.1.** Chapter IV, (Sections 15 to 40) sets out the penalties for offences under the Act. These offences are essentially related to violations of the various prohibitions imposed under the Act on the cultivation, production, manufacture,

distribution, sale, import and export etc. of narcotic drugs and psychotropic substances. All these offences are triable by Special Courts and the punishments prescribed range from imprisonment from 10 to 20 year for first offences in the case of seizure of drugs/ psychotropic substances in commercial quantity to 15 to 30 years for any subsequent offences together with monetary fines. In addition to persons directly involved in trafficking narcotic drugs and psychotropic substances, any person who finances trafficking or harbours a person involved in trafficking, or abets, or is a party to a criminal conspiracy, including a criminal conspiracy to commit an offence outside India, is also liable to the same scale of punishments. The Act was amended in May 1989 to mandate the death penalty for second offences relating to contraventions involving more than certain quantities of specified narcotic drugs and psychotropic substances.

**II.9.15.2.** The Act, however, makes a distinction between possession for personal consumption and trafficking, the punishment for the former being limited to between six months and one year only. The application of this provision is subject to the following two qualifications :

i) The quantity of the drug involved in the offence should be a small quantity as specified by the Central Government. Refer to Notification issued by Government of India quantifying small quantity and commercial quantity in relation to narcotic drug or psychotropic substance vide S.O. 1055 (E) dated 19.10.2001, published in the Gazette of India , Extra, Part II Sec 3 (ii) dated 19.10.2001.

ii) The onus is on the accused to establish that the drug in question was meant for personal consumption and not for sale, distribution etc

## **II.9.16.        PRECURSOR CONTROL**

**II.9.16.1.** The 1988 U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to which India is a signatory, requires Parties to impose controls on the manufacture, internal distribution and import and export of chemicals which can be used in the illicit manufacture of narcotic drugs and psychotropic substances. In order to implement India's obligations under this Convention, the

NDPS Act was amended in 1993 in order to empower the Central Government to declare any substance as a controlled substance and to regulate its manufacture, import and export etc. (Section 9-A). Violations relating to such substances were established as criminal offences punishable with imprisonment for upto 10 years (Section 25-A). In 1993, the Government of India promulgated the NDPS (Regulation of Controlled Substances) Order, to regulate the manufacture, distribution etc., of any substance declared to be a "Controlled Substance".

**II.9.16.2.** In exercise of its powers under the Act, the Central Government has so far notified Acetic Anhydride, which is used in the processing of opium into heroin, N-Acetylanthranilic acid which is used in the illicit manufacture of Methaqualone and Ephedrine and Pseudoephedrine, which are used in the illicit manufacture of amphetamine type stimulants, as controlled substances.

## **II.9.17. INDIAN SITUATION – VULNERABILITY (BORDER-WISE)**

### **II.9.17.1. Indo-Pak border:**

**II.9.17.1.1.** Ever since the emergence of the Golden Crescent as a major source of illicit opiates and cannabis resin, the entire Indo-Pak land border has become extremely vulnerable for in-smuggling of drugs from Pakistan. The State of Jammu & Kashmir, by its proximity to opiate sources in Pakistan, is as much vulnerable to trafficking in drugs as any other State bordering Pakistan. Jammu border is the nearest from the North West Frontier Province where most of the illicit opium is grown and converted into Heroin. The Kabul-Lahore highway runs fairly close to Jammu before reaching Lahore, which is opposite to Amritsar in Punjab. Though not many seizures on the Indian side in Jammu & Kashmir have been reported. Yet most of the major seizures on the Pakistani side take place in areas bordering Jammu

**II.9.17.1.2.** Due to tightening of security on the borders, there is some diversification of routes to the adjacent State of Rajasthan. The four sectors of Sriganganagar, Bikaner, Jaisalmer and Barmer are the most vulnerable sectors for trafficking of drugs into India from Pakistan. Mostly, when the drugs are meant for northern India or Delhi, routes through Sriganganagar and Bikaner are preferred by traffickers whereas if, the drugs are meant for Western India and Bombay, they are trafficked through Jaisalmer and Barmer sectors.

**II.9.17.1.3.** Large quantities of heroin and hashish is smuggled into India through camel backs in the Jaisalmer and Barmer sectors and, after crossing the border, the same is buried and kept under sand. One of the persons crossing the border gets in touch with the person responsible on the Indian side of the border either at Jaisalmer or Barmer and they proceed in the night in Vehicles to the points where the drugs are concealed and, after loading the same, bring them on to the National highway connecting Delhi-Mumbai. The drugs are concealed under trade goods in trucks and they are transported to Mumbai for onward Export. On the Pakistani side, the Lahore-Hyderabad highway and the railway line run parallel to the Indian border. There are well-connected road and rail facilities adjacent to the border on either side. This border came into prominence some years ago.

**II.9.17.1.4.** The entire land border between Gujarat and Pakistan is marshy, known as the Rann of Kutch. Though stray cases of trafficking of drugs through the Rann of Kutch have been reported in the past, yet the area is not very conducive for this activity. Small country boats called “Hodas” are used for transport of drugs from Karachi to the Kori-creek on the coast of Gujarat. Though stray cases of trafficking have been noticed in the past few years, yet the data available is rather erratic to suggest any trends.

**II.9.17.2. Indo-Nepal border:**

**II.9.17.2.1.** Nepal has a wild growth of cannabis plants in the foothills adjacent to the Indian Terai region. Cultivation of cannabis is also undertaken by the by the poor villagers to supplement their earnings. The Indo-Nepal border touches the Indian States of U.P., Bihar, West Bengal and Sikkim. Till a few years ago, some North Indian States allowed cultivation of cannabis for production of ‘bhang’. However, presently only Orissa and Madhya Pradesh are legally cultivating cannabis for medical and research purposes. The cultivation is done on very small patches of land. Consumption of cannabis herbal (Ganja) has been popular in many North Indian States, including U.P. and Bihar since times immemorial. The progressive reduction in the cultivation of cannabis in India came as a boon to the traffickers operating on both sides of the Indo-Nepal border. Ganja is smuggled into India by trucks and on head-loads from Nepal. Since ganja does not form any significant part of the drugs exported out of India the entire quantity of ganja that is smuggled into

India from Nepal is meant for captive consumption. Small quantities of heroin of Thai/Myanmar origin is also trafficked from Nepal into India.

**II.9.17.2.2.** Nearly 80% of the land border with Nepal is in the State of U.P. However, trafficking of ganja is mostly done through the State of Bihar. The U.P. border accounts for only small quantities of ganja and charas. Bihar border is very adversely effected where besides trafficking of ganja on head-loads, both rail and road routes are used very extensively for transportation of the drug. There are well-stacked storage places adjacent to the border on the Nepalese side. Since there are no passport and visa restrictions on movement of persons between India and Nepal, it becomes, all the more convenient for traffickers to move drugs across the border without any hindrance. The check-posts manned by police and the Customs are far and off and cannot patrol the entire length of the border. Cris-cross of different routes is adopted to transport drugs from the border to the consuming centres. The Nepalese border with West Bengal is confined to the Darjeeling sector.

**II.9.17.3. Indo-Myanmar border:**

**II.9.17.3.1.** India's north-east comprises of many small States which include the border States of Arunachal Pradesh, Nagaland, Manipur and Mizoram. There are frequent reports of smuggling of Myanmar refined heroin from this border into India, especially through the Indian State of Manipur from the border town of Moreh. The earlier reports indicated that heroin of Golden Triangle origin was brought into India from Tamu in Myanmar to Imphal via Moreh. However, recent reports indicate that laboratories have been set up on the Myanmar side near the Indian border for manufacture of heroin with the aid of acetic anhydride, which is smuggled out, from India. Reports also indicate that large quantities of heroin smuggled through this border also find their way into Nepal. A local factor which creates very congenial atmosphere for trafficking of drugs is that tribal inhabitants on either side of the international border can move around freely within a belt of 40 Kms on the Indian side and 16 Kms on Myanmar side of the border for barter trade in terms of daily necessity without any restrictions of passport and visa.

**II.9.17.3.2.** Intelligence received also indicates that acetic anhydride, a precursor, is smuggled across the Indo-Myanmar border in jerry cans of 5 gallons each and these jerry-cans are tied to floating rafts, which travel along the Chindwin River till they reach Mandalay. Further, a 100 Kms belt on the Indian side of the Indo-Myanmar border was declared as a specified area in which the movement of acetic

anhydride has been banned under the Customs Act 1962 unless certain conditions are fulfilled.

### **II.9.18. International Co-Operation**

**II.9.18.1.** India realises that the flight against drug trafficking, which recognises no barrier, has to be fought at the national and international levels. A solution to this problem can be found only with the co-operation of the concerned countries. Similarly, there also exist arrangements between India and United States through a Working Group on Narcotics for exchange of information on drug-related matters and also for extending bilateral arrangements with Sri Lanka and Nepal to discuss matters relating to smuggling which also include discussions on drug trafficking. At the regional level, India discusses drug with its neighbours through the auspices of the SAARC. Also, India is a Member of the ESCAP Regional Plan wherein 15 countries of South-East Asia regularly exchange information on monthly basis. The ESCAP Plan was organised by the Customs Co-operation Council and started operating from Jan. 1987. At the international level, India is a signatory to the U. N. Convention on Narcotic Drugs of 1961 and the 1971 Convention on Psychotropic Substances. It is also a useful and active Member of the INTERPOL.

India has also established close liaison with many of the countries by permitting them to post their Drug Liaison Officer, in India. These include officers of Drug Enforcement Administration of USA, H. M. Customs of UK, RCMP of Canada and an officer from the Federal Republic of Germany. There is fruitful exchange of intelligence to the mutual seizures have been effected by various agencies around the World in places like Amsterdam, New York, Boston, Rome, Lagos and Tokyo. India has also been providing to the international agencies like the I.N.C.B., INTERPOL, Colombo Plan Bureau, C.C.C., and U. N. Division on Narcotic Drugs, etc. with the latest development with regard to drugs in India and the effort made by the country to prevent trafficking in drugs.

### **II.9.19. IMPORTANT ASPECTS OF NARCOTICS SEIZURE CASES**

1. Statement of co-accused cannot be used unless corroborated by independent evidence.
2. Stock witness should be avoided. Choice of panache witness should be proper and generally from the place around the seizure or search. Absence of

independent witness will adversely affect the prosecution for non compliance of the requirement of section 52 and 55 of NDPS

3. **SAMPLES:** Refer to Standing order No. 1/88 and 1/89. (Details given in the following paragraphs)

- Samples drawn from seized lot should be proved to be the same which was sent to the analyst. Further while drawing the panchanama; the details of sealing the drugs and the sample for testing, like seal Number or logo of the department on the seal, should be incorporated in the panchanama. The receipt obtained from the laboratory should link the sample drawn from the seized goods. For this the seal affixed on the sample should be shown on the receipt and an endorsement made by the receiver of the sample, that the seal was found intact. Care should be taken that the seal is not damaged. Further the receiver should say that the label was bearing the signature of the panchas with the date. A proper receipt will avoid any loop hole for rejecting the test report.
- The samples to be tested should be tested chemically and not be confirmed by seeing and smelling or by experience.
- The person carrying the sample to the Lab must give evidence to prove that the correct sample was tested, as taken by him and the link between the sample and the test report should be established.
- The sample from the test Lab should be received in properly sealed condition. Care should be taken that this seal is not broken. Hence these remnant sample should be kept safely and in protective packing with proper label.
- Report of the Director, Dy. Director and Asstt. Director of recognised Lab are considered as opinion of scientific experts and they need not come to give evidence on that certificate under section 293(4) (e) of Cr. P.C. There should be no discrepancy in the weight of the sample recorded at the time of seizure panchanama and when the same is sent to the lab for testing. There should be no delay in sending the sample for test. It must be sent immediately and not later than 72 hours from the time of seizure, the proper and authorised laboratory report is essential for conviction

4. The seized goods should be sealed and deposited immediately within 24 hours of the seizure. Report of the seizure should be sent immediately to the superior officer.
5. Provision of section 167(2) of the Cr. P.C. of enlarging on bail will not be applicable to NDPS. Complaint to be filed in 180 days
6. The intelligence or information received must be recorded in writing and should be put up to his senior officer, as required under section 42 (2) of the NDPS Act. Generally the officer who receives intelligence should not conduct search and also do investigation. A report of arrest and seizure should be submitted to the immediate superior officer within 48 hours as required under section 57 of this Act. Therefore the officer receiving the information must put the date and time below, the report of recording the information, similarly the superior officer receiving this report should also put the date and time below his signature.
7. Suspicion is no substitute for proof. Even if we know that the person is involved, evidence has to be collected to prove that suspicion. Vagueness is not permitted as the benefit of doubt will go to the accused.
8. If narcotics has come to the accused from out side the border then the offence of importing is complete.
9. Non compliance of section 50 would vitiate the trial and render conviction unsustainable. The accused must be asked in writing his choice should be recorded and his signature obtained on that paper, and also the fact that he was given the choice of being taken before a gazetted Officer or Judicial Magistrate should be incorporated in the panchanama.
10. If several persons are residing in the place from where the drug is seized then the possession of the drugs from the accused should be proved and the control of the premises should be proved beyond doubt. If there is a possibility of more than person dealing with the goods the nexus must be proved between the accused and the object.
11. Under section 35 (2) and 54 the burden of proof will be on the accused from whose possession the drug was recovered. The possession factor will ensure punishment and ownership in that case need not proved. If seizure is not believed the possession will not be believed by the court. Hence the panchanama should be correct when seizure is made.



Possession of premises, and contraband was brought there and that he was dealing in it are the required ingredients.

12. Extra Judicial confession is not a voluntary statement.

13. Punishment under NDPS for contravention of psychotropic drugs is 10 years extendable upto 20 years and fine of 1 lakh extendable to 2 lakhs

14. It is required that the offence should have been committed knowingly with culpable mental state under section 36, 54 and 60 (3) and this should be proved by positive evidence or circumstantial evidence before *mens rea* can be established.

15. Chapter V and VI consisting of section 107 and 120 B of Cr. P.C. deals with abetment and conspiracy, while section 120A deals with criminal conspiracy. The requirements of an abettor (1) There must be a abettor (2) He must abet (3) the abetment must be an offence. Investigation is tantamount to abetment. In order to constitute a conspiracy four things are necessary (1) At least two person (2) They must engage in the commission of an act (3) the act or omission must have taken place "in order to do a thing" (4) the act or omission must take place in pursuance of that conspiracy, knowledge or common design.

16. Offence of acquiring, purchase, store, warehousing, possession punishable under section 22 r/w 8(c) and 29 of NDPS. Attempt to export punishable under section 28 r/w 8 (c) and 29. Export or attempt to export under section 8 (C) and section 11 of the Customs Act and would constitute an offence under section 135 (I) r/w 135 (I) (ii) of the Customs Act. Forgery punishable under section 465,471 of IPC.

17. Draw up a rough sketch of the place from where the drugs are seized, this should be made a part of the panchanama and take the signatures of the witness and the person from whom the drugs are seized.

18.(1) An information describing the suspect and his modus operandi with specific details on the date time and place of drug deals should be prepared. It needs to be reduced into writing by the officer receiving the information and should be sent forthwith to the next superior officer. It is mandatory legal provision.

(2) Search of a person, premises, conveyance leading to recovery of drug concealed in a packaging or a cavity of the vehicle. A search warrant issued by the empowered officer of the rank of superintendent or above is executed in case the search is not to be conducted in a public place. All the requirements relating to the search as are provided in the code of criminal

procedure have to be followed. A notice in writing under Sec. 50 needs to be served on the person searched giving him the option of his getting searched in presence of a gazetted officer or a magistrate. The recovery would be illegal if such a notice has not been given.

- (3) The contraband is tested by way of a field testing kit which indicates the presence of drug in the recovered substance. It is a prima facie proof of the substance being of the drug type as is confirmed from the field testing kit. A sample of the drug is drawn from the lot recovered and sealed with an official seal after taking the signatures of the panchas and the person from whom the recovery is made on the paper slip which is affixed on the packet containing the sample before the same is sealed with an official seal. Chemical analysis report received is the final word on the recovery of drug to be of a particular type that makes the person possessing it liable for punishment.
- (4) A report on the seizure and arrest has to be prepared and submitted to the next higher officer by the arresting officer under Sec. 57, within 48 hours of the arrest.
- (5) The arrested person is produced before the court within 24 hours of his arrest. He is to be conducted strictly in conformity with the law relating to the rights of the arrested person. His relative or friend should be notified of his arrest. In case the person is needed for effecting any further recovery of drug or for any other investigation he is remanded to the custody of the agency; otherwise the arrested person is sent to jail in judicial remand pending trial against him.
- (6) Follow up investigation are undertaken for collecting additional evidence corroborating the confessional statement and the seizure document. These could be verification of vehicle registration details, telephone dial out information, searches at other places from where the drug transited or originated etc. Statement of the panchas is recorded on anything additional they have to say to what is recorded in panchnama.
- (7) The investigations must be completed with 90 days of the arrest of the person. If there is delay in filing challan or complaint within this period then the accused gets right to be enlarged on Bail. A complaint is filed under the regular punitive sections of the Act enumerating the evidence in support of the complaint. The court takes cognisance of the complaint and frames charges

based on the complaint. If the accused denies the charges trial commences. Evidence is recorded by the prosecution in support of its charges

- (8) The court under section 313 of the Cr.P.C. records statement of the accused and he is given an opportunity to lead evidence in support of his statement. Judgement is passed by the court on hearing the two parties after completing the evidence and accordingly if the charges are proved the accused is convicted.

**II.9.20. Guidelines for Search/Raid:**

1. All officers deployed for search should carry their Identity Card.
2. Leader of each team should have a search authorisation.
3. As far as possible there should be a pre-planning before carrying out the search/raid. Pre-planning will include survey of the area/place where the search/raid has to be undertaken. This pre-planning is essential for effective deployment of staff to achieve maximum results.
4. The officer-in-charge of the search should deploy his officers in such a manner that all the entrances/exits are properly guarded so as to prohibit any person coming in/going out of the premises.
5. All incoming telephone calls should be received by the searching officers only. No person within the premises should be allowed to talk on phone with any person outside.
6. Immediately on entering the premises, the occupants should be instructed not to converse about the business of search with each other.
7. The list of documents/records mentioned for recovery should be gone through carefully. The searching officers should examine every document and record and decide its worth for purposes of recovery.
8. Samples should be drawn.
9. The documents/records to be seized should be properly numbered serially and a brief description of the file/records and the period to which it belongs should be mentioned in the Panchnama.
10. The statements of the persons concerned should be recorded on the date of search itself, lest they may be tutored by the party. For this purpose, a brief and immediate scrutiny of the records/documents should be done.

11. Soon after the commencement of the search the contact telephone number of the party should be given to the officers who is monitoring the search/raid. He should be apprised about the commencement of the search and its progress from time to time and the important material have come to notice so far. Before withdrawal from the search as far as possible clearance from the same officer should be taken unless the search/raiding party has already briefed in this regard.
12. Seized documents/records should be handed over to the assigned person under proper receipt.
13. Each search/raid party should invariably carry with them a drug identification/testing kit / weighing scale from Office, if possible and they should also have bag containing certain essentials like screw driver, torch, flash light, mirror, walkie talkie, binocular, night vision devices, hand cuff, seal sealing materials, emergency medical kit, etc.

**II.9.21. Points to be noted while recording Panchnama :**

1. Name, occupation, age and address of panchas.
2. Time, date and place of start of proceedings.
3. Reason for search.
4. Authority for search.
5. Identify yourself by showing identity card.
6. Mention names of a few other officers included in the search part.
7. Offer personal search of each member.
8. Mention presence of the occupants of the premises/person to be searched.
9. Before conducting personal search ask the person whether he would like to be taken before a gazetted officer or a magistrate. A letter by the officer conducting personal search of the persons should give in writing and at the same time a written consent should also be taken from them.
10. Mention description of place to be searched e.g. area of flat, number of rooms, telephone no. etc.
11. Ask the person to be searched to give declaration of this baggage wherever necessary e.g. Whether he is having any contraband.

12. Give graphic description of the search operation e.g. who opened the suitcase, who had the key, from where the incriminating documents or contraband was recovered, how it was concealed etc.
13. Test drugs with field testing kit and mention results.
14. Mention where and how the weighment of contraband goods was done. Give gross weight, net weight.
15. Mention value of contraband to be seized.
16. Mention no. of samples drawn and their weight , what identification marks were given to contraband exhibits, samples and documents proposed to be seized/taken over.
17. Mention “Nothing else was taken over” or “Religious feelings hurt.”
18. Mention time of conclusion of panchnama.
19. Offer personal search on conclusion of search before leaving the place of search.
20. Take photographs, finger prints wherever possible.
21. Mention money and valuables given back to the person searched or seal them for handing over later in the court.
22. Seal contraband and exhibits mentioning seal no.
23. Take signature of panchas, officer writing the panchnama and the person being searched on labels pasted on contraband, exhibits and documents.
24. Mention under what provisions the seizure was done.
25. Mention any important events taking place during search e.g. Arrival of more officers/persons etc.
26. Give a copy of panchnama of the persons searched and obtain his receipt.

**II.9.22. Details of Drugs seized :**

1. Note the exact date and place of recovery. Record the weight and type of the drug.
2. Describe the wrapper : material, colour, trademark, subsequent markings, number of parcels making up the whole amount.
3. Note the means of transport used and the hiding place.
4. Seize the vehicle, and make a complete and thorough search of it.

### **II.9.23 Details in case of foreign National:**

1. Check his passport carefully. Are there any signs of alteration : e.g. Erasures (transparency), insertion, missing pages, restrictions on travel ? For nationals of certain countries: do they have appropriate visas ?
2. Has he several different passport ?
3. If they bear the photograph of person concerned , but give particulars of different identities ?
4. From whom did he obtain these passports ? Where and when did he obtain them ? How much did he pay for them ? For what purposes has he used them ? Where ? When ? On what date did he enter the country ? At which border check-point ? Where has he stayed since ?
5. Note the frontiers crossed (dates and places of Immigration/Emigration stamps).

### **II.9.24. Questions to be asked while recording Statement under NDPS Act**

1. Does he know the type of drug he was carrying ? Who gave it to him ? Where ? When ? Through which towns and along which roads did he travel before reaching the place where the drug was seized ? Where did he stay on the journey ? At what hotels ?
2. To whom was he to have handed the drug ? Where ? When ? Is there a prearranged code so that the carrier and the intended recipient recognise each other (e.g. Words, signs, or an article to show) ? What was he to have been paid ? When ? Where ? Obtain details that can lead to the identification of the individuals involved (First names, family names, description, accents, origins, etc.).
3. Make full use of all the information obtained during the investigations. Send to all countries that may be concerned, because of the nationality of the individuals arrested, their place of residence, the point of departure or destination of the drug, the place of transit, or for any other reason, all information liable to be of interest, or to suggest lines of enquiry which will produce useful results for the investigators working on the case. Do not fail to send the photographs and fingerprints of all persons arrested.

4. As far as possible record the statement in own handwriting of concerned person in the language known to him who will record the statement.

The above points are few tips to the officers working in the Narcotic cell or those dealing in Narcotic cases. If the officers follow these instructions meticulously, then the conviction rate increase.

#### **II.9.25. DISPOSAL OF SEIZED/CONFISCATED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AFTER DISPOSAL OF CASES**

**II.9.25.1.** In a number of cases seized/confiscated narcotic drugs and psychotropic substances which were produced in the Courts as Muddamal articles,(case property) continue to lie in the courts even after the trial is concluded. In a number of cases, the possession of such Muddamal articles has not been taken by the appropriate authorities for disposal thereof , even though the courts have passed appropriate orders with regard to disposal of such Narcotics Drugs and Psychotropic Substances. With the increase in litigation and shortage of premises for storage of such seized articles, the courts also get exposed to the risk of pilfering, theft, substitution, abuse, misuse, etc.

**II.9.25.2.** Appropriate arrangements be made expeditiously for taking the possession and disposal of seized drugs in respect of which the courts have passed appropriate orders.

**II.9.25.3.** In other cases, where the trial is still pending, it is pre-trial disposal of seized drug as laid down in Standing Order no. 2/88 of NCB, New Delhi.

**(Narcotics Control Bureau, New Delhi, Letter F. No. XXIV/19/99/I & I dt. 30.07.1999)**

#### **RECEIPT, CUSTODY, STORAGE AND DISPOSAL OF SEIZED CONFISCATED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES.**

Consequent upon the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, with effect from 14.11.1985, the enforcement activities against drug traffickers in the country have been stepped up resulting in seizures of

huge quantities of narcotic drugs and psychotropic substances (hereinafter referred to as the 'drugs'). For successful prosecution of drug offenders, it has been felt necessary to formulate a uniform procedure for drawal of samples of the seized drugs, which from the primary evidence in the course of prosecution proceedings before the courts of law keeping this in view, the Narcotics Control Bureau; the Central Authority created under section 4(3) of the Narcotic Drugs and Psychotropic Authority created 1985 (hereinafter referred to as the 'new law') which functions as the apex coordinating and enforcement agency in the country has formulated and circulated a Standing Order No. 1/88 dated 15.3.1988 .

**2.** Recognising the importance of despatch transit receipt, safe custody, storage, proper accounting and disposal + destruction of the seized/confiscated drugs, and the need for evolving a uniform procedure for regulating the above mentioned operations, both by the Central and State drug law enforcement agencies in the country, the Narcotics Control Bureau has formulated the following procedure to be complied with in this behalf.

**3.1** All drugs should be properly classified, carefully weighted and sampled on the spot of seizure.

**3.2** All the packages/containers should be serially numbered and kept in lots of sampling. The procedure set out in Standing Order No. 1/88 referred to above should be scrupulously followed.

**3.3** After sampling, detailed inventory of such packages/containers should be prepared for being enclosed to the panchanama, Original, wrappers must also be preserved for evidentiary purposes.

**3.4** After completion of panchanama, the drugs should be packed, in heat sealed plastic bags. For bulk quantities of ganja, instead of plastic bags, gunny bags may also be utilised wherever those are not readily available.

**3.5** Agencies of the Central and State Government, who have been vested with the powers of investigation under the new law must specifically designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.

**3.6** All drugs must invariably to be stored in safe and vaults provided with double-locking system.

**3.7** Such godowns, as a matter of rule, be placed under the overall supervision and charge of a Gazetted Officer of the respective enforcement agency, who should



exercise utmost care, circumspection and personal supervision, as far as possible. Such officers should not be below the rank of Superintendent in the Departments of Customs, Central Excise, Directorate of Revenue Intelligence, Central Bureau of Narcotics, Narcotics Control Bureau, C.B.I., B.S.F., etc., (Central agencies and Station House Officer/Officer-in-charge of a police station, Superintendent of State Excise, Naib/Tehsildar of Revenue, Drug Control Department, etc. in the States and U.T. enforcement agencies. They will personally be held accountable for safety and security of the drugs.

**3.8** Each seizing officer should deposit the drugs fully packed and sealed with his seal in the godown within 48 hours of seizure of such drugs, with a forwarding memo indicating.

- (i) NDPS Crime No. as per crime and prosecution register under the new law (i.e. NDPS Act.)
- (ii) Name (s) of accused
- (iii) Reference of test memo
- (iv) Description of drugs in the sealed packages/containers and other goods, if any.
- (v) Drug-wise quantity of each package/container and other goods, if any
- (vi) Drug-wise number of packages/containers
- (vii) Total number of all packages/containers

### **Annexure I**

3.9 The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure - I), will hand over the same to the Investigating Officer of the case along with the case dossiers for further proceedings.

4.0 The officer-in-charge of the godown, before accepting deposit of drugs, will ensure that the drugs are properly packed and sealed. He will also arrange the packages/containers (case-wise and lot-wise) for quick retrieval, etc.

4.1 The godown in-charge is required to maintain a register wherein entries of receipt should be made (as per format at Annexure II).

### **Annexure II**

4.2 It will be incumbent upon the Inspecting Officers of the various departments mentioned as Annexure II to make visits to the godowns for ensuring adequate

security and safety and for taking measures for timely disposal of drugs. The Inspecting Officer should record their remarks/observations against col. 15 of the Format at Annexure II.

4.3 The Heads of respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

### **Annexure III**

4.4 While quarterly returns of disposal of drugs by the Central Government agencies concerned shall be furnished to the Director-General, Narcotics Control Bureau by the 15<sup>th</sup> of the month following the quarter (in the format at Annexure III), the state enforcement agencies are required to submit their reports to the State Police Headquarters (CID) Director General, Narcotics Bureau informed of the same as per Annexure III.

### **Annexure IV**

4.5 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies should obtain orders for **pre-trial disposal of drugs and other articles** (including conveyance, if any) by having recourse to the provisions of Section 451 of the Criminal Procedure Code, 1973 (extracts enclosed at Annexure IV) and those of the provisions of section 110 (IA) , (IB) and (IC) of the customs Act, 1962 read with Government of India's notification No. 31/86-Cus. (AS) dated the 5<sup>th</sup> February, 1986 issued in this behalf which specifies 'Dangerous drugs and psychotropic substances'.

4.6 While preferring the application under section 451 before the Court of Sessions immediately, emphasis may be laid on 'expediency of disposal' The grounds that may be high-lighted may pertain to,

- (i) risk of pilferage, theft and substitution
- (ii) high potential and vulnerability of abuse
- (iii) high temptations to traffickers
- (iv) diminution in the value of other articles (including conveyances) due to long storage, etc.

4.7 Since the filing of the charge-sheet/complaint is a condition precedent for expeditious issue of orders for pre-trial disposal, complaints by the respective enforcement agencies must be filed after completion of investigation within the stipulated period of 180 days of seizure/arrest, on a priority basis. They should meticulously be adhered to.

4.8 While moving the application under section 451 of the Criminal Procedure Code as above, production of all seized/articles/drugs, etc., along with the panchanama (in original) and detailed Inventory thereof is essential. The inventory should be complete in all respects and contain such particulars as may be relevant to establish nexus/identity of articles. The chemical analysis report should also be simultaneously filed.

4.9 After the court orders are passed for pre-trial disposal of drugs, those drugs which have no legitimate commercial value (excepting opium, morphine, codeine and the baine, which are required to be transferred to the Government Opium and Alkaloid Works Undertaking at Ghazipur or Neemuch, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and not repugnant to the court's order.

5.0 As bulk of seizures of drugs relate to illicit import or export and are made at the points of entry or exit or in transit traffic, such drugs are liable to seizure under section 110 of the Customs Act, 1962 and confiscation under section 111 or 113 *ibid*. In such cases, it would be appropriate to initiate proceedings under the Customs Act also.

#### **Annexure V**

5.1 The relevant provisions of section 110 (IA), (IB) and (IC) are reproduced at Annexure-V.

5.2 A three member Committee of the respective enforcement agencies (both Central and States), known as the Narcotics Drugs and Psychotropic Substances Disposal Committee should be constituted to discharge its functions from the Head Quarters of the respective Heads of Departments. The Committee will be headed by an officer not below the rank of –

- (a) Deputy ( *now Joint* ) Commissioner of Customs and Central Excise with two members of the rank of Assistant Commissioner of Customs

- and Central Excise in the case of a Customs and Central Excise Commissionerate;
- (ii) Deputy Narcotics Commissioner with two members of the rank of Assistant Narcotics Commissioner in the case of Narcotics Commissioner's Organisation;
  - (iii) Deputy Director of Revenue Intelligence with two members of the rank of Assistant Director in the case of the Directorate of Revenue Intelligence;
  - (iv) Deputy Director and two other officers as may be authorised by the Director General, Narcotics Control State Police Organisation;
  - (v) Deputy Inspector General of Police with two members of the rank of Superintendent of Police in respect of State Police Organisations; and
  - (vi) Deputy Commissioner of Excise with two officers of the rank of Assistant Commissioners, in respect of State Excise Organisations.

The Committee will be directly responsible to the Head of the Department concerned.

5.3 The functions of the Committee will be to

- (a) undertake detailed analysis of drugs pending disposal
- (b) advise the respective investigating officers/supervisory officers on the steps to be initiated for expeditious disposal.

The Committee will meet, as frequently as possible, as may be considered necessary for quick disposal of drugs and at least once in two months. While the Central agencies will endorse a copy of the minutes of such meetings directly to Narcotics Control Bureau, the State enforcement agencies concerned will report the same to their respective state police Head Quarters (CID), who, in turn, will keep the Narcotics Control Bureau informed of the progress made from time to time

5.4 The officers-in-charge of godowns will prepare a list of all such drugs that have become ripe for disposal to the Chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they are no longer required for legal proceedings and the approval of the court has been obtained for the purpose, the Members of the respective drug disposal committees will endorse necessary certificates to this effect. The committee will, thereafter, physically examine and verify the drug consignments will reference to the seizure

report and other documents like chemical analysis, etc., including its weighment and record its finding in each case.

[ **Note:** The drugs become ripe for disposal after they are confiscated by the competent court or the competent authority of the Customs on expiry of the period of appeal or when ordered by the court for disposal under section 451 of the Cr. P.C. 1973 or section 110 1(C) of the Customs Act, 1962 ]

5.5 In the case of tampering with seal, etc., the composite sample will be drawn for getting the same tested by the Central Revenue Control Laboratory or the State Forensic Science Laboratory/State Drug Control Laboratory concerned. If no variation either in purity or quantity is found, the same will be ordered for destruction by the Department. Where any minor variations are noticed, a detailed report should be submitted to the Head of the Department of the enforcement agency concerned. In the case of wider variations, the matter should be immediately reported to the Narcotic Control Bureau indicating the follow-up action taken in this regard. The destruction of drugs in such cases can be done only after obtaining the orders of the Head of the Department concerned.

5.6 The Committee will be empowered to order destruction of the seized drugs in the following cases:

<u>Name of drug</u>	<u>Quantity (Kgs)</u>
Heroin	2
Hashish (Charas)	50
Hashish oil	10
Ganja	500
Cocaine	1
Mandrax	150
Other drugs	upto value of Rs.5 lakhs

The disposal Committee should intimate the Head of the Department concerned the programme of destruction (giving complete details) in advance (at least 15 days before the date of destruction), so that in case he deems fit, he may either himself conduct surprise checks, or depute an officer for conducting such surprise checks. The disposal Committee should inform the respective Heads of Departments in respect of every destruction made by it indicating the date of destruction, quantities destroyed, etc.

In those cases where the quantities exceed the above limits destruction could be ordered and take place only **under the supervision by the Head of Department himself along with the Chairman and Members of Drug Disposal Committee.**

5.7 All drugs excepting opium, morphine, codeine and the baine shall be destroyed by incineration in such places where adequate facilities and security arrangements exist for the same after ensuring that this will not be a health hazard from the point of view of pollution.

### **Annexure VI**

5.8 A certificate of destruction (in triplicate) (annexure-vi) containing all the relevant data like godown entry no., file no., gross and net weight of the drugs seized, etc., shall be prepared and duly endorsed by the signature of the Chairman as well as Members of the Committee. This could also serve the purpose of panchanama. The original copy will be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case

file and the triplicate copy will be kept by the Disposal Committee.

6. The procedure as outlined in Section II of the Opium Manual (Vol.III) will continue to apply for drugs like opium morphine, codeine and the baine. Disposal of poppy straw shall continue to be regulated by the procedure as stipulated by the respective State Excise Department in this behalf.

7. Other goods (including conveyance) ripe for disposal may be disposed of by public auction or in such manner as is deemed convenient in the best interests of the Government.

### **ANNEXURE I**

#### **(Para 3.9)**

#### **GODOWN RECEIPT (No. II)**

RECEIVED (No.) .....packages/containers said to contain ..... (Description of Drugs) sealed with the seal No. .... of (Name & Designation) seizing officer and entered into godown register vide entry No. ....

Facsimile of the seal.....

Place:  
charge  
Date:  
and  
Time:  
seal

Signature of the Officer-in-  
of godown with full name  
official

**ANNEXURE-II**  
(Para 4.1)

**FORMAT OF REGISTER REQUIRED TO BE  
MAINTAINED BY THE GODOWN IN CHARGE  
N.C.B.III**

1. Godown entry S.No.
2. N.D.P.S. Crime No.
3. Description of drugs in the scaled packages/containers and other goods, if any
4. No. of packages/containers (drug-wise)
5. Quantity of drug (package/containerwise)
6. Particulars of the test memos.
7. Name(s) and address(es) of accused
8. Name with official designation and address of seizing/depositing officer
9. Facsimile of the seal put on the packages/ containers by the seizing officer
10. Date and time of deposit
11. Particulars of exit and re-entry for exhibiting to court.
12. Date and time of removal for disposal

13. Disposal particulars including destruction or despatch to Central Govt. Opium Factory.
14. Certificate of disposal including price payment particulars, from Govt. Opium Factory, where applicable.
15. Remarks of the Inspecting Officer(s)\*

**\*Inspecting Officers:** In the case of Central Enforcement Agency: (1) D.G.,NCB (2) Dy.D.G.,NCB(3) Narcotics Commissioner of India (4) Dy. Narcotics Commissioners (5) D.G.,BSF,(7) Sr. Officers of CBI, (8) Chief Commissioner, Customs & Central Excise, (9) Commissioner, Customs & Central Excise (10) Assistant Commissioner of Customs and Central Excise.

**In the case of State Enforcement Agency :** (1) D.G. of Police (2) I.G. of Police (3) Dy. I.G.P. (4) Superintendent of Police (5) State Excise Commissioner (6) Dy. Excise Commissioner (7) Superintendent of Excise and Equivalent officer of State Govt. in the authorised departments.

**ANNEXURE III**  
( Para 4.2 )

**FORMAT OF QUARTERLY RETURN TO BE FURNISHED BY THE  
CENTRAL ENFORCEMENT AGENCIES TO N.C.B.**

Name of Stock in the drug hand at the	Opening Balance Remarks as on 1st day of the quarter	Receipts during the Qr.	Qty. disposed by destruction factories	Qty. Despatched to opium end	
1.	2.	3.	4.	5.	6.
	7.				



**ANNEXURE IV**

( para 4.5 )

**PROVISIONS OF SECTION 451 OF THE CRIMINAL PROCEDURE CODE, 1973**

“451. Order for custody and disposal of property pending trial in certain cases:-

When any property is produced before any criminal court during any enquiry or trial, the court may take such order as it thinks fit for the proper custody of such property pending, the conclusion of the enquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

**Explanation:** For the purpose of this section “property” includes –

- (a) Property of any kind or document which is produced before the court or which is in its custody.
- (b) Any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offences.”

**ANNEXURE V**

( para 5.1)

**PROVISIONS OF SECTION 110(1A) (1B) AND (1C)  
OF THE CUSTOMS ACT, 1962.**

**110( 1 A ):** The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in value of the goods with the passage of time, constraints of storage space for goods, or any other relevant considerations, by notification in the Official Gazette specify the goods or the 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.

**110(1B ):** Where any goods, being goods specified under subsection (1A) have been seized by a proper officer under subsection (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 Magistrate for 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.

**110(1C):** Where the application is made under sub-section (1B) the Magistrate shall, as soon as may be, allow the application.

**ANNEXURE-VI (in triplicate)**

**(Para 5.9)**

**CERTIFICATE OF DESTRUCTION OF NARCOTIC DRUGS AND PSYCHOTROPIC  
SUBSTANCES (PARA 9, 10 OF THE STANDING ORDER NO. /88 –DETAILS  
OF THE DRUGS AND SUBSTANCES DESTROYED.**

Particulars of on the drugs	Seizure case file ref. No.	Godown Register entry No.	As recorded in the Godown register		Weight ascertained physical verification	
(1)	(2)	(3)	(4)		(5)	
			Gross Wt.	Net. Wt.	Gross Wt.	Net
		Wt.	(a)	(b)	(a)	(b)
Name and address of the witnesses		Date/Place/Mode of destruction				
(6)		(7)				

It is certified that a Committee consisting of S/Shri.....supervised the destruction of narcotic drugs and psychotropic, substances particulars above, in the presence of following witnesses.

(delete whatever is not applicable).

SIGNATURE  
WITH DATE  
(CHAIRMAN)

SIGNATURE  
WITH DATE  
(MEMBER)

SIGNATURE  
WITH DATE  
(MEMBER)

**DRAWAL, STORAGE, TESTING AND DISPOSAL OF SAMPLES FROM SEIZED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES – PROCEDURE**

1.1 It has been brought to the notice of this Bureau by the Chief Chemist, Central Revenues Control Laboratory that different investigating officers of various enforcement agencies adopt different Procedures in drawing samples from seized narcotic drugs and psychotropic substances, particularly with regard to the number of samples drawn, quantity of the sample, sealing, mode of packing, despatch of samples etc., to the concerned laboratory, for test. It has also been found that handling of samples at different stages and places may also become an issue of dispute during the trial, and hence a clear and uniform procedure is necessary to avoid any doubt or confusion at any level. With a view to bring uniformity of approach in such matters, and also to provide for a secure system of handling of drug samples it is decided to standardise the procedure with regard to drawing, forwarding and testing of samples.

1.2 It may be noted that all drugs and psychotropic substances, materials, apparatus utensils, or any other articles in respect of which or by means of which any offence punishable under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed, are liable to confiscation under Section 60 of the Narcotic Drugs and Psychotropic Substances Act. In other words, an act of omission, or commission constituting an offence under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985 is only in relation to such narcotic

drugs or psychotropic substances which are liable to confiscation. As such all offence under N.D.P.S. Act have to be proved only in relation to such drugs or psychotropic substances which are liable to confiscation.

1.3 All illicit narcotic drugs or psychotropic substances recovered from a person, place, conveyance etc. are material evidence as they are liable to confiscation. Further, they constitute primary evidence for any act, omission or commission on the part of a person rendering him liable for punishment under Chapter IV of the N.D.P.S. Act, 1985. Most of the narcotic drugs and psychotropic substances cannot be conclusively proved to be such drugs or substances merely by visual examination in the trial Court and they require to be proved by chemical analysis to be conducted by chemists authorised under section 293 of Cr.P.C. 1973. The provisions of subsection 4 of section 293 of Cr.P.C. are reproduced hereunder for ready reference:-

'293 (4) :-'

This section applies to the following government scientific experts, namely :-

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government.
- (b) The Chief Inspector of Explosives;
- (c) The Director of Finger-print Bureau;
- (d) The Director Halffkein Institue of Bombay;
- (e) The Director(Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
- (f) The Serologist to the Government.

**[ Note :- Sub – Section (4) of section 293 has been amended to include deputy Deputy Directors and Assistant Directors of Central and State Forensic Science Laboratories in the list of Government Scientific experts ]**

Government of India vide notification No.74F.No. 50/53/76-Ad.II dated 17<sup>th</sup> July 1976 as amended vide notification dated 2<sup>nd</sup> February 1977 have declared chemists of different grades working in Central Revenues Control

Laboratories as Chemists to Government for the purpose of section 293 of Cr. P. C.

1.4 If the drugs seized are found in packages / containers the same should be serially numbered for purposes of identification, In case the drugs are found in loose form the same should be arranged to be packed in unit containers of uniform size and serial numbers should be assigned to each package / container. Besides the serial number, the gross and net weight, particular of the drug and the date of seizure should invariably be indicated on the packages. In case sufficient space is not available for recording the above information on the package, a Card Board label, should be affixed with a seal of the seizing officer and on this Card Board label, the above details should be recorded.

#### **1.5 Place and time of drawal of sample**

Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug is recovered, and mention to this effect should invariably be made in the panchnama drawn on the spot.

#### **1.6 Quantity of different drugs required in the sample**

The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas / Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages / containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

#### **1.7 Number of samples to be drawn in each seizure case**

(a) In the case of seizure of single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.

(b) However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect / the packages / container may be carefully bunched in lots of 10 packages / containers may be bunched in lots of 40 such packages such

packages / containers. For each such lot of packages / containers, one sample in duplicate may be drawn.

(c) Whereafter making such lots, in the case of Hashish and Ganja, less than 20 packages / containers remains, and in case of other drugs less than 5 packages / containers remain, no bunching would be necessary and no samples need be drawn.

(d) If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package / containers

(e) While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package / container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

1.8 Subject to the detailed procedure of identification of packages / containers, as indicated in para 1.4 each package / container should be securely sealed and an identification slip pasted / attached on each one of them at such place and in such manner as will avoid easy obliteration of marks and numbers on the slip. Where more than one sample is drawn, each sample should also be serially numbered and marked as S-1, S-2, S-3 and so on, both original and duplicate sample. It should carry the serial number of the packages and marked as P-1, 2, 3, 4 and so on.

1.9 It needs no emphasis that all samples must be drawn and sealed in the presence of the accused, Panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose custody the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and the duplicate of each of the samples.

**1.10 Packing and sealing of samples :**

The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the S.No.of the package (s) / container (s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope

which should also be sealed and marked “secret-Drug sample/Test memo” to be sent to the concerned chemical laboratory.

#### 1.11 **Laboratories to which samples may be sent**

The seizing officers of the Central Government Departments viz. Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, D.R.I., etc. should despatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The addresses of the Dy. Chief Chemists of the Central Revenues Control Laboratories are given below:

1. General Manager, Govt. Opium and Alkaloid Works, Ghazipur (U.P.).
2. General Manager, Govt. Opium and Alkaloid Works, Neemuch (M.P.).
3. Chief Chemist, Central Revenue Control Laboratory, Pusa Road(IARI), New Delhi.
4. Dy. Chief Chemist, Office of the Collector of Customs House, Chennai 600 001.
5. Dy. Chief Chemist, Chemical Laboratory, Customs House, Calcutta 1.
6. Dy. Chief Chemist, New Customs House, Ballard Estate, Mumbai 400 038.
7. Dy. Chief Chemist, Central Excise Lab., Estrella Batteries Compound, Dharavi Road, Mumbai - 19.
8. Chemical Examiner, Office of the Commissioner of Customs, Customs House, Cochin 9.
9. Chemical Examiner, Central Excise Laboratory , Central Excise New Building, Arkee Garba Ground, Near Telephone Exchange, Subhanpura, Vadodara.
10. Chemical Examiner, Central Excise Laboratory, Central Excise Laboratory, CORIL Refinery, Vishakhapatnam (A.P.)
11. Chemical Examiner, Customs House, Kandla, Gujarat.
12. Chemical Examiner, Customs House, Laboratory, Sada, MARMUGOA GOA 403803.
13. Chemical Examiner, Central Excise Laboratory, Assam Oil Refinery, Dibboi (Assam).
14. Chemical Examiner, Central Excise Laboratory, Bureau Oil Refinery, Distt. Begusarai (Bihar).
15. Chemical Examiner, HPCL, Refinery, Corridor Road, Trombay, Mumbai 400 074.

The other Central Agencies like B.S.F., C.B.I. and other Central Police organisations may send such samples to the Director, Central Forensic Laboratory,

New Delhi. All State Enforcement Agencies may send samples of seized drugs and psychotropic substances to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

The Addresses of State Forensic Science Laboratories are given below:

1. Director, Forensic Science Laboratories, Govt. of Bihar Patna-800 023.
2. Director, Police Forensic Science Laboratory, Rajasthan, Nehru Nagar, Jaipur-6.
3. Director, Forensic Science Laboratory, Mini Punjab Secretarial, Plot No. 2, Sector 9-A, Chandigarh.
4. Director, State Forensic Science Laboratory, Rasulgarh, Bhubaneshwar-10 (Orissa).
5. Director, Forensic Science Laboratory, Haryana Madhuban (Karnal).
6. Director, Forensic Science Laboratory, Andhra Pradesh, Red Hills, Hyderabad-4.
7. Director, Forensic Science Laboratory, Trivendram-10.
8. Director, State Forensic Science Laboratory, Govt. of West Bengal, Balgachia Road, Calcutta-37.
9. Director, Forensic Science Laboratory, 5-Miller Road, Om Mehal Building, Bangalore-560052.
10. Director, Forensic Science Laboratory, Assam, Kahitapara, Guwahati-19.
11. Director, Forensic Science Laboratory, Forensic House, Kamaragar Slai, Mysore, Madras-4.
12. Director, Forensic Science Laboratory, Gujarat State, New Mental Corner, Ahmedabad-380016.
13. Director, Forensic Science Laboratory, Mah. State, Vidyanagari, Kalina, Santacruz (E), Mumbai
14. Director, Forensic Laboratory, Civil Lines, Sagar (M.P) –470 001.
15. Director, Forensic Science Laboratory, Mahanagar, Lucknow (U. P.).
16. Director, Forensic Science Laboratory, Sector 18, Chandigarh.
17. Director, Forensic Science Laboratory, Bureau of Police Research and Development (MHA), Govt. of India, O.V. Campus, Ramnathpur, Hyderabad – 500 013.
18. Director, Central Forensic Science Laboratory, C.B.I., Block-4, C.G.O. Complex, Lodhi Road, New Delhi.
19. Assistant Director, Forensic Science Laboratory, Junagarh (Gujarat).
20. Chemical Examiner to the U.P. Govt., Agra (U.P.).



21. Govt. Examiner of questioned documents, Railway Board Building, Simla (HP)

22. Director, Forensic Science Laboratory Opposite C.D. Hospital, Sri Nagar (J.K.)

### 1.12 Test Memo

The Samples of seized drugs or substances should be despatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-I. This test memo will be serially numbered for each unit effecting the seizure. The seizing officer will carefully fill-up column 1 to 8 of the Test Memo and put his signature with official seal. The original and duplicate of the Test Memo should be sent to the Laboratory concerned alongwith the samples. The triplicate shall be retained in the case file of the seizing officer.

### 1.13 Mode and time limit for despatch of sample to Laboratory.

The samples should be sent either by insured post or through special messenger duly authorised for the purpose. Despatch of samples by registered post or ordinary mail should not be resorted to. Samples must be despatched to the Laboratory within 72 hours of seizure to avoid any legal objection.

1.14 Each Unit of every Enforcement Agency will maintain a Register of samples to monitor the progress of testing, which will have the following columns:-

Crime No.	Date of Seizure	Name & Address of offender	Description of seized drugs and yet qty.	
1	2	3	4	
Name of the officer drawing Reference and despatching the sample.	S. No. of samples and S. No. of Packages/containers from which samples were drawn.	Test	Memo	
5	6	7		
Name & Designation of custodian of sample.	The authority to whom Despatched.	Date of receipt of analysis Result and Its reference.		
8	9	10		
Results in brief	Date of receipt of remnant sample.	Date of Destruction/ disposal of remnant samples.		
11	12	13		
Date of destruction/disposal	Remarks			

of duplicate samples.

14

15

The register should be received once a month by the Head of unit and once in three months by the supervising officer.

### 1.15 Receipt in the Laboratory.

The sealed envelope containing the samples received in the Laboratory concerned should be carefully opened so as to preserve the seals on the envelope to be sent back along with the report on the test for evidence purposes. In the laboratory every sample received for test must be given a distinct Laboratory number. A separate register for Narcotic Drugs and Psychotropic Substances shall be maintained. The Laboratory may further sub-divide the register Agency-wise. The Laboratory number should form a continuous series, beginning on the 1<sup>st</sup> January every year and ending on the 31<sup>st</sup> December. The sample clerk must enter the laboratory number and the date of registration on the Test Memo and enter the same number with date of registration on the label of the sample container. Often there may be number of samples coming under once Test Memo, each sample must be given a separate number and all the numbers must be entered on the Memo.

The samples and memos having been marked with Laboratory numbers should be entered in a Register. The headings of the columns in the register will be as indicated below: -

S. No. (Lab. No.)	Date of receipt	Name of the officer drawing & despatching the sample	Test Memo Ref. & Date
1	2	3	4
Description of the drug as per the Test Memo	To whom allotted	Date of receipt by the concerned chemist with his signature	
5	6	7	
Details of Test results	Date of despatch of remnant samples	Remarks	
8	9	10	

**Note:** Columns & 6 should be filled up respectively at the time of actual forwarding of the sample to the concerned chemist.

### **1.16 Allotment of Samples**

Samples of narcotic drugs and psychotropic substances should be taken to the chemical examiner or such officer in the Laboratory for this purpose. He will mark the sample to a chemist. While so doing the chemical examiner or such officer will keep in view the provisions of section 293 of Cr. P.C. The sample clerk will handover the sample and test memos to the chemist named as above and obtain his initial for receipt in his register. All drug samples must reach such chemist the same day and the chemist will keep the samples in his safe custody under lock and key in his steel almirah, provided for the purpose.

### **1.17 Examination of sample with reference to Test Memo**

On receipt of the samples such chemist will examine the same and record its weight in the Test Memo. He will compare the markings on the Test Memos with the markings on the packages/containers. It will be his responsibility to ensure that he tests the relevant sample.

### **1.18 Expeditious test**

Expeditious analysis of narcotic drugs and psychotropic substances is of essence to all proceedings under N.D.P.S. Act, 1985. In many cases the court may refuse to extend Police/judicial remand beyond 15 days in the absence of a chemical report. Accordingly, it is essential that the analysis is completed and the report is despatched within 15 days from the date of receipt of the sample. However, where quantitative analysis requires longer time, the results of the qualitative test should be despatched to the officer from whom the samples were received within the aforesaid time limit on the original copy of the Test Memo so that court proceedings can start immediately. In the next 15 days the results of quantitative test (purity of the drug) should also be indicated on the duplicate test memo and sent to the officer from whom the samples were received.

### **1.19 Test Register**

All results both the qualitative and quantitative tests should be entered into the Register of samples (para 1.15). This register is intended to serve as a reference and as such should be quite durable, It should carry the results and the date of despatch with reference to the Test Memo. There should be clear and adequate reporting of the results in the Test Memo. As soon as the analysis is over the test result should

be despatched by registered post in the name of the officer who forwarded the sample for test.

### **1.20 Remnants of samples**

Remnants of all narcotic drugs and psychotropic substances samples should be returned with reference to the Test Memo to the analysis of the drug.

### **1.21 Custody of duplicate sample**

Duplicate sample of all seized narcotic drugs and psychotropic substances must be preserved and kept safely in the custody of the Investigating officer along with the case property. Normally duplicate sample may not be used but in case of loss of original sample in transit or otherwise or on account of trial court passing an order for a second test, the duplicate sample will be utilised.

### **1.22 Disposal of Test Memo**

As soon as the test result in original or duplicate or both test memos are received, the same will be filed in the Court, trying the case, along with chargesheet/complaint by the Investigating officer. He will keep an attested copy of the same in his case file.

### **1.23 Disposal of Remnant sample/duplicate sample and the drug**

At present, the remnant sample/duplicate sample and seized narcotic drugs and psychotropic substances can be disposed of after the proceedings of prosecution are over or by obtaining an order from such court under section 110 of the Customs Act, 1962 and/or 451 of Cr. P.C. While obtaining the order of the court under the aforesaid section it is necessary that specific order in respect of the remnant sample/duplicate sample is also obtained.

After such order has been obtained, the drug or substance along with the samples including remnants shall be disposed of in the manner prescribed. Please acknowledge the receipt of the standing order.

### **STANDING ORDER NO. 1/89 Dated 13<sup>th</sup> June, 1989.**

'Whereas the Central Government considers it necessary and expedient to determine the manner in which the narcotic drugs and psychotropic substances, as specified in Notification No.4/49 dated the 29<sup>th</sup> May, 1989 (F.No. 664/23/89-Opium, published as S.O. 381 (E), which shall, as soon as may be, after their seizure, be

disposed of, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space:

### **SECTION 1 – DRUGS MEANT FOR DISPOSAL**

<b>Drugs Specified in Notification No. 4/89 Drugs meant For disposal Specified</b>	1.	<b>Narcotic Drugs :</b>
		1) Opium
		2) Morphine
		3) Heroin
		4) Ganja
		5) Hashish (Charas)
		6) Codeine
		7) Thebaine
		8) Cocaine
		9) Poppy straw; and
		10) Any other manufactured drug as under clause (xi) Of section 2 of the Act.

#### **Psychotropic Substances :**

- 1) Methaqualone,
- 2) T.H.C.,
- 3) Amphetamine and
- 4) Any other psychotropic substance, as defined under Clause (xxiii) of section 2 of section 2 of the said Act.

### **SECTION II – GENERAL PROCEDURE FOR SAMPLING, STORAGE, Etc.**

**Sampling Classification, Etc. of drugs** 2.1 All drugs shall be properly classified, carefully, weighed and samples on the spot of seizure.

#### **Drawal of Samples**

2.2 All the packages/ containers shall be serially numbered and kept in lots for Sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should

invariably be made in the panchnama drawn on the spot.

**Quantity to Be drawn for the sampling**

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for duplicate sample also. The seized drugs in the packages / containers shall be well mixed to make it homogeneous and representative before the sample (in Duplicate) is drawn.

**Method of drawal**

**(a) Single Container / package**

2.4 In the case of seizure of a single package / container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package / container in case of seizure of more than one package / container.

**(b) Bunch of packages/ Bunching for**

2.5 However, when the packages/ containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicated that the packages are identical in all respects the packages / containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 Such packages / containers, one sample (in duplicate) may be drawn.

**(i) Hashish and ganja**

**(ii) other drugs Drawal of representative samples:**

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that sample are in equal quantity is taken from each quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

**Storage of samples - procedure**

2.9 The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the S.No. of the package (s)/container (s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should also be sealed and marked 'secret-drug' sample/Test memo', to be sent to the chemical laboratory concerned.

**Despatch of samples for testing: To whom to be sent?**

3.0 The seizing officers of the Central Government Departments, viz., Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, Directorate of Revenue Intelligence, etc. should despatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The other Central Agencies like BSF, CBI and other Central Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

**Preparation of Inventory**

3.1 After sampling, detailed inventory of such packages/containers shall be prepared for being enclosed to the panchnama. Original wrappers shall also be preserved for evidentiary purposes.

### **SECTION III – RECEIPT OF DRUGS IN GODOWN AND PROCEDURE**

**Custody of Drugs in Godowns – Storage Procedure**

3.2 All the drugs invariably be stored in safes and vaults provided with double-locking system. Agencies of the Central and State Governments, may specifically designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.

**Maintenance of godowns and procedure for deposit of Drugs**

3.3. Such godowns, as a matter of rule, shall be placed under the over-all supervision and charge of a Gazetted Officer of the respective enforcement agency, who shall exercise utmost care,

circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godowns within 48 hours of such seizure, with a forwarding memo indicating NDPE Crime No. as per Crime and Prosecution (C & P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total no. of packages/containers, etc.

**Acknowledgement to be obtained**

3.4 The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure-I), shall had acknowledgement over such to the Investigating Officer of the case along with the case dossiers for further proceedings.

**Action to be taken by Godown-in-charge before Acceptance of drugs for deposit**

3.5 The Officer-in-charge of the godown, before accepting the deposit of drugs, shall ensure that the same are properly packed and sealed. He shall also arrange the packages/containers (case-wise and lot-wise) for quick retrieval, etc.

**Maintenance of godown register**

3.6 The godown-in-charge is required to maintain a register wherein entries of receipt should be made as per format at Annexure-II.

**Inspection by Inspecting Officer**

3.7 It shall be incumbent upon the Inspecting Officers of the various Departments mentioned at Annexure-Ii to make frequent visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drug. The Inspecting Officers should record their remarks/observations against Col.15 of the Format at Annexure-II.

**Prescription of periodical reports and returns**

3.8 The Heads of the respective enforceent agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

**Pre-trial disposal of drugs**

3.9 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of sub-section (2) of section 52A of the Act.

**Follow-up action to be taken by Police and Empowered officers**

**SECTION IV – ACTION TO BE TAKEN BY POLICE AND OTHER EMPOWERED OFFICERS FOR PRE – TRIAL DISPOSAL**



4.0 Where any narcotic drug of psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer, referred to in paragraph 3.3 .....of the order shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers of such other identifying particulars of the narcotic drugs or psychotropic substances of the packing in which they are packed, country of origin and such other particulars as may be considered..... relevant to the identity of the aforesaid drugs in any proceedings under the Act and make an application to any Magistrate for the purpose of -

**Application to Magistrate for pre-trial**

(a) certifying the correctness of the inventory so prepared; or  
 (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or  
 (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

**Magistrate to allow Application**

4.1 Where an application is made under sub-section (2) of the section 52A of Act, the Magistrate shall, as soon as may be, allow the application.

**Courts to treat documents and list of samples certified by Magistrate as "primary evidence"**

4.2 Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs, or narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

**Grounds to be enumerated in application**

4.3 While preferring an application under section 52A to any Magistrate, emphasis may be laid on 'expediency of disposal'. The ground that may be highlighted may pertain to -  
 (i) risk of pilferage, theft and substitution;  
 (ii) constraints of storage and hazardous nature;  
 (iii) high potential and vulnerability of abuse;  
 (iv) high temptations to traffickers;  
 diminution in the value of other articles (including conveyances) due to long storage, etc.

- Filing of Charge-sheet/Plaint** 4.4 Since the filing of charge-sheet/complaint is condition precedent for expeditious issue of orders for pre-trial disposal, for expeditious issue of orders for pre-trial disposal, complaints by the respective enforcement agencies must be filed after Completion of investigation within the stipulated period of 90 days of seizure/arrest , on a priority basis. This requires to be meticulously adhered to.
- Documents to accompany Application** 4.5 While moving the application under sub-section (2) of section 52A of the Act as above, production of all seized articles/drugs, etc. along with the panchnama (in original) and detailed inventory thereof is essential. The inventory shall Be complete in all respects and contain such particulars, as may be relevant to Establish nexus/identity of articles. The chemical analysis report should be Simultaneously filed.
- Mode of disposal of drugs on which court's and orders obtained** 4.6 After the court orders are passed for pre-trial disposal of drugs, those drugs which have no legitimate value (excepting opium, morphine, codeine and the ,baine, which are required to be transferred to the Government Opium Alkaloid Works Undertaking at Ghazipur or Neemuch, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and not repugnant to the court's order.
- Application of Customs Act** **ibid.** 4.7 As bulk of seizures of drugs relate to illicit import and are made at the points of entry or exit or in transit traffic, such drugs are liable to seizure under section 110 of the Customs Act, 1962 and confiscation under sections 110 or 113 In such cases, it would be appropriate to initiate proceedings under the Customs Act also.

## SECTION 5

### CONSTITUTION & FUNCITONS OF DRUG DISPOSAL COMMITTEE

- Constitution of Drug Committee** 5.0 A three Members Committee of the respective enforcement agencies (both Central and States), known as the "Narcotic Drugs and Psychotropic Substances Disposal Committee" should be constituted to discharged its functions from the Headquarters of the respective Heads of Departments. The Committee will be headed by an officer not below the rank of –
- (i) Deputy Collector of Customs and Central Excise with two Members of the rank of Customs and central

Excise in the case of Customs and Central Excise Collectorate;

(ii) Deputy Narcotics Commissioner with two members of the rank of Assistant Narcotics Commissioner in the case of Narcotics Commissioner's organisation;

(iii) Deputy Director of Revenue Intelligence with two members of the rank of Assistant Director in the case of Directorate of Revenue Intelligence;

(iv) Deputy Director and two other officers, as may be authorised by the Director General, Narcotics Control Bureau in the case of that organisation;

(v) Deputy Inspector-General of Police with two members of the rank of Superintendent of Police in respect of State Police Organisations; and

(vi) Deputy Commissioner of Excise with two officers of the rank of Assistant Commissioners, in respect of State Excise Organisations.

5.1 The Committee will be directly responsible to the Head of the Department concerned.

**Functions**

5.2 The functions of the Committee will be to,

(a) undertake detailed analysis of drugs pending disposal, and

(b) advise the respective investigation officers/supervisory officers on the steps to be initiated for expeditious disposal.

**Meeting by the Committee**

5.3 The Committee shall meet, as frequently as possible, as may be considered necessary for quick disposal of drugs and at least once in two months. While the Central agencies shall endorse a copy of the minutes of such meetings directly to the Narcotics Control bureau, the State enforcement agencies concerned shall report the same to their respective State Police Headquarters (CID), who, in turn, may keep the Narcotics Control Bureau informed of the progress made from time to time.

**Procedure to be followed by the Committee with regard to disposal of drugs**

5.4 The officers-in-charge of godowns shall prepare a list of all such drugs that have become ripe for disposal to the Chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they for legal proceedings and the approval of the court has been obtained for the purpose, the Members of the respective drug disposal committee shall endorse necessary certificates to this effect. The committee shall, thereafter, physically examine and verify the drug consignments with

reference to the seizure report and other documents like chemical analysis, etc., including its weighment and record its findings in each case.

**Variation in chemical analysis report -Further action to be taken**

5.5 The composite sample shall be drawn for getting the same tested by the Central Revenues Control Laboratory or the State Forensic Science Laboratory/State Drug Control Laboratory concerned. If no variation, either in the purity or quantity is found, the same shall be ordered for destruction by the Department.

Where any minor variations are noticed, a detailed report may be submitted to the Head of the Department of the enforcement agency concerned. In the case of wider variations, the matter should be immediately reported to the Narcotics Control Bureau indicating reported the following-up action taken in this regard. The destruction of drugs in such cases can be done only after obtaining the orders of the Head of the Department concerned.

**Power of Committee For Destruction of Seized drugs**

5.6 The Committee shall be empowered to order destruction of the seized drugs in the following cases :

**Name of drug Seized drugs Quantity (Kgs.)**

- |                     |                           |
|---------------------|---------------------------|
| 1. Heroin           | 2                         |
| 2. Hashish (Charas) | 50                        |
| 3. Hashish oil      | 10                        |
| 4. Ganja            | 500                       |
| 5. Cocaine          | 1                         |
| 6. Mandrax          | 150                       |
| 7. Other drugs      | upto value of Rs. 5 lakhs |

**Intimation To Head of Deptt. On destruction**

5.7 The disposal Committee shall intimate the Head of the Department concerned the programme of destruction (giving complete details) in advance (at least 15 days before the date of destruction), so that, in case he deems fit, he may either himself conduct surprise checks, or depute an officer for conducting such surprise checks. The disposal Committee should inform the respective Heads of Departments in respect of every destruction made by indicating the date of destruction, quantities made by it indicating the date of destruction, quantities destroyed, etc

**Quantities in excess of delegation-Procedure to**

5.8 In those cases where the quantities exceed the above limits, destruction shall be ordered and take place only under the supervision by the Head of the Department himself along with the Chairman and

**be followed:** Members of the Drug Disposal Committee.

**Mode of Disposal of Drugs**

5.9 All drugs excepting opium, morphine, codeine and the baine shall be destroyed by incineration in such places where adequate facilities and security arrangements exist for the same after ensuring that this may not be a health Hazard from the point of view of pollution. Open destruction of such drugs may also be resorted to, wherever considered feasible and necessary, after due publicity to gain the confidence of public. Wide publicity, in such cases, would be consequential.

**SECTION VI – MISCELLANEOUS**

**Certificate of destruction**

6.0 A certificate of destruction (in triplicate) Annexure-III of containing all the relevant data like godown entry no., file no., gross and net weight of the drugs seized, etc., shall be prepared and duly endorsed by the signature of the Chairman as well as Members of the Committee. This could also serve the purpose of panchnama. The original copy shall be pasted in the godwon register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Disposal Committee.

The procedure as outlined above should be followed by all Central and State endorsement agencies concerned. Other goods (including conveyance), ripe for disposal may be disposed of by public auction or in such manner as is deemed convenient in the best interests of the Government.

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## Chapter – X

### REWARDS

#### *II.10.1. INTRODUCTION*

**II.10.1.1.** Reward, is an incentive given in cash or kind to somebody in token of recognition of distinguished services rendered/tasks accomplished by him.

#### **II.10.1.2. REVISED GUIDELINES (2004)**

#### **II.10.2. SCOPE OF THE REWARD GUIDELINES**

**II.10.2.1.** These guidelines will be applicable for grant of rewards to the informers and Govt. servants in respect of cases of seizures made and/or infringements/evasion of duty etc. detected, under the provisions of the following Acts :-

(1) The Customs Act, 1962;

(2) The Central Excise Act, 1944;

(3) Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985.

(4) Finance Act, 1994 as amended to the extent the said Act contains provisions relating to Service Tax. \*

**[ \* Board's letter F. No. R-13011/6/2001-Cus(AS) dated 16<sup>th</sup> April, 2004]**

**II.10.2.2** These guidelines will also be applicable for grant of rewards in respect of cases of detection of Drawback frauds or abuses of duty exemption schemes such as DEEC, DEPB, EPCG etc. unearthed on the basis of specific prior information.

#### **II.10.3. ELIGIBILITY FOR REWARD TO GOVT. SERVANTS**

**II.10.3.1** Ordinarily, Govt. servants upto the level of Group 'A' officers of the rank of Dy. Commissioner of Customs & Central Excise, will be eligible for reward depending on the contribution made by them as a team as well as in their individual

capacity with regard to collection of intelligence, surveillance, effecting of seizure/detection of duty evasion and post-seizure investigation.

**II.10.3.2** Group 'A' officers above the rank of Dy. Commissioner of Customs & Central Excise will not be eligible for reward on the basis of the value of seized goods/amount of duty evaded etc. However, in appropriate cases, they may be considered for grant of lump-sum payment and/or recognition, in any other manner, of the services rendered by them, for which proposals may be forwarded by the jurisdictional Chief Commissioners of Customs and Central Excise to the Ministry, through DGRI or DGCEI, as the case may be.

**II.10.3.3** Govt. servants working in other Departments/Agencies such as Police, BSF and Coast Guard etc. may also be considered for sanction of reward in respect of cases of seizures of contraband goods effected by these agencies under the provisions of Customs Act, 1962. However, only such officers of these Departments/Agencies who hold rank equivalent to the Dy Commissioner of Customs & Central Excise or lower rank, will be considered eligible for sanction of rewards in terms of para 3.1. above.

**II.10.3.4** In view of the emphasis of economic crime shifting now-a-days from outright smuggling to commercial frauds ; which require an in-depth investigation and collection of evidence for establishing the various infringements of law; there is a need for better appreciation of the work of the officers engaged in the investigation work. The officer(s) engaged in the investigation work should, therefore, be considered at par with the officers involved in the collection of intelligence and search/seizure operations, while sanctioning reward.

**II.11.3.5** Govt. servants involved in post-investigation work such as those posted in adjudication, COFEPOSA, Legal or Prosecution Cells of the Commissionerate/Custom House may also be considered for grant of lump-sum payment of reward, not exceeding Rs. 5,000/- in each case, if there is evidence to show extra hard work, exceptional zeal, enthusiasm or initiative displayed by the officer(s) to assist in speedy and effective finalisation of adjudication, COFEPOSA, Legal or prosecution proceedings resulting in favourable decisions like confiscation

of seized goods, confirmation of duties demanded and/or imposition of penalties, detention/convictions etc.

**II.10.3.6** Govt. servants engaged in audit/special audit and who have made outstanding contribution in detecting major cases of evasion of central excise duty, may also be considered for grant of lump-sum payment of reward, not exceeding Rs. 5,000/- in each case.

**II.10.3.7** The Departmental Representatives and other officers/staff working in the office of Chief Departmental Representative (CDR) CEGAT, may also be considered for sanction of reward in deserving cases, for which purpose specific proposals may be sent to the Ministry by the Chief Departmental Representative. Only such cases should be recommended for reward where the opposite party was represented by a senior advocate or eminent lawyer and where the Govt. would have lost the case but for the pain-staking efforts and effective pleading by the Departmental Representative. Clear-cut cases where the point at issue was already settled by a Supreme Court/High Court judgement would not qualify for reward, just because the stakes involved in the case were very high.

#### **II.10.4. QUANTUM AND CEILING OF REWARDS**

**II.10.4.1** Informers and Govt. servants will be eligible for reward upto 20% of the net sale-proceeds of the contraband goods seized and/or amount of duty evaded plus amount of fine and penalty levied/imposed and recovered. However, in respect of gold, silver, opium and other narcotic drugs etc. seized under the provisions of the Customs Act, 1962/Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, the overall ceiling of reward will be as per specific rates indicated in the Annexure. These ceilings would be subject to periodical revision in the light of the price fluctuations of these items, for which periodical intimations may be sent to the DGRI/DGNCB, who, in turn, will send suitable recommendations to the Ministry, for appropriate revision, as and when warranted.

**II.10.4.2** In respect of cases of detection of Drawback frauds or abuse of duty exemption schemes such as DEEC, DEPB, EPCG etc. unearthed on the basis of specific prior information, the informers and Govt. servants will be eligible for reward



upto 20% of recovery of drawback claimed fraudulently and/or recovery of duties evaded under DEEC/DEPB/EPCG schemes, plus amount of fine/penalty levied/imposed and recovered.

**II.10.4.3** Reward to Govt. servants, however, may ordinarily be paid upto 10% of the net sale-proceeds of the contraband goods seized and/or amount of duty evaded and/or amount of fraudulently claimed Drawback recovered plus amount of fine/penalty levied/imposed and recovered. Similarly, in respect of Gold, Silver, Opium & Narcotic drugs etc., the reward may be limited to half of the maximum rewards indicated in the Annexure. Reward in excess of this limit but not exceeding 20% of the value may be considered only in such cases where the Govt. servant has exposed himself/herself to a great personal hazard or displayed an exemplary courage, commendable initiative or resourcefulness of an extraordinary nature or where his/her personal efforts have been mainly responsible for the detection of case of seizure/evasion of duty.

**II.10.4.4** Govt. servants will be eligible for sanction/payment of total reward not exceeding Rs.15 (fifteen) lakhs during their entire career. As regards reward in a single case, an individual officer should not be sanctioned a total reward (advance reward and final reward put together) exceeding Rs.1 lakh. However, in exceptional cases, reward in excess of this limit i.e. above Rs.1 lakh can be sanctioned to an individual officer, by the Board, on the recommendations of the Reward sanctioning authority for which proposals may be sent to the Ministry, through DGRI or DGCEI, as the case may be. \*

**[ \* Board's letter F. No. R-13011/6/2001-Cus(AS) dated 16<sup>th</sup> April, 2004]**

## **II.10.5. REWARD SHOULD NOT BE GRANTED AS A MATTER OF ROUTINE**

**II.10.5.1** Reward is purely an ex-gratia payment which, subject to guidelines, may be granted on the absolute discretion of the authority competent to grant rewards and cannot be claimed by anyone as a matter of right. In determining the reward which may be granted, the authority competent to grant reward will keep in mind the specificity and accuracy of the information, the risk and trouble undertaken,

the extent and nature of the help rendered by the informer, whether information gives clues to persons involved in smuggling, or their associates etc., the risk involved for the Govt. servants in working out the case, the difficulty in securing the information, the extent to which the vigilance of the staff led to the seizure, special initiative, efforts and ingenuity displayed, etc. and whether, besides the seizure of contraband goods, the owners/organizers/ financiers/racketeers as well as the carriers have been apprehended or not.

**II.10.5.2** Reward should not be sanctioned for routine and normal nature of work.

### **II.10.6. PAYMENT OF ADVANCE / INTERIM REWARD**

**II.10.6.1** Advance/Interim reward may be paid to informers and Govt. servants upto 50% of the total admissible reward immediately on seizure in respect of the following categories of goods, namely :-

- a) gold / silver bullion;
- b) arms and ammunition, explosives; and
- c) opium and other narcotic drugs.

**II.10.6.2** In other cases of outright smuggling, involving seizures of contraband goods, including foreign currency, advance/interim reward upto 25% of the total admissible reward may be paid to the informers and Govt. servants, immediately after seizure, if the authority competent to sanction reward is satisfied that the goods seized are reasonably expected to be confiscated on adjudication and the adjudication order is likely to be sustained in appeal/revision proceedings.

**II.10.6.3** In all other cases, including Customs appraising cases, cases of town-seizures and Central Excise duty evasion cases, normally, no advance/interim reward will be granted. However, in cases where the parties/persons involved have voluntarily paid the amount of duty evaded during the course of investigation, admitting their liability, 25% of the voluntary deposits may be considered for payment as advance/interim reward to the **informers**, after the issue of the show-cause notice (SCN), provided the authority competent to sanction reward is satisfied that there is reasonable chance of confiscability/infringement/evasion, as the case may be, being

established in adjudication and sustained in appeal/revisionary proceedings. However, in such cases, the **Govt. servants** will become eligible for payment of advance/interim reward only after adjudication of Show-Cause Notice resulting in confirmation of duty.

**II.10.6.4** In exceptional cases, the Heads of Department may, having regard to the value of the seizures effected and magnitude of the evasion of duty/infringement detected and special efforts or ingenuity displayed by the officers concerned, sanction suitable reward on the spot to be adjusted against the advance/interim reward that may be sanctioned subsequently.

### **II.10.7. PAYMENT OF FINAL REWARD**

**II.10.7.1** Final rewards, both to officers as well as informers, should be sanctioned and disbursed only after conclusion of adjudication/appeal/revision proceedings. The final reward will be determined on the basis of the net sale proceeds of goods seized/confiscated (if any) and/or the amount of additional duty/fraudulently claimed Drawback recovered plus penalty/fine recovered, and the total reward admissible, i.e., advance and final reward put together, will not exceed the ceiling of 20% of the net sale proceeds (if any) plus amount of additional duty/fine/penalty recovered or the amount of drawback fraudulently claimed recovered, as the case may be. This will also be subject to instructions in para 4.3. above as regards rewards to Govt. Servants is concerned. The advance / interim reward sanctioned and disbursed, if any, shall be adjusted from the final reward to be paid to the officers/informers.

### **II.10.8. DELEGATION OF POWERS FOR SANCTION/PAYMENT OF REWARD**

The monetary limit for sanction of rewards to informers and Govt. servants are given below:-

#### **II.10.8.1** TO INFORMERS

<b>Monetary Limit</b>	<b>Reward Sanctioning Authority</b>
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Upto lakhs	Rs.5	Jurisdictional Head of Department, i.e., Commissioner of Customs and/or Central Excise/Addl. Director General, DRI/Addl. Director General, DGCEI
Above lakhs & upto Rs.10 lakhs	Rs.5	A Committee comprising :  (i) Jurisdictional Commissioner of Customs and/or Central Excise/ADG, DRI/ADG, DGCEI  (ii) One of Jurisdictional Addl. Commissioner/Director or Senior most Jt. Commissioner/Director of the Commissionerate or the DRI/DGCEI as the case may be, and  (iii) An officer of equivalent rank, outside the Commissionerate/Directorate i.e. Addl. or Jt. Commissioner of Customs & Central Excise of another local Commissionerate / Nearest Jt. Director(DRI) or Jt. Director(CEI) or Jt. Director(DOL), nominated by Jurisdictional Commissioner/ADG, DRI, ADG, CEI.
Above Lakhs & upto Rs.20 lakhs	Rs.10	A Committee comprising :  (i) Jurisdictional Chief Commissioner/DGRI/DGCEI.  (ii) Jurisdictional Commissioner of Customs and/or Central Excise/ADG, DRI/ADG, DGCEI, and  (iii) Commissioner (Logistics) or any other Commissioner rank officer, nominated by the Chief Commissioner/DGRI/DGCEI.
Above lakhs (other than Service Tax cases)	Rs.20	A Committee comprising :  (i) Jurisdictional Chief Commissioner,  (ii) Director General (Revenue Intelligence) and  (iii) Director General(CEI).
Above lakhs (Service Tax cases)	Rs.20	A Committee comprising :  (i) Jurisdictional Chief Commissioner,  (ii) Director General (Service Tax )  (iii) Director General(CEI).

**II.10.8.2 TO GOVT. SERVANTS**

<b>Monetary Limit</b>	<b>Reward Sanctioning Authority</b>
Upto Rs.5,000/-	Jurisdictional Addl. Commissioner/Jt. Commissioner of Customs & Central Excise/Addl./Joint Director of DRI/CEI
Above Rs.5,000 & upto Rs.10,000	Jurisdictional Head of the Department i.e. Commissioner of Customs and/or Central Excise/ADG, DRI/ADG, CEI.
Above Rs.10,000/- & upto Rs.50,000/-	A Committee comprising : (i) Jurisdictional Commissioner of Customs and/or Central Excise/Addl. Director General(DRI)/Addl. Director General(CEI). (ii) Jurisdictional Addl./Joint Commissioner of Customs & Central Excise/Addl./Jt. Director (DRI)/Addl./Jt. Director(CEI). (iii) An outside Addl./Jt. Commissioner /Addl./Jt. Director(DRI)/Addl./Jt. Director(CEI), nominated by Jurisdictional Commissioner in consultation with concerned Commissioner/DG/ADG.
Above Rs.50,000/-but less than Rs.1 lakh	A Committee comprising : (i) Jurisdictional Chief Commissioner/DGRI/DGCEI, (ii) Jurisdictional Commissioner of Customs and/or Central Excise/ADG, DRI/ADG, CEI. and (iii) Commissioner (Logistics) or any other Commissioner of Customs/Central Excise, nominated by the Chief Commissioner/DGRI/DGCEI.

By virtue of the amendment to para 2.1 the reward scheme is extended to the cases of detection of service tax evasion. The reward claims to informers and Govt. servants in respect of service tax cases shall be processed and decided in the same manner as those of Central Excise cases. Accordingly, in the aforementioned letter wherever the word “duty” occurs the same shall be read as “duty/Service Tax”. \*

**[\* Board's letter F. No. R-13011/6/2001-Cus(AS) dated 16<sup>th</sup> April, 2004]**

#### **II.10.9. REVIEW OF FINAL REWARDS SANCTIONED BY THE COMPETENT AUTHORITY**

Final reward sanctioned by the duly constituted reward sanctioning authority/committee shall not be reviewed or reopened. However, in most exceptional cases, where DGRI, DGCEI, or the Chief Commissioner, as the case may be, is satisfied that the review of the final reward sanctioned by the competent authority is absolutely necessary to redress any grave injustice meted out to the Informer/Govt. servant and make a recommendation to the Board to this effect, the Govt. may review the final reward sanctioned on the specific recommendations of the Board.

#### **II.10.10. MECHANISM TO MONITOR THE REWARD SANCTIONED TO THE GOVT. SERVANTS**

To ensure that the Govt. servants do not exceed the ceiling of Rs. 10 Lakhs of total reward during their career, all rewards sanctioned to the Govt. servants should be entered in their Service Book, before the same are disbursed. Detailed instructions issued vide Ministry's letter F.No. 394/46/95-Cus(AS) dated 18th September, 1998, may be scrupulously followed in this regard.

**II.10.11.** In view of the liberalisation of rewards, the Heads of Departments will take special care to ensure that the value of goods fixed at the time of seizure is fully realistic and represents the correct value of the goods seized.

**II.10.12.** To ensure that reward is not cornered by a few officers only, it is necessary that larger number of officers are given an opportunity to work on the anti-smuggling and anti-evasion posts. It is, therefore, desired that there should be periodic rotation of officers and no officer should be allowed to be posted to airports, DRI, DGCEI or Headquarters Preventive of a Commissionerate /Custom House for more than the prescribed tenure, as per the existing instructions of the Board on the subject.

#### **II.10.13. UNDERTAKING BY THE INFORMER**

At the time when an informer furnishes any information or documents, an undertaking should be taken from the informer that he/she is aware that the extent of the reward depends on the precision of the information furnished by him/her; that the provisions of Section 82 of the Indian Penal Code have been read by and/or explained to him/her; that he/she is aware that if the information furnished by him/her is found to be false, he/she would be liable to prosecution; that he/she accepts that the Govt. is under no obligation to enter into any correspondence regarding the details of seizures made etc., if any, and that the payment of reward is ex-gratia in the absolute discretion of the authority competent to grant reward. It may also be made specifically clear to the informer that the Govt. is under no obligation to grant/sanction the maximum admissible reward upto 20% of the net sale proceeds of the seized/confiscated goods, (if any) and/or the amount of additional duty / penalty / redemption fine recovered and that the amount of reward to be sanctioned to the informer, will purely depend on the specificity & accuracy of the information & other dependent factors, as indicated in para 5.1 of these guidelines.

#### ANNEXURE

(Paras 4.1 and 4.3)

Sl. No.	Commodity	Range of illicit prices indicated	Rate of maximum reward @ 20% of illicit prices	Prescribed purity
(1)	(2)	3 (a)	3 (b)	(4)
1	Gold	-	Rs. 500/- per 10 grams	999.5 mille or more
2	Silver	-	Rs. 1,000/- per kg.	99% or more
3	Opium	Rs. 1,100/- Rs. 2,000/-	Rs. 220/- per kg.	Standard opium
4	Morphine base and its salts	Rs. 40,000/- Rs. 50,000/-	Rs. 8,000/- per kg.	90% or more of anhydrous

				morphine
5	Heroin and its salts	Rs. 1,00,000/- Rs. 3,00,000/-	Rs. 20,000/- per kg.	90% or more diacetyl morphine
6	Cocaine and its salts	Rs. 2,00,000/- Rs. 6,00,000/-	Rs. 40,000/- per kg.	90% or more of anhydrous cocaine
7	Hashish	Rs. 2,000/- Rs. 3,500/-	Rs. 400/- per kg.	With THC content of 4% or more
8	Hashish oil	Rs. 10,000/- Rs. 17,500/-	Rs. 2,000/- per kg.	With THC content of 20% or more
9	Ganja	Rs. 400/- Rs. 500/-	Rs. 80/- per kg	Should be commercially acceptable as Ganja
10	Mandrax Tablets	-	Rs. 500/- per kg.	Presence of Methaqualone

[F. No. R-13011/6/2001-Cus(AS) the 20th June, 2001]

**II.10.14.** The Ministry vide letter F. No. R-13011 / 6 / 2001-Cus (AS) dated the 20<sup>th</sup> June, 2001 while communicating the guidelines in respect of grant of reward to informers and Government servants, further vide letter F. No. 13011/3/2004-CUS(AS) dated 12<sup>th</sup> Aug. 2005 communicated its decision to extend the reward scheme to cases of recovery from tax defaulters. The provisions in this regard are as follows:

- (i) The reward scheme shall be extended to grant of suitable reward to an informer who gives information regarding the whereabouts, assets, immovable properties etc. of persons from whom arrears of duty, tax, fine, penalty etc. (under the provisions of the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994 in so far as the



said Act contains provisions relating to Service Tax) are recoverable and the information results in recovery of arrears.

- (ii) The grant of reward shall be considered only in those cases where the Chief Commissioner is satisfied that
  - a) all possible efforts have been made by the Departmental officers to trace the defaulter / details of defaulter's property, and
  - b) information provided by the informer has been instrumental in the recovery of arrears.
- (iii) The reward in such cases can be given up to a maximum of 5% of the amount recovered and the quantum of reward will be determined by such factors as the nature, accuracy, actionability and efficacy of the information, and other attendant factors.
- (iv) In those cases where the case was originally booked on the basis of information provided by an informer, reward to the informer(s) giving information leading to arrears recovery shall be given out of the total reward available in the informer category as per existing policy.
- (v) In order to expedite arrears recovery, the jurisdictional Commissioner may, if necessary, invite information from the general public through notices in the print / electronic media in a case where recovery of arrears is pending on account of the fact that the whereabouts / details of assets of the defaulter are not known, and the Chief Commissioner is satisfied that all possible efforts have been made by the Departmental officers in this regard.
- (vi) For removal of doubts, it is clarified that reward in cases of arrears recovery shall be admissible only to informers and not to officers. \*

[ \* letter F. No. 13011/3/2004-CUS(AS) dated 12<sup>th</sup> Aug. 2005 ]

**CHECK – LIST FOR PROCESSING REWARD FILES**

The following documents are necessary in the file while forwarding the file to Reward Cell for reward purpose.

1. Report of Seizing Officer on noting side.
2. Panchanama of seizure of goods
3. DRI-I proforma
4. DRI-II proforma
5. Assay report in case of gold / silver
6. Test report in case of Drugs / Narcotics
7. Disposal Certificate.
8. Order-in-original.
9. Appeal verification report, if any.
10. CEGAT order if any.
11. Contemporaneous report.
12. Annexure –II: Advance / Final reward proposal form the informer.
13. Annexure -III: Final / Advance reward proposal form for Staff.
14. Names of all the staff who participated in seizure and post seizure formalities to be mentioned in the contemporaneous report.
15. Contemporaneous report should be supported by documents.
16. Available Reward amount calculation sheet.

## **ANNEXURE – II**

### **Proposal For Final Reward To The Informant**

F. No.

- |  |   |
|--|---|
| 1. Date and place of seizure   | : |
| 2. Description of goods.   | : |
| 3. Quantity (in case of Gold<br>Silver / Narcotics)                                      | : |
| 4. Panchanama Value  | : |
| 5. Estimated Value   | : |
| 6. Sale proceeds actually realised   | : |
| 7. 10% of the estimated value / sale proceeds<br>in case of seizure made prior to 1.1.85 |   |
| 8. 20% of the estimated value / sale proceeds<br>in case of seizure made after 1.1.85    |   |

---

9. Amount available at the rate per tola / kg.  
(in respect of gold / silver / narcotics)

---

10. Amount already paid as advance reward  
to the informant as per column No. 7 or 8  
(attach copy of order)

---

11. Amount available for payment :  
of final reward to the informant as  
per column No. 7 or 8

---

12. Result of adjudication proceedings :  
(attach copy of order)

---

13. Whether appeal or revision :  
application has been filed  
& if so, results thereof.

---

14. Result of prosecution proceedings. :

---

15. Recommendation for final reward, if :  
any, by Additional Commissioner

### **ANNEXURE III.**

#### **Proposal For Advance / Final Reward To Staff**

F. No.

1. Date and place of seizure :

---

2. Description of goods :

---

3. Quantity (in case of gold / silver / narcotics) :

---

4. Panchanama Value :

---

5. Estimated Value :

---

6. Sale proceeds actually realised :

---

7. 10% of the Estimated value / sale proceeds :  
in case of seizure made before 1.1.85.

---

8. 20% of the estimated value / ale proceeds :  
in case of seizure made after 1.1.85.

---

9. Amount available at the rate per tola / kg. :  
(in respect of gold / silver / narcotics)

---

10. Advance reward already sanctioned in any :  
(attach copy of order)

---

11. Amount available as advance / Final :  
reward to the staff as per column no. 7 or 8.

---

12. Result of adjudication proceedings :  
(attach copy of order)

---

13. Whether appeal or revision application has :  
been filed & if so, result thereof

---

14. Results of prosecution proceedings. :

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### **APPENDIX 'A'**

#### **Reward Payment Certificate**

Certified that an amount of Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_ only) sanctioned as Advance / Final Reward by the Committee headed by the Chief Commissioner, Commissioner / Addl. Commissioner of Customs vide order no. \_\_\_\_\_ dated \_\_\_\_\_ in the case of seizure of \_\_\_\_\_ on \_\_\_\_\_; drawn in Contingency Bill No. \_\_\_\_\_

Dated \_\_\_\_\_ for Rs. \_\_\_\_\_ encashed from the Customs Treasury on \_\_\_\_\_

Was paid to the right informant from whom a receipt has been obtained by me in the presence of a witness.

Place \_\_\_\_\_ Commissioner / Addl. Commissioner / Asstt. Commissioner of Customs  
Date :

### **APPENDIX 'B'**

#### **Receipt of Reward**

Received a sum of Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_ only) as Advance / Final Reward from the Commissioner / Addl. Commissioner / Asstt. of Customs ( Commissionerate & address ) , in the case of seizure of \_\_\_\_\_ on \_\_\_\_\_ vide Custom House File No. \_\_\_\_\_

Thumb impression / Signature of the informant with date of payment.

Certified that the payment has been made by me to the right informant whose thumb impression / signature appears on the above receipt, this day the \_\_\_\_\_

Signature of the  
Identifying Officer

Commissioner / Addl. Commissioner / Asstt. Commissioner  
of Customs, ( Commissionerate )

Name & Designation

Signature of Witness Officer

Name & Designation

### **REWARDS PROCEDURE ' 85**

In the year 1985 the Govt. reviewed the existing policy on grant of rewards to informants & Govt. Staff & issued revised guidelines vide letter F No. 13011/3/85 AD II dated 30-3-1985. The guidelines along with Ministry's clarifications and decisions issued from time to time are given below.

#### **GRANT OF REWARDS TO INFORMERS AND GOVT. SERVANTS- Review of policy, procedures and orders**

( Ministry's letter F. No. 13011/3/85 Ad. II dt. 30-3-1985 )

**1. The Government have reviewed the existing policy, procedures and orders in respect of grant of rewards to informers and Government Servants in case of seizures made, infringement or evasion of duty, etc. detected under the provisions of the following Acts:-**

The Customs Act, 1962

The Central Excises & Salt Act, 1944

**The Gold (Control) Act, 1968**

The Foreign Exchange Regulation Act, 1973.

**2. As a result, the revised guidelines are laid down in the succeeding paras. All previous guidelines issued on the subject may be deemed to be modified to the extent indicated herein.**

### **CLARIFICATIONS**

A ) The date from which the revised instructions will take effect.

The revised rates of reward to Government Servants will be applicable to the cases wherein seizures, etc. have been effected on or after 1<sup>st</sup> January, 1985. It is further clarified that the revised rates would not be applicable in respect of rewards to be paid to informers for information leading to seizure, etc. received prior to 3<sup>rd</sup> March, 1985, the date on which the Government took a decision on the revised rates of reward, etc.

B ) Whether advance rewards should be paid to departmental officers in past cases and how rewards are to be sanctioned in respect of pending cases of seizures, detection etc. made prior to 1<sup>st</sup> January, 1985 in which final rewards have not been sanctioned and which came up for consideration now:

Under the earlier orders there was no provisions for grant of advance rewards to Government employees. This restriction has been removed after the issue of the revised guidelines on 30<sup>th</sup> March, 1985 and which have been given effect to from 1<sup>st</sup> January, 1985. As regards seizures, as in force on the relevant dates, would apply their aspects, such as grant of advance reward to Government employees eligible at the relevant time, monetary ceilings upto which competent authorities could sanction reward would be governed by the revised instructions, if final rewards had not been previously sanctioned and the cases come up for consideration now. It is further emphasized that the total amount available for sanction of reward to both informers and government employees in the aforesaid cases would be regulated by the old rates in accordance with the orders in force at the relevant time of seizures detection, etc. Cases where rewards have been sanctioned before receipt of these orders need not be re-opened.

[Ministry's clarification vide letter of even number of 5-6-85]

Attention is drawn to Ministry's letter F. No. R.13011/3/85- Ad. V dated the 5<sup>th</sup> June, 1985 under which grant of advance rewards to Government employees in respect of cases detected prior to 1<sup>st</sup> Jan., 1985 has been provided. Doubts have been raised by some Collectors whether while determining the quantum of rewards in respect of cases booked prior to 1-1-85, the monetary ceilings applicable as per

orders in force at the relevant time have to be taken into consideration or not. It is clarified that the Collectors are empowered to sanction rewards in accordance with the revised rewards rules but the rates and monetary ceilings applicable to relevant reward rules at the time of seizure / detection etc. are to be kept in mind.

[Ministry's further clarification vide letter of even number of 21-5-89]

**C ) Whether rewards at the revised rates are payable for internal seizures of dangerous drugs and psychotropic substances under the Opium Act / Dangerous Drugs Act to and after 1<sup>st</sup> January, 1985 and seizures under the Customs Act made prior to 1<sup>st</sup> Jan., 85.**

As clarified in para (A) above, the revised instructions issued on 30<sup>th</sup> March, 1985 would also apply to seizures of the dangerous Drugs and psychotropic substance made under the Customs Act on or after 1.1.85. Further, having regard to the increased transit traffick in narcotic drugs through India, it has been decided to extend the revised rates and instructions to cases of internal seizures of dangerous drugs and psychotropic substances made by the personnel of the Customs, Central Excise and Narcotics Department under the Dangerous Drugs Act, 1930 and Opium Act 1857 on or after 1<sup>st</sup> January, 1985 for Government employees (including State Government employees who assist Officials working under Central Board of Excise and Customs effecting seizures).

The guidelines indicated in para (B) above would also apply to the pending cases of Opium.

[Ministry's clarification in letter of even number dt 5.6.85.]

**3.1 QUANTAM OF REWARDS:**

**Seizures of contrabands under the Customs Act ("Smuggling" Offence)**

3.1.1 Informers and Government servants will be eligible for rewards upto 20% of the estimated market value of the contraband goods seized. In respect of gold, silver, opium and other narcotic drugs etc. the overall ceilings for rewards (based on broadly 20% of the value of these items, as reckoned by the Government for the present) are shown in the Annex. These would be subject to

periodical revision in the light of price fluctuations about which timely intimation should be sent to D. G. R. I. every quarter to enable him to recommend appropriate revision, as and when warranted, to the Ministry.

ANNEXURE

(Paras 3.1.1, 3.1.2\*\*\* and 3.4.1)

Sr.	Commodity	Range of illicit prices indicated now	Rate of maximum reward @ 20% of illicit prices	Prescribed purity
1.	2.	3(a)	3(b)	4.
		Rs.	Rs.	
1.	Gold	-	Rs. 500 per 10 ** Grammes	999.5 Mille or more
2.	Silver	-	Rs. 1000/-** per kg.	99% or more
3.	Opium	1,100 2,000	220/- per kg.	*Not less than 9.5% morphine as on anhydrous morphine.
4.	Morphine Base and its salts	40,000 50,000	8,000/- per kg.	90% or more anhydrous morphine
5.	Heroin and its salts	1,00,000 3,00,000	20,000/- per kg.	90% or more diacetyl morphine
	Cocaine and			90% or more of



6.	its salts	2,00,000	4,00,00/- per kg.	anhydrous cocaine
	Hashish	6,00,000	400 per kg.	With The content of 4% or more
7.		2,000		
	Hashish oil	3,500	2,000/- per kg.	With THC content of 20% of more
8.		10,000		
	Ganja	17,500	Rs. 80/- per kg.	Should be commercially acceptable as Ganja.
9.		400		
		500		

N.B. :- Rewards shall be reduced pro rata if the purity is less than the one prescribed above.

\* Substituted by vide Board's Letter F. No. R 13011/11/86 dt 13-5-86.

\*\* Revised as per Ministry Letter F No. 13011/5/88/ Ad V dt 7-6-1988.

\*\*\* Reference to para 3.1.2 in Annexure to the Ministry's letter of even number dated 30.3.1985 may be treated as deleted.

### *CLARIFICATIONS*

A ) Normally an amount of only Rs. One lakh in all (i. e. advance reward & final reward together) would be granted as reward to an individual officer in a single case. However, rewards in excess of this limit would be sanctioned only by the Board on

the recommendations of the Reward Committees (as in existing orders dated 18-2-87 and 20-10-87) in cases of an exceptional nature.

For the same reason, no Government servant will be paid rewards exceeding Rs. 10 Lakhs in his entire career. In order to implement this ceiling, all rewards paid to a Govt. servant should be entered in his service book on a separate page assigned for reward entries.

In cases of reward of less than Rs.10, 000/- the authority competent to sanction reward should be one stage higher than the Adjudicating authority. For rewards in excess of Rs.10, 000/- the reward Committee already constituted would be competent as sanctioning authority.

In order to give larger number of officers an opportunity to work on the anti-smuggling and anti-evasion posts, there should be periodic rotation of officers and no officers should normally be posted to the airports, Directorate General of Revenue Intelligence, Directorate General (Anti Evasion) and Headquarters (Preventive) of a Collectorate etc. for more than five years and after each posting there should normally be a cooling period of two years but the special attitude and flair for anti-smuggling and anti-evasion work should not be lost sight of in the interest of operational efficiency while enforcing this principle.

[MINISTRY'S LETTER F. NO. R 13011/5/89 AD V DT:- 13-4-89.]

B ) As for seizures of other dangerous drugs such as heroin, morphine, etc. and psychotropic substances like, mandrax tablets, for want of firm prices, no rate of reward could be fixed. In view of the increasing incidence of drug trafficking, transit trafficking with attendant adverse effects, it has been decided that seizures of all dangerous drugs and psychotropic substances effected on or after 1<sup>st</sup> January, 1985 \* would also qualify for rewards to Government employees at the rates to be indicated separately. Informers would however be eligible for rewards only in respect of information received on or after 3<sup>rd</sup> March. 1985.

\* should be read as during the period from 1<sup>st</sup> January to 31<sup>st</sup> December, 1984".

[Para 2.5.3 of Ministry's clarification in letter of even no, dt 5-6-85,]

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**3.2 Reward for detection of other offences under the Customs Act, such as, evasion of Customs Duty, under / over – invoicing of import / exports, infringement of import / export licencing laws, etc. (other than those relating to smuggling matters)**

3.2.1 Informers and Government Servants will be eligible for reward upto 20% of the duty, if any, sought to be evaded plus 20% of the fine and penalty levied / imposed and realised, provided the amount does not exceed 20% of the market value of the goods involved.

3.3 Seizures made, evasion of duty and other infringements detected under the Central Excises and Salt Act, 1944.

3.3.1 In cases of detection of evasion of Central Excise duty, concealment or suppression of production, surreptitious removal of dutiable goods, etc., informers and Government Servants will be eligible for reward upto 20% of the duty, fine and penalty levied / imposed and realised provided the amount does not exceed 20% of the market value of the goods involved.

3.4 Seizure under the Gold (Control) Act and cases of other violations detected under the Gold (Control) Act.

3.4.1 In case of seizure of gold bullion, the overall ceiling for rewards to informers and Government Servants will be as indicated in serial No. 1 of the Annex.

3.4.2 In other cases, whether of seizure of articles of gold / ornaments, or of detection of "shortages" informers and Government, Servants will be eligible for reward upto 20% of the redemption fine and / or penalty imposed and realised, provided the amount does not exceed 20% of the market price of the goods involved.

3.5 Cases of seizures / violations detected under FERA-

3.5.1 Informers and Government Servants will be eligible for reward upto 20% of the amount involved in confiscation. When in addition to confiscation or without confiscation a penalty is imposed and realised, 20% of it may also be taken into account in computing the ceiling.

4. REWARD SHOULD NOT BE GRANTED AS A MATTER OF ROUTINE

- 4.1 Reward is purely an ex-gratia payment which, subject to the guidelines may be granted on the absolute discretion of the authority competent to grant rewards and cannot be claimed by anyone as a matter of right. In determining the reward which may be granted, the authority competent to grant reward will be keep in mind the specificity and accuracy of the nature of the help rendered by the informer, whether information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, whether information gives clues to persons involved in smuggling, or their associates, etc, the risk involved for the Government Servants in working out the case, the difficulty in securing the information, the extent to which the vigilance of the staff led to the seizure, special initiative, efforts and ingenuity displayed, etc. and whether, besides the seizure of contraband goods, the owners / organizers / financiers/ racketeers as well as the carriers have been apprehended or not.
- 4.2 To Government Servants, rewards may ordinarily be paid upto 10% of the estimated market value of the goods involved (half of the maximum rewards indicated in respect of gold, silver, opium and other narcotic drugs, etc. in the Annex). Rewards in excess of this limit, but not exceeding 20% (or, as in the Annex. In respect of gold, silver, narcotics, etc.) of the said value, may be considered in cases where the Government servant has exposed himself to a great personal hazard or displayed exemplary courage, commendable initiative, ingenuity or resourcefulness of an extraordinary character or his personal efforts have been mainly responsible for the detection of the goods.

#### STAGE OF PAYMENT OF REWARD

##### 5. Payment of Advance Rewards

- 5.1 Advance reward may be paid to informers and Government servants upto 50% of the expected final reward immediately on seizure in respect of the following categories of goods, namely:-
- a) gold / silver bullion and goods which are notified; or specified under the Customs Act, 1962:
  - b) arms and ammunition, explosives;
  - c) opium and other narcotic drugs;
  - d) goods not declared which are seized in the Customs area or Customs waters; and
  - e) freely convertible foreign exchange in the form of currency notes.
- 5.2 In other ("Smuggling") cases of seizures of contraband goods, advance reward upto 25% of the expected final reward may be paid immediately after seizure, if the authority competent to sanction reward is satisfied that the goods seized are reasonably expected to be confiscated on adjudication and the order is likely to be sustained in appeal / revision proceedings.

5.3 In all other cases, whether of seizure or of evasion / infringement detected on the basis of documents, 25% of the expected final reward may be paid after the issue of a show cause notice provided the authority competent to sanction reward is satisfied that there is reasonable chance of confiscability / infringement / evasion, as the case may be, being established in adjudication and sustained in appeal / revisionary proceedings.

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#### CLARIFICATIONS

It is clarified that advance reward referred to in paras 5.2 and 5.3 of the letter dated 30-3-1985 may also be paid upto 25% of the expected final reward, subject to the conditions mentioned therein, immediately after seizure of excisable goods under the Central Excise and Salt Act, 1944 and rules made there under and that of foreign exchange seized and encashed under and that of foreign exchange Act, 1973, as distinct from cases involving no actual seizure where the offence is based entirely on the basis of documentary evidence which is governed by para 5.3 that covers FERA cases too.

[Ministry's letter of even number of 9.9.1985.]

#### Advance reward to Informers in Central Excise & Customs Appraising cases

Attention is drawn to Ministry's instruction contained in letter F. No. 13011/3/85. Ad. V. dated 30<sup>th</sup> March, 1985, 13011/3/89-Ad. V. dated 13.4.1989 and dated 15.5.89 and to other instruction / orders on sanction of rewards to Govt. servants and informers issued from time to time.

On 16.11.89 the Hon'ble Supreme Court of India stayed the sanction of rewards to informers and Govt. servants in all type of cases, both in customs & central excise, in the SLP filed by M/s. Duncan Agro Industries Ltd. The stay was however later made inapplicable to informers in seizure cases of gold bullion, silver bullion and in narcotic smuggling cases.

On 28.11.94 the Hon'ble Supreme Court of India dismissed as withdrawn the SLP filed by M/s. Duncan Agro Industries Ltd. The Ministry vide F. No C-18013/2189-Cus (AS) dated 27.10.95 issued instruction for repeal of the interim orders issued from time to time from Letter F. No. C.18013/21/89-Ad. V dated 16.11.89, 12.01.90, 17.4.90, 23.8.90 and 25.3.92.

In view of the above position the sanction of advance reward to informers in Central Excise evasion cases and in Customs appraising cases is now possible immediately after the issue of Show Cause notice, as per the provisions of Para 5.3 of reward instruction 13011/3/85-Ad. V dated 30.3.85, subject to the condition that the authority competent to sanction the reward is satisfied that the orders are likely to be sustained in appeal revision proceedings.

The sanction of advance reward to Govt. servants will however continue to be governed by existing provisions contained F. No. R.13011/5/89-Ad. V dated 13.4.89.

The earlier clarifications R-13011/13/91-Cus (AS) dt.8.5.91 regarding payment of advance rewards in Central Excise evasion cases and Board Letters F. No. 13011/3/96-Cus (AS) dated 10.7.97 and 10.9.97 may accordingly be treated as withdrawn with immediate effect.

[MINISTRY'S LETTER F. NO. R – 13011/3/96 – CUS (AS) dt 31-10-96.]

5.4 In exceptional cases, the Heads of Departments may, having regard to the value of the seizures effected and magnitude of the evasion or infringement detected and special efforts or ingenuity displayed by the officers concerned, sanction and announce the grant of suitable rewards on the spot to be adjusted against the advance reward that may be sanctioned.

#### 6. PAYMENT OF FINAL REWARD

6.1 Final reward will be paid after adjusting the advance reward, if any, paid in the manner as indicated in succeeding paras.

6.2 In respect of the goods described in Para 5.1, the remaining 50% of the reward may be sanctioned both to informers and Government Servants on adjudication of the case resulting in confiscation of the goods. If, however, the party concerned delays adjudication proceedings by contesting the imposition of penalty only but not confiscation of the goods, the final reward may be sanctioned even prior to the conclusion of the adjudication proceedings.

6.3 In all other cases, 25% of the expected final reward may be paid after adjudication resulting in confiscation and / or confirmation of the demand / infringement and the remaining 50% may be paid only after the conclusion of the appeal / revision proceedings by the appropriate authorities, (such as, Tribunals, FERA Board, etc.) resulting in the upholding of confiscation, demand / fines / penalties, etc. imposed under the respective Acts.

#### CLARIFICATIONS

Attention is drawn to this Department's instructions contained in the letter of even number dt. 13.4.89 whereby the existing reward policy dt. 30.3.85 has been modified to some extent.

2. The issue whether final reward should be given only after actual realization of Central Excise duty, penalty fine even if appeal / revision proceedings have concluded resulting in confiscation and / or confirmation of demand / infringement has also been under consideration of the Government. Keeping in view all consideration of the matter, it has been decided that final reward should be paid only after actual realization of the Central Excise duty / Customs duty, penalty, fine etc. Para 6.3 of reward rules dt. 30.3.85 stands amended accordingly.

[MINISTRY'S LETTER F. No. R 13011/5/89 Ad V dt.15.5.1989 ]

## 7. TO WHOM REWARD MAY BE PAID

7.1 Ordinarily, informers and Government Servants (upto the level of Group 'A' Superintendents / Assistant Collector of Customs and Central Excise / Assistant Directors) will be eligible for reward depending on the contribution made by them as a team as well as individually with regard to the collection of intelligence, surveillance, effecting of seizure etc. Due credit should be given to the staff employed on investigation and / or prosecution resulting in conviction of persons involved other than the carriers of contraband goods, etc.

7.2 Group 'A' Officers above the level of Assistant Collector / Assistant Director will not be eligible for reward on the basis of value of the seizure, etc. However, in appropriate cases, Government may consider, in consultation with GCA / DGRI / Director, Anti-Evasion, the grant of lump-sum payment / advance increments and / or recognition, in any other manner of the services rendered by them for which purpose the Heads of Departments should forward their recommendation to the aforementioned officers with a copy to the Ministry.

### CLARIFICATIONS

Grant of rewards to informers & Govt. servants -Re-designation of post of Asstt. Commissioner of Customs & Central Excise

Attention is drawn to the Ministry's Instructions issued vide F. No. 13011/3/85-AD. V dated 30-3-1985, relating to grant of rewards to informers and Government servants,(amended subsequently from time to time) and in view of redesignation of post of Assistant Commissioner of Customs & Central Excise / Assistant Director in Senior Time Scale (STS) as Deputy Commissioner of Customs & Central Excise / Deputy Director w. e. f. 11-05-1999, as per Office Order No. 118/99 dated 2.6.1999 issued from F. No. 50/17/99-Ad. II in this regard, any reference to Assistant Commissioner of Customs & Central Excise / Assistant Director in para 7.1 and 7.2 of the above stated instructions dated 30.3.95, may be read as Assistant Commissioner of Customs & Central Excise / Assistant Director or Deputy Commissioner of Customs & Director, as the case may be.

[Ministry's letter F. No. R-13011/4/99-Cus (AS) dated 15.7.1999 ]  
]

Sanction of reward to staff involved in prosecution / sponsoring detention under COFEPOSA / Processing adjudication files etc.,

1. The proposal for extension of the scheme for grant of reward to Government servants who make outstanding contributions in post seizure operating was under the consideration of the Government. While the present reward rules cover performed relating to collecting of intelligence and making of seizure, post-seizure operating which some times form a very important segment of preventive work is not always given its due importance. After careful consideration of the matter, the

government has decided that while it may not be necessary to reward routine performance in respect of post-seizure operations such as investigation, adjudication, prosecution, detention of persons involved under COFEPOSA, disposal of goods etc. should also be duly and adequately recognized and rewarded.

2. The staff employed on investigations / adjudication and / or prosecutions will be eligible for reward if their investigations etc. lead to penalization / conviction of persons who are organizers / financiers of smuggling activities (other than mere carriers of smuggled goods). Similarly, staff deployed in COFEPOSA Unit have to work in close co-operation with officers deployed for investigation so as to ensure prompt detention of the organisers of the smuggling racket. Quite often our Departmental Officers play a very important role in tracing out COFEPOSA absconders and in effecting their detention. If the detention of financiers / organisers of smuggling racket (other than carriers) is sustained for the full term by the Advisory Board / Courts / Officers employed in COFEPOSA / work also could be rewarded. Prompt disposal of the confiscated goods without causing any loss to Government could also merit payment of reward. In all such deserving cases a reward upto a maximum of Rs. 5,000/- per head in each case, subject to the over all ceiling of 20% of value of the goods involved etc. could be sanctioned by the Head of the Department.

[ Board's Letter F. No. R.3014/23/85-Ad. V dated 14.6.86 ]

#### Payment of reward to staff

The Financial Adviser has observed that the instructions and guidelines on payment of rewards are not being scrupulously followed by some of the Collectorates. Monetary rewards are being sanctioned for activities such as typing work, bringing the seized goods to the Collectorates, ensuring their safe custody etc. He has also observed that rewards are being paid to the staff where seizures are being effected only on account of X-ray baggage machines and when the staff has not played an important role in the seizure. The views of the Financial Adviser are quite reasonable and it is felt that the Collectors should not grant monetary rewards in a routine manner without ensuring that the guidelines are followed. Greater care should, therefore, be exercised in such cases and rewards should be sanctioned only to Government servants who are eligible for the same and the amount so sanctioned should be commensurate with the role played by the Government servants.

[ Ministry's Letter F. No. R. 13011/21/89 Ad V Dt. 4.10.89]

## 8. DELEGATION OF POWERS FOR PAYMENT OF REWARD

8.1.1 The Monetary limit of sanction of rewards to informers and Government Servants are given below:-

Designation of Officer	Monetary limit for sanction of rewards to	
	<u>Informers</u>	<u>Govt. Servants</u>
Heads of Department	Rs. 20 lakhs	Rs. 10,000/-



Additional Collector of Customs / Central Excise, Special Director, Enforcement	Rs. 10,000	Rs. 5,000/-
Deputy Collector of Customs / Central Excise, Enforcement / DRI / Directorate of Anti-Evasion	Rs. 5,000/-	Rs. 2,500/-

8.1.2 Any case for the grant of reward in excess of Rs. twenty lakhs to an informer would be examined and approved by a Committee consisting of:-

1. The head of the Department;
2. Director, Preventive Operations; and
3. Additional Collector / Deputy Director, Enforcement / Deputy Director, Anti-Evasion / DRI.

8.1.3 All cases of grant of reward to Government Servants in excess of the limits specified above should be examined and approved by a Committee consisting of the following:-

<u>Amount of reward for Government</u>	<u>Constitution of the Committee</u>
(1) Reward in excess of Rs.10,000/- but not exceeding Rs. one lakh	1) Head of the Department; 2) Additional Collector; and 3) Seniormost Deputy Collector / Deputy Director at the Hdqrs.
(2) Reward in excess of Rs. one lakh upto Rs. five lakhs.	1) Head of the Department; 2) Director, Preventive Operations; and 3) Additional Collector / Special Director incharge at the Hdqrs.
(3) Reward in excess of Rs. five lakhs.	1) Concerned Member of the C. B. E. C. or G. C. A., as the case may be, and 2) DGRI / Director, Enforcement / Director, Anti-Evasion, as the case may be, and 3) The Head of Department concerned.

“ 8.1.3.\* At a situation where a committee has to be constituted in respect of cases detected on the basis of intelligence worked out entirely by the Directorate of Anti-Evasion Officers, the committee can consist of the Director of Anti-Evasion (as Head of the Department), the Additional Collector of the Collectorate is involved one of the Additional Collectors concerned) and the Zonal Director of Anti-Evasion”.

9. It has also been decided to set up three separate Funds namely, the Welfare Fund, the Performance Award Fund and the Special Fund for the acquisition of equipment, etc., 1% of the estimated market value of the goods involved will be credited to the Welfare Fund, 4% to the Performance Award Fund and 5% to the Special Fund. Detailed guidelines in this regard will be issued separately.

10. In view of the liberalisation of rewards, the Heads of Departments will take special care to ensure that the value of the goods fixed at the time of seizure is fully realistic and represents the correct value of the goods. For this purpose, price lists in respect of items frequently seized and disposed of should be prepared with utmost care with the assistance of the Valuation Committee and these should be regularly reviewed.

1. At the time an informer furnishes any information or documents, an undertaking should be taken from him that he is aware that the extent of the reward depends on the precision of the information furnished by him and that the provisions of Sec. 182 of the Indian Penal Code have been read by him or explained to him, that he is aware that if the information furnished by him is found to be false, he would be liable to prosecution, that he accepts that the Government is under no obligation to enter into any correspondence regarding the details of seizures, if any, made, etc., and that the payment of reward is ex-gratia in the absolute discretion of the authority competent to grant reward.

\*[Inserted by letter of even number 13014/22/85 Ad. V dt.20.1.1986]

#### CLARIFICATIONS

##### Grant of reward to informers and Government servants

The Board have had occasion to review the scheme of liberalization reward rules introduced vide Ministry's letter F. No. 13011/3/85-Ad. V dated 30<sup>th</sup> March, 85. It has been decided that in cases where the reward proposed to any Officer is between Rs.50, 000/- to Rs. 1 Lakh, such proposal should be examined by a Committee headed by the Principal Collector having jurisdiction in that region.

[ Ministry's letter F. NO.R.13011/19/88 Dt.24.8.1988 ]

##### Constitution of Reward Committee

In pursuance of the Ministry's instructions contained in F.No.13011/3/85 Ad. V / 30.3.85 as amended by letter F. No. 8011/19/88 Ad. V / 24.8.88, and in supersession of Standing Order S O. 6918 dated 3.10.89; a Committee consisting of officers as follows is constituted for sanction of rewards to officers.

- 1) For reward amount in excess of Rs.50,000/- but not exceeding Rs.1,00,000/-
  - a) Principal Collector – Chairman
  - b) Collector of Customs – Member
  - c) Addl. Collector (Preventive General) – Member
  - d) Addl. Collector (Appraising General) – Member
  
- 2) For reward amount in excess of Rs.10, 000/- but not exceeding Rs. 50, 000/-

- a) Collector of Custom – Chairman
- b) Addl. Collector (Preventive General) – Member
- c) Addl. Collector (Appraising General) – Member

The Committee shall be assisted by Asstt. Collector (Preventive General) and Asstt. Collector (Appraising General), as the case may be. The cases detected by the Preventive units v SIIB, CIU, Dock Intelligence Units, shall be sent to Asstt. Collector (Preventive General) for processing and submitting to the committee. The cases detected by Appraising Groups, Audit, Docks, M.C.D. etc., shall be sent to Asstt. Collector (Appraising General) for process and submitting to the Committee. The Asstt. Collectors (Preventive General and Appraising General) may take the assistance of Asstt. Collectors incharge of the detecting units for presentation of cases before the reward Committee. The Committee may co. opt an Addl. Collector / Deputy Collector for examination of a proposal, if it deems necessary.

[S. O. issued from File No, S/15-70/90 Apprg. (M) Dated, the 13.8.90, of Mumbai Custom House]

The Hon'ble Supreme Court of India in the following cases examined the complete Reward Scheme, its eligibility, competent Authority to sanction rewards & its discretion, etc. and observations, decisions given in these cases have settled many disputes :

In the case of **Union of India Vs. C. Krishna Reddy 2004 (163) E.L.T. 4 (S.C.)** the Apex Court observed that the reward scheme [to informers] indicated that claim for reward was in sole discretion of competent authority who was to decide it based on several factors stated therein to weigh usefulness of information and that the High Court could not examine those factors as that was exclusive domain of departmental authorities and as reward could not be claimed as matter of right, no writ of mandamus could be issued to give a particular amount by way of reward. It further observed that in case the informant is not the sole source of information, then the informant was entitled only to the small amount realized by department and not to a percentage calculated on amount adjudicated upon. It also observed that withholding reward does not involve hardship like delay in making compensation to victim of accident or deprivation of land of agriculturist as only source of livelihood and therefore in such a case, there is no justification to issue peremptory order that if reward is not granted within stipulated time, larger amount will become due

The **Apex Court in the case of Union of India v. C. Krishna Reddy - 2004 (167) E.L.T. A65 (S.C.)** observed that reward [to informer] is ex-gratia, could not be claimed as matter of right. It further observed that High Court could not examine factors that 'the amount of reward had to be paid in accordance with the guidelines as they stood before the amendment and the amended guidelines cannot be given any retrospective operation' as that was exclusive domain of departmental authorities.

The Apex Court in the case of **D.G., Revenue Intelligence & Invest. Vs. Amrit Lal Mehta 2007 (220) E.L.T. 9 (S.C.)** observed that the Informer had no vested right to claim reward as per Reward Scheme and that the reward can be exgratia payment and therefore interest on reward, if delayed, is not justified. Briefly stated the facts are as follows :-

The Respondent admittedly gave information regarding clandestine import of machinery without payment of duty by M/s. J.K. Synthetics Ltd. As a result of his information, the Department was able to establish import and levy duty. The levy of duty as well as interest and penalty have been confirmed by Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT). No appeal has been filed by M/s. J.K. Synthetics Ltd. against the order of the CEGAT. Therefore that order has become final. It appears that initially a sum of Rs. 6 lakhs was paid to the Respondent pursuant to the Reward Policy of the Government dated 30th March, 1985. As no further amounts were paid by way of reward in spite of numerous letters, the Respondent filed a writ petition in the High Court. The High Court has, by the impugned Order, directed the payment of final reward amount in terms of the policy. It was further directed that the reward amount will be paid within 15 days from the date on which a copy of the High Court Order is produced with interest @ 15% p.a., failing which the amount shall be paid with interest @ 18% p.a. and the additional 3% was to be borne by a responsible officer who did not take immediate action. The High Court has also directed payment of Rs. 10,000/- as costs. Pursuant to the

directions of the High Court, a Rewards Committee was constituted. The Committee, at its meeting held on 11th May, 2004, decided that total compensation payable was Rs. 9.5 lakhs. Accordingly, in May 2004 another sum of Rs. 3.5 lakhs was paid to the Respondent. Keeping in view, earlier judgements held by the Apex Court in the cases of Union of India & Ors. v. C. Krishna Reddy reported in [2003 (10) SCALE 1050] as well as in Union of India v. R. Padmanabhan reported in [(2003) 7 SCC 270] and in the Reward Scheme that there is no vested right in the person to claim a reward and that the payment can, at the highest, be an ex gratia payment, there is absolutely no justification to grant interest on such ex gratia payment. In view of the same the Apex Court set aside the portion of the High Court Order where the interest is directed to be paid as well as the portion awarding costs.

#### **CHECK – LIST FOR PROCESSING REWARD FILES**

The following documents are necessary in the file while forwarding the file to Reward Cell for reward purpose.

1. Report of Seizing Officer on noting side.
2. Panchanama of seizure of goods
3. DRI-I proforma
4. DRI-II proforma
5. Assay report in case of gold / silver
6. Test report in case of Drugs / Narcotics
7. Disposal Certificate.
8. Order-in-original.
9. Appeal verification report, if any.
10. CEGAT order if any.
11. Contemporaneous report.
12. Annexure –II: Advance / Final reward proposal form the informer.
13. Annexure -III: Final / Advance reward proposal form for Staff.
14. Names of all the staff who participated in seizure and post seizure formalities to be mentioned in the contemporaneous report.
15. Contemporaneous report should be supported by documents.
16. 31. Available Reward amount calculation sheet.

## ANNEXURE – II

Proposal For Final Reward To The Informant

F. No.

2. Date and place of seizure :

2. Description of goods. :

3. Quantity (in case of Gold  
Silver / Narcotics) :

4. Panchanama Value :

5. Estimated Value :

6. Sale proceeds actually realised :

7. 10% of the estimated value / sale proceeds  
in case of seizure made prior to 1.1.858. 20% of the estimated value / sale proceeds  
in case of seizure made after 1.1.859. Amount available at the rate per tola / kg.  
(in respect of gold / silver / narcotics)10. Amount already paid as advance reward  
to the informant as per column No. 7 or 8  
(attach copy of order)11. Amount available for payment  
of final reward to the informant as  
per column No. 7 or 8 :12. Result of adjudication proceedings  
(attach copy of order) :13. Whether appeal or revision  
application has been filed  
& if so, results thereof. :

14. Result of prosecution proceedings. :

15. Recommendation for final reward, if  
any, by Additional Commissioner :ANNEXURE III.Proposal For Advance / Final Reward To Staff

F. No.

1. Date and place of seizure :
- 
2. Description of goods :
- 
3. Quantity (in case of gold / silver / narcotics) :
- 
4. Panchanama Value :
- 
5. Estimated Value :
- 
6. Sale proceeds actually realised :
- 
7. 10% of the Estimated value / sale proceeds :  
in case of seizure made before 1.1.85.
- 
8. 20% of the estimated value / ale proceeds :  
in case of seizure made after 1.1.85.
- 
9. Amount available at the rate per tola / kg. :  
(in respect of gold / silver / narcotics)
- 
10. Advance reward already sanctioned in any :  
(attach copy of order)
- 
11. Amount available as advance / Final :  
reward to the staff as per column no. 7 or 8.
- 
12. Result of adjudication proceedings :  
(attach copy of order)
- 
13. Whether appeal or revision application has :  
been filed & if so, result thereof
- 
14. Results of prosecution proceedings. :  
APPENDIX 'A'

Reward Payment Certificate

Certified that an amount of Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_ only) sanctioned as Advance / Final Reward by the Committee headed by the Chief Commissioner, Commissioner / Addl. Commissioner of Customs vide order no. \_\_\_\_\_ dated \_\_\_\_\_ in the case of seizure of \_\_\_\_\_ on \_\_\_\_\_; drawn in Contingency Bill No. \_\_\_\_\_

Dated \_\_\_\_\_ for Rs. \_\_\_\_\_ encashed from the Customs Treasury on \_\_\_\_\_

Was paid to the right informant from whom a receipt has been obtained by me in the presence of a witness.

Place \_\_\_\_\_ Commissioner / Addl. Commissioner / Asstt. Commissioner of  
Customs  
Date :

**APPENDIX 'B'**

Receipt of Reward

Received a sum of Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_ only) as Advance / Final Reward from the Commissioner / Addl. Commissioner / Asstt. of Customs ( Commissionerate & address ) , in the case of seizure of \_\_\_\_\_ on \_\_\_\_\_ vide Custom House File No. \_\_\_\_\_

Thumb impression / Signature of the informant with date of payment.

Certified that the payment has been made by me to the right informant whose thumb impression / signature appears on the above receipt, this day the \_\_\_\_\_

Signature of the  
Identifying Officer

Commissioner / Addl. Commissioner / Asstt. Commissioner  
of Customs, ( Commissionerate )

Name & Designation

Signature of Witness Officer

Name & Designation