

confiscation.

## MONETARY PENALTY

Customs Act, 1962 provides for the following monetary penalties :—

### (I) Penalty for improper importation of goods etc. [Sec. 112]

Any person who :—

- (a) in relation to any goods, does or omits to do any such act which would render such goods liable to confiscation u/s 111, or abets the doing or omission of such an act, 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 such goods.

then, he shall be liable to the following penalties for improper imports :—

- (i) If the goods are prohibited for imports under the customs Act or any other law, then, a penalty not exceeding the value of such goods or ₹ 5,000, whichever is greater, is leviable.
- (ii) If the goods are dutiable, other than prohibited goods, then, a penalty not exceeding 10% of the duty sought to be evaded or ₹ 5,000, whichever is greater, is leviable.
- (iii) If actual value of the goods is higher than the value thereof as stated in the Bill of entry or in the declaration of contents of baggage, then, a penalty not exceeding the difference between the declared value or actual value thereof or ₹ 5,000, whichever is highest, is leviable.
- (iv) If the goods are prohibited and the value thereof is wrongly stated or declared, a penalty, being the highest of the followings, shall be leviable :—
  - (a) the value of goods, or
  - (b) the difference between actual value or declared value, or
  - (c) ₹ 5,000

(v) If the goods are dutiable other than prohibited goods, and the value thereof is mis-declared or wrongly stated, then, a penalty, being the highest of the following shall be leviable :—

- (a) The duty sought to be evaded, or
- (b) The difference between actual value or the declared value, or
- (c) ₹ 5,000.

Thus, minimum penalty in case of improper importation is of ₹ 5,000.

**(2) Penalty for attempt to export goods improperly, etc. [Sec. 114]**

If any person, in relation to any goods, does any act or omits to do any act which would render such goods liable to confiscation, then, he shall be liable to the following penalties :—

(i) In the case of goods prohibited for exports, a penalty not exceeding three times the value of the goods as declared by the exporter or the value determined under this Act, whichever is the greater, is leviable.

(ii) In the case of dutiable goods, other than prohibited goods, a penalty not exceeding the duty sought to be evaded or ₹ 5,000, whichever is the greater, is leviable.

(iii) In the case of any other goods, a penalty not exceeding the value of the goods as declared by the exporter, or the value as determined under this Act, whichever is the greater, is leviable.

**(3) Penalty for short-levy or non-levy of duty in certain cases [Sec. 114A]**

If the duty or interest was not levied or short-levied or was refunded on account of fraud, collusion, wilful misstatement or suppression of facts, the person liable to pay duty and interest shall also be liable to pay a penalty equal to the duty or interest so determined.

But if such duty or interest as determined and the interest payable thereon is paid within 30 days from the date of communication of such order, the amount of penalty shall be only 25% of the duty and interest so determined.

But if such duty or interest determined to be payable is reduced or increased by the commissioner (Appeals) the Appellate Tribunal or, the court, then, the reduced or increased duty and interest shall be taken into consideration.

**(4) Penalty for use of false and incorrect material [Sec. 114AA]**

If a person knowingly or intentionally makes, signs or uses any declaration, statement or document which is false or incorrect in any material particular, in any business transaction under this Act, then, he shall be liable to a penalty not exceeding five times the value of goods.

**(5) Penalty for obtaining instrument by fraud [Sec. 114AB]**

If any person has obtained any instrument by fraud, collusion, wilful mistakement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.

**(6) Penalty for not accounting for goods [Sec. 116]**

If any goods loaded in a conveyance for importation into India, or any goods transhipped or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or are unloaded in short quantity and the failure to unload or the

deficiency is not accounted for to the satisfaction of the Assistant or Deputy Commissioner of customs, then, the person-in-charge of the conveyance shall be liable to the following penalties :—

(a) In the case of goods, loaded in a conveyance for importation into India or goods transhipped, a *penalty not exceeding twice duty* that would have been charged on the goods not unloaded or the deficient goods, as the case may be, *had such goods been imported*, is leviable.

(b) In the case of coastal goods, a *penalty not exceeding twice the amount of export duty* that would have been charged on the good not unloaded or the deficient goods, as the case may be, *had such goods been exported*, is leviable.

**(7) Penalties for contravention etc., not expressly mentioned [Sec. 117]**

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provisions of the Act, and if no express penalty is prescribed under this Act for such contravention or failure, then, he shall be liable to a penalty not exceeding ₹ 4,00,000.

## ADJUDICATION : RULES & PROCEDURES FOR CONFISCATION & PENALTIES

**(1) Adjudication of confiscations and penalties [Sec. 122]**

Any confiscation or penalty may be adjudged by the followings :—

(a) A Principal Commissioner or Commissioner or commissioner of customs or a Joint Commissioner of customs—in the case of unlimited value.

(b) Upto a limited value, by such officer as the Board may notify.

**(2) Adjudication procedure [Sec. 122A]**

(i) The adjudicating authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires.

(ii) The adjudicating authority may, if sufficient cause is shown, grant time, at any stage of the proceeding, and adjourn the hearing for reasons to be recorded in writing.

(iii) The adjudicating authority may grant time and adjourn the hearing maximum upto three time. No such adjournment shall be granted more than three times to a party during the proceedings.

**(3) Burden of proof in certain cases [Sec. 123]**

(1) If any goods are seized on the belief that they are smuggled goods the burden of proving that they are not smuggled goods shall be as below :—

(a) If goods are seized from the possession of any person, burden of proving—

(i) shall be on the person from whose possession the goods were seized; and

(ii) if any other person claims to be the owner of the seized goods, then, on the owner also.

(b) In any other case, the burden of proving shall be on the person who claims to be the owner of the goods seized.

(2) This provision shall apply to gold and manufactures thereof, watches and any other class of goods which the Central Government may notify.

Thus, the burden of proving that the goods seized are not smuggled goods lies on the person from whose possession the goods were seized or on the owner of such goods.

**(4) Issue of show cause notice before confiscation of goods etc. [Sec. 124]**

Before passing an order of confiscating any goods or imposing any penalty on any person, the following process shall be followed in respect of such person or owner of the goods :-

(a) A notice will be given to him in writing stating the grounds on which it is proposed to confiscate the goods or to impose a penalty.

(b) Such person or the owner is given an opportunity of making a representation in writing within the time fixed in the notice. Such person or the owner in his written reply, should state the grounds for not confiscating the goods and imposing a penalty;

(c) Such person or the owner shall be given a reasonable opportunity of being heard in the matter.

But if the person concerned requests the notice and the representation both may be oral.

The proper officer under such circumstances as prescribed may issue a supplementary notice.

**(5) Option to pay fine in lieu of confiscation [Sec. 125]**

(1) The adjudication officer shall give to the owner of the goods, which is liable to be confiscated, or if such owner is not known, then, to the person from whose custody or possession such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.

But such fine shall not exceed the market value of the goods confiscated, less in the case of imported goods, the duty chargeable thereon.

(2) If any fine in lieu of confiscation of goods has been imposed, the owner or possessor of such goods shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) If the fine imposed is not paid within 120 days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

**(6) On confiscation, property to vest in Central Government [Sec. 126]**

(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.

**(7) Award of confiscation or penalty by customs officers not to interfere with other punishments [Sec. 127]**

The award of any confiscation or penalty under this Act by an a customs officer shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act or under any other law.