

CUSTOMS ACT

BEOTRA'S

Fourth Edition

Law Book Co.

BEOTRA'S

THE
Customs Act, 1962
(ACT 52 OF 1962)

[*With allied legislations*]

FOURTH EDITION
THOROUGHLY REVISED

By

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PREFACE TO THE FOURTH EDITION

Since the publication of the third edition of the commentaries on this book in 1971, many amendments of far-reaching effect were made, in the Customs Act, 1962, by the Central Acts 36 of 1973, 51 of 1975 and 25 of 1978, and nearly two dozen of Rules and Regulations newly framed. Besides the above, there was a notable increase in the case-law. All these factors necessitated the bringing out of the new edition of this popular work on the subject.

As the Customs Act, 1962, was widely amended to meet the new and diversifying problems, raised by import and export of goods, this edition had to be almost re-written in the light of the statutory changes and new case-law, maintaining the good features of the original work. The obsolete, and unnecessary matter has been omitted, synopsis headings re-classified and re-arranged, and passages re-written and enlarged, for giving the better expression to the matter available. Superseded Rules and Regulations have been weeded out to give room for the new ones. Rules and Regulations, framed under the Customs Act, 1962, and the allied Acts, given in the Appendices, have been made up-to-date. In a nut-shell, the new edition presents the Law of Customs as on 31-12-1980.

To enhance the utility of the book, a comparative chart of the sections of the Customs Act, 1962, corresponding to the sections in the Sea Customs Act, 1878, and the Land Customs Act, 1924, has been given in the beginning. A well-planned index at the end also enables the reader to obtain quickly the reference on a point of interest to him.

I am confident that the Bench, the Bar, the Customs Authorities, the business community, the Import and Export Houses, the Customs Training Institutes and all others, interested in the up-to-date knowledge of this important piece of legislation, will find this comprehensive edition to be the most reliable and helpful book on the subject.

New Year's Day, 1981

CHHEDA LAL GUPTA
Advocate

PREFACE TO THE THIRD EDITION

The commentary on the Customs Act, 1962 (Act 52 of 1962), hereinafter called the Act, goes into its third edition. It saw the light of day in 1964 and has been hailed as a good commentary providing guidance on every question likely to arise under the Act.

The Act has been in force for nearly eight years and the increasing number of cases under the Act shows its provisions are being strictly enforced. The importance and utility of the commentary on the Act are, in greater measure than before, manifest.

The present edition retains the features of the preceding editions. The text of the Act and the case-law have been brought up to date. Existing passages have been enlarged, obsolete ones have been excised and new ones have been added in the work to make it in step with the law. The Appendices contain a lot of useful matter and their number has increased. For the facility of the reader the matter is now grouped into Acts, Rules, Regulations and Notifications. A well-planned Index at the end enables the reader quickly to obtain the reference on a point of interest to him.

It is hoped that the third Edition will commend itself, as did the previous ones, to the Bench and the Bar, the officers administering the provisions of the Act and the lay public.

New Year's Day, 1971

B. R. BEOTRA

PREFACE TO THE SECOND EDITION

The second edition of the commentary on the Customs Act, 1962 (Act No. 52 of 1962), like the first edition, aims at familiarising the reader with the intricacies of Customs Law and Procedure. The fact that a second edition has been called for within four years of the first demonstrates the popularity of the commentary as a clear and authoritative exposition of the law embodied in the Act.

The Customs Act, 1962, hereinafter called the Act, consolidates and amends the law relating to customs contained in the Sea Customs Act, 1878, the Land Customs Act, 1924 and the Indian Aircraft Act, 1934. Thus the provisions relating to sea customs, land customs and air customs have been consolidated into one comprehensive measure. As the Sea Customs Act, 1878, was the principal enactment on the subject of customs, most of the decisions incorporated in the commentary are under that Act. Since the first edition was published, the corpus of case-law has been augmented by illuminating decisions of the Supreme Court and the High Courts.

The second edition retains the features of the first. In a section-wise commentary, synopsis headings are provided under each section. The principles distilled from the decisions are stated, as far as possible, in the very language of the judgments. All points arising under the Act are dealt with. The exposition of the law is analytical as well as critical. The statutory law and the case-law have been brought up to date. All available notifications under the Act are given at appropriate places in the commentary. A well-planned Index at the end enables the reader quickly to obtain the reference he needs.

It is conceived that the work will be found useful by the layman, the Bench, the Bar and the officers of the Customs Departments as it is designed to be a complete Manual on Customs Law.

New Year's Day, 1969

B. R. BEOTRA

PREFACE TO THE FIRST EDITION

The Customs Act, 1962 (Act 52 of 1962), which came into force on February 1, 1963, seeks to codify the entire law relating to Sea, Land and Air Customs into a single comprehensive measure, repealing the prior law and the subject which was contained in the Sea Customs Act (8 of 1878), the Inland Bonded Warehouses Act (8 of 1896), the Land Customs Act (19 of 1924) and Section 16 of the Aircraft Act, (22 of 1954). Of these enactments only the Sea Customs Act contained the basic provisions, the Land Customs Act not being self-contained and applying by reference to the provisions of the Sea Customs Act to Land Customs with certain modifications. But, several provisions of this eighty-five-year old enactment were rendered obsolete and, some of its provisions became difficult of implementation. Apart from that the trade pressing for certain changes and new problems about smuggling arising from controlled economy also engaged the attention of the law-makers. Occasion for a general and comprehensive revision of the Sea Customs Act was, therefore, created and this afforded a well-grappled opportunity for the codification of the whole law on the subject culminating into the enactment of the present Customs Act.

A Code without a befitting commentary as its guiding element is just a body without soul, an intellect without power of reasoning. The author, therefore, thought it proper to the occasion to undertake the task of providing in this volume a sectionwise, exhaustive and wholesome commentary in the provisions of the Act, dividing the discussions in suitable headings, basing the expositions on decided cases and presenting his own candid opinions wherever necessary. History of this piece of legislation and certain applicable canons of construction have been analysed in the beginning. Corresponding provisions of the repealed law have not only been referred to under the new sections but also amply reviewed. The purposes of the changes made by the new provisions of law have been clearly and precisely brought out in order to give an insight into the evil sought to be remedied by the same. The question of the constitutionality of some of the provisions of the Act arises for consideration. The same has been tackled with sound reasoning based on the foot of the working of the provisions of our Constitution as enlightened by the judicial interpretations placed on them. Due share of attention has been bestowed on provisions of some importance such as the determination of assessable value, assessment and provisional assessment of customs duty, warehousing of goods and problems allied to it, drawback allowances, *bona fide* baggage and other exemptions, imposition of penalties, principles of adjudications, criminal liability attaching to certain acts and omissions, procedure for cognizance and trial of offences, right of appeal, revision by Board and by Central Government and special provision relating to burden of proof.

The notifications issued by the Central Government as well as those by the Board have been noticed at appropriate places in the commentary. The commentaries also include under the relevant provisions the text of Customs Valuation Rules, 1963, Tourist Baggage Rules, 1958, Baggage (Condition of Exemption) Rules, 1963, Customs House Agents Licensing Rules, 1960, Notice of Short-Export Rules, 1963, Imported Stores (Retention on Board) Regulations,

1963 and the Warehoused Goods (Removal) Regulations, 1963. The method of giving these Rules and Regulations in the commentaries pertaining to the relevant section of the Act affords the added advantage of giving a complete picture about the section under which the same is given. The provisions akin to customs, import and export appearing in other enactments have been spread as pieces of referential legislation in the twenty-four Appendices appearing at the end of this Manual.

Thus the author has endeavoured to present this volume as a complete and self-sufficient Manual on the law relating to Customs in India whose merit remains to be assessed by the discerning Bench, the illustrious Bar and the intelligent personnel called upon to administer its provisions.

15th December, 1963

B. R. BEOTRA

ADDENDA

In 2 Parts

Part I—Case-law

Part II—Amendments

PART I—Case-law

(Case-law reported when the book was progressing in the Press)

1. Sec. 11, page 22, heading 2, footnote 5 : Add after "1973 Pat. L. J. R. 355", " ; *Euresian Equipments and Chemicals, Ltd. v. Collector of Customs*, 1980 Cal 188, 200-202 (FB)."

2. Section 110, page 144, heading 16: Add in continuation of the running paragraph from the previous page the following :

"In *Jethanand Tahilram v. Union of India* [1979 Cr. LJ 1468 (Cal.)] it was held that, under Sec. 110 (1) of the Customs Act, 1962, the proper officer has no power to re-seize the goods after their restoration to the person concerned. It is the mandate of Sec. 110 (2) of the said Act that the goods must be returned to the person concerned if the notice, under Sec. 124 (a), in respect of the seized goods, is not given to the person concerned within six months of the seizure of the goods. This mandate will be completely nugatory if the power of re-seizure is read in Sec. 110 (1). It will also nullify the proviso to Sec. 110 (2)."

3. Section 123, page 191, heading 3 : Add in continuation of the first paragraph, "If, however, the presumption under Sec. 123 is not available, it is for the prosecution to prove affirmatively that the accused was in possession of the smuggled gold knowing full well that it was imported from outside the country so as to fall within the ambit of Sec. 111 of the Customs Act, 1962. [*Shah Guman Mal v. State of Andhra Pradesh*, 1980 Cr. LJ 557, 558 (SC) : 1980 SC 793.]"

4. Section 123, page 194, heading 4 (c), footnote 2 : Add after "1973 Cr. LJ 1551", " ; *Government of India v. Mohammad Issak*, 1979 Mad. LJ (Cr.) 652 : (1979) 2 Karn. LJ 19 ; *Central Excise Department v. P. Somasundaram*, 1980 Cr. LJ 553, 534 (Karn.) (DB)."

5. Section 135, page 137, heading 4 : Add in continuation of the first paragraph, "In *State of Maharashtra v. Mohd. Yakub*, 1980 SCC (Cr.) 513 : (1980) 3 SCC 57, Sarkaria, J., with whom Chinnappa Reddy, J., concurred, at pages 518 and 519, observed thus : "What constitutes an attempt is a mixed question of law and fact, depending largely on the circumstances of the particular case. 'Attempt' defies a precise and exact definition. Broadly speaking, all crimes, which consist of the commission of affirmative acts, are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or

intention to commit an offence. In the second stage, he makes preparations to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act or step, in order to be a 'crime', need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done and manifest a clear intention to commit the offence aimed, being reasonably proximate to the commission of the offence..... Thus construed, the expression 'attempt', within the meaning of these penal provisions, is wide enough to take, in its fold, any one or series of acts committed beyond the stage of preparation in moving the contraband goods deliberately to the place of embarkation, such act or acts being reasonably proximate to the completion of the unlawful export."

6. Section 135, page 239, heading 7, footnote 6 : Add after "64 Punj. L. R. 748". " ; *Shah Guman Mal v. State of Andhra Pradesh*, 1980 Cr. LJ 557, 558 (SC) : 1980 SC 793."

7. Section 135, page 247, heading 14 : Add in continuation of the paragraph above heading 15, "In *D. B. Kothari v. State of Maharashtra*, 1979 SCC (Cr.) 748, the Supreme Court, hearing an appeal with special leave, having regard to the fact that the offence, under consideration, was committed as long ago as February, 1967, and proceedings had been going on for well nigh over a decade, during which period the accused must have been going through a lot of mental and financial strain, and the fact that he was the only bread-winner of the family, consisting of six souls, including four minor children, considered that it would meet the ends of justice if the substantive sentence of nine months' rigorous imprisonment, awarded to him, is reduced to six months' rigorous imprisonment. In another case, reported in *Inder v. State of Maharashtra*, 1980 SCC (Cr.) 100 : (1979) 4 SCC 484, in which the appellant had already spent about one month in jail about ten years' ago, while upholding the conviction under Sec. 135 (b) of the Customs Act, 1962, and Sec. 85 (ii) of the Gold Control Act, the Supreme Court reduced the sentence of two years' rigorous imprisonment to period already undergone and imposed, in lieu of the sentence remitted, a fine of Rs. 15,000 under each count, total being Rs. 30,000 and, in default of payment, six months' rigorous imprisonment. Likewise, in *State of Maharashtra v. Laxmichand Varhomal Chugani*, 1978 Cr. L. R. (Mah.) 77, the accused was already in custody for two and a half months. It was held that, in such a case, no enhancement of sentence could be done.

8. Section 135, page 248, heading 16, footnote 1 : Add after "(1974) 1 Mad. LJ (Cr.) 125 (An. Pra.)", " ; *Assitant Collector of Central Excise Customs Division v. R. Subramaniam*, 1979 Cr. LJ (NOC) 70 (Mad.) : 1978 J. S. C. T. L. 296."

PART II—AMENDMENTS

The following are the extracts from the FINANCE (No. 2) ACT, 1980 (Act No. 44 of 1980),¹ of which Sec. 50, read with the Fifth Schedule, introduced amendments in the Customs Act, 1962, with effect from a date, which the Central Government may, by notification in the official Gazette, appoint.² The relevant extracts are as under :

“The Finance (No. 2) Act, 1980

(Act No. 44 of 1980)

(August 21, 1980)

An Act to effect the financial proposals of the Central Government for the financial year 1980-81.

Be it enacted by Parliament in the Thirty-first Year of the Republic of India as follows :

CHAPTER I

Preliminary

1. Short title and commencement.—(1) The Act may be called the Finance (No. 2) Act, 1980.

(2) Save as otherwise provided in this Act, Secs. 2 to 43 and Secs. 52 and 53 shall be deemed to have come into force on the 1st day of April, 1980.

Customs Act, 1962

* * * * *

50. Amendment of Act 52 of 1962, etc., to provide for an Appellate Tribunal.—(1) The amendments, directed in the Fifth Schedule, being amendments to provide for an Appellate Tribunal under the Customs Act, 1962, the Central Excises Act and the Gold (Control) Act, 1968 (45 of 1968), and the matters connected therewith, shall be made in the said Acts.

(2) The amendments, directed to be made by sub-sec. (1), shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for the amendment to different Acts.

(3) If any difficulty arises in giving effect to provisions of any Act, referred in sub-sec. (1), as amended by the amendments thereto directed in the Fifth Schedule (particularly in relation to the transition to the provisions of that Act as so amended), the Central Government may, by general or special order, do anything not inconsistent with such provisions, as so amended, which appears to be necessary or expedient for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiry of two years from the date on which such amendments come into force.

1. Received the assent of the President on August 21, 1980, and published in the *Gazette of India*, Extraordinary, Part I, dated 21st August, 1980, at pages 317-414.
2. The enforcement date has yet not been notified in the official Gazette.

THE FIFTH SCHEDULE

(See Sec. 50)

PART I

Amendments in the Customs Act, 1962

1. Section 2.

(a) For clause (1), *substitute*—

(1) “adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Board, Collector (Appeals) or Appellate Tribunal ;

(1-A) “aircraft” has the same meaning as in the Aircraft Act, 1934 (22 of 1934) ;

(1-B) “Appellate Tribunal” means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under Section 129.’ ;

(b) After clause (7), *insert*—

‘(7A) “Collector (Appeals)” means a person appointed to be a Collector of Customs (Appeals) under sub-section (1) of Section 4.’.

2. Section 3.—For clause (b), *substitute*—

“(b) Collectors of Customs (Appeals)”;

3. Section 5, in sub-section (3).—For “an Appellate Collector of Customs”, *substitute* “a Collector (Appeals)”.4. For Chapter XV, *substitute*—

‘CHAPTER XV

APPEALS

128. Appeals to Collector (Appeals).—(1) Any person, aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Collector of Customs, may appeal to the Collector (Appeals) within three months from the date of the communication, to him, of such decision or order :

Provided that the Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

128-A. Procedure in appeal.—(1) The Collector (Appeals) shall give an opportunity to the appellant to be heard if he so desires.

(2) The Collector (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal, not specified in the grounds of appeal, if the Collector (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) The Collector (Appeals) may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary :

Provided that an order, enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund, shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :

Provided further that where the Collector (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order, requiring the appellant to pay any duty not levied, short-levied or erroneously refunded, shall be passed unless the appellant is given notice within the time-limit, specified in Section 23, to show cause against the proposed order.

(4) The order of the Collector (Appeals), disposing of the appeal, shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Collector (Appeals) shall communicate the order, passed by him, to the appellant, the adjudicating authority and the Collector of Customs.

129. Appellate Tribunal.—(1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Gold (Control) Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A judicial member shall be a person who has, for at least ten years, held a civil judicial post or who has been a member of the Central Legal Service (not below Grade I) for at least three years or who has been in practice as an advocate for at least ten years ; and a technical member shall be a person who has been a member of the Indian Customs and Central Excise Service—Group A and has held the post of Collector of Customs or Central Excise, Level I or any equivalent or higher post for at least three years.

(3) The Central Government shall appoint one of the members of the Appellate Tribunal to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-President, thereof.

(5) The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

129-A. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders, may appeal to the Appellate Tribunal against such order—

(a) a decision or order passed by the Collector of Customs as an adjudicating authority ;

- (b) an order passed by the Collector (Appeals) under Section 128-A ;
- (c) an order passed by the Board or the Appellate Collector of Customs under Section 128, as it stood immediately before the appointed day ;
- (d) an order passed by the Board or the Collector of Customs, either before or after the appointed day, under Section 130, as it stood immediately before that day :

Provided that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

- (i) the value of the goods, confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125, or
- (ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved, or
- (iii) the amount of fine or penalty, determined by such order, does not exceed ten thousand rupees.

(2) The Collector of Customs may, if he is of opinion that an order, passed by the Appellate Collector of Customs under Section 128, as it stood immediately before the appointed day, or the Collector (Appeals) under Section 128-A, is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Collector of Customs, or as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party, against whom appeal has been preferred, may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in such manner as may be specified by rules made in this behalf, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period, referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules, made in this behalf, and shall, except in the case of an appeal, referred to in sub-section (2), or a memorandum of cross-objections, referred to in sub-section (4), be accompanied by a fee of two hundred rupees.

129-B. Orders of Appellate Tribunal.—(1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass

such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the authority, which passed such decision or order, with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order, passed by it under sub-section (1), and shall make such amendments if the mistake is brought to its notice by the Collector of Customs or the other party to the appeal :

Provided that an amendment, which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made, under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of every order, passed under this section, to the Collector of Customs and the other party to the appeal.

(4) Save as otherwise provided in Section 130 or Section 130-E, orders passed by the Appellate Tribunal on appeal, shall be final.

129-C. Procedure of Appellate Tribunal.—(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions, contained in sub-sections (3) and (4), a Bench shall consist of one judicial member and one technical member.

(3) Every appeal against a decision or order, relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment, shall be heard by a Special Bench, constituted by the President, for hearing such appeals and such Bench shall consist of not less than three members and shall include at least one judicial member and one technical member.

(4) The President or any other member of the Appellate Tribunal, authorised, in this behalf, by the President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where—

- (a) the value of the goods, confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125, or
- (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved, or
- (c) the amount of fine or penalty involved, does not exceed ten thousand rupees.

(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points, on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other members of

the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case including those who first heard it.

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely,--

- (a) discovery and inspection ;
- (b) enforcing the attendance of any person and examining him on both ;
- (c) compelling the production of books of account and other documents ; and
- (d) issuing commissions.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

129-D. Powers of Board or Collector of Customs to pass certain orders.---

(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Collector of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

(2) The Collector of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority, subordinate to him, has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Customs in his order.

(3) No order shall be made under sub-section (1) or sub-section (2) after the expiry of two years from the date of the decision or order of the adjudicating authority.

(4) Where, in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of Customs, authorised in this behalf by the Collector of Customs, makes an application to the Appellate Tribunal or the Collector (Appeals) within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Collector (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating

authority and the provisions of this Act, regarding appeals, including the provisions of sub-section (4) of Section 129-A, shall, so far as may be, apply to such application.

129-E. Deposit, pending appeal, of duty demanded or penalty levied.—Where, in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods, which are not under the control of the customs authorities, or any penalty levied under this Act, the person, desirous of appealing against such decision or order, shall, pending the appeal, deposit, with the proper officer, the duty demanded or the penalty levied :

Provided that where, in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause under hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

130. Statement of case to High Court.—(1) The Collector of Customs or the other party may, within sixty days of the date, upon which he is served with notice of an order under Section 129-B (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), by application, in such form as may be specified by rules made in this behalf, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) On receipt of notice that an application has been made under sub-section (1), the person, against whom such application has been made, may, notwithstanding that he may not have filed such an application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in such manner as may be specified by rules made in this behalf against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the Appellate Tribunal as if it were an application presented within the time specified in sub-section (1).

(3) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the Collector of Customs or, as the case may be, the other party may, within six months from the date, on which he is served with notice of such refusal, apply to the High Court and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and, on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.