

VOLUME IV

NAME OF DEPARTMENT	LOCATE SYMBOL
1. TRIBUNAL CO-RDINATION UNIT (TCU)	\$
2. APPEAL SECTION.	#
3. LEGAL SECTION.	*+
4. REVIEW CELL.	++
5. ADJUDICATION CELL.	~

UNDERSTANDING CUSTOMS SYSTEM

\$ TRIBUNAL CO-ORDINATION UNIT

TRIBUNAL CO-ORDINATION UNIT (T.C.U.): WORKING:-

The Appellate Tribunal for Customs, Central Excise, and Gold matters has been constituted with effect from 11th October 1982 by the notification of Government of India, Ministry of Finance. Section 129 of customs act 1962 substituted by finance (no2) Act 1980 (44 of 1980), provides for constitution of an Appellate Tribunal to be called Customs,Excise and Gold (control) Appellate Tribunal consisting of Judicial and Technical Members to excercise the powers and discharge the functions conferred on Appellate Tribunal by this act. The Appellate Tribunal is a body, independent of the Executive machinery charged with the responsibility of the day to day administration of Customs, Excise and Gold (control) law, which will hear and decide appeals against orders passed by the Executive machinery. The tribunal consist of Judicial members and Technical Members. The technical member is from the Department. For appointment as a technical member, he should have been a member of the Indian customs and Central

Excise Service group `A` and should have held the post of Collector of Customs or Central Excise or any equivalent, higher post for atleast three years. A judicial member shall be a person who has for Ten years held a judicial office in India or should be a member of the Central Legal Service holding Grade `I` post of that service or any equivalent or higher post for three years. Advocates with ten years of experience are also eligible for appointment as Judicial Member.

One of the members is appointed as President of the Tribunal and one or more members are appointed as Vice-Presidents of the tribunal. Among the Vice-Presidents, one is designated as Senior Vice-President. The Senior Vice-President or a Vice-President can 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.

The powers and functions of Appellate Tribunal are exercised and discharged by benches constituted by the President of the Tribunal. Each bench consists of atleast two members, one judicial and one technical. There are two types of benches.

1. Special Bench
2. Regional Bench

Special Bench is situated in New Delhi. It looks after disputes involving

1. Classification
2. Valuation
3. Rate of duty

There are four special benches having all india jurisdiction situated in new delhi. these are titled as special bench `A`, `B`, `C` and `D` respectively.

The special bench `A` deals with valuation matters and the other three special benches referred to as special bench `B`, special bench `C` and special bench `D` deal with classification matters as per the chapter headings allotted to these benches.

Any matter relating to both classification and valuation is dealt with by special bench concerned with the classification matter.

The jurisdiction of special benches dealing with the classification matters is determined with reference to tariff items under which the goods in question have been classified by the authority against whose order, the appeal to the tribunal is filed.

In case of any dispute regarding jurisdiction, The President allocates the matter to such bench, he considers appropriate. The regional benches are situated at New Delhi, Madras, Calcutta and Bombay and look after other matters falling beyond the jurisdiction of special benches.

The President or any other member of tribunal authorised, in this behalf by the president, may, sitting singly can dispose off any matter allotted to his bench, of which he is a member, where the disputed amount does not exceed Rs.50,000/-(rupees fifty thousand only), provided the matter does not relate to valuation or classification for the purpose of determination of rate of duty.

If the members of the bench differ, then the majority view will prevail. If the members are equally divided, then the matter shall be referred to president for hearing. The president may nominate one or more members to decide the same. The matter is decided according to the majority view. In case of any difference in opinion in matters pertaining to special benches the president himself will decide the issue.

Powers of the Appellate Tribunal for the purpose of discharging its the Tribunal functions, have the same power as vested in a court, under the code of civil procedure 1908 in respect of following matters.

1. Discovery and inspection
2. Enforcing the attendance of any person and examining him on oath.
3. Compelling the production of book of account and other document.
4. Issuing commissions.

The proceedings before Appellate Tribunal is deemed to be a judicial proceeding as far as Sec.193, 228 and 196 of Indian Penal Code. The Appellate Tribunal is also deemed to be a Civil Court for all purposes of Sec.195 and Chapter xxvii of Code of Criminal Procedure 1973.

Types of appeals to the appellate tribunal

1. Against any order passed by collector of customs as an adjudicating authority.
2. Against any order passed by collector (appeals) under Sec.128 a of customs act 1962,
The appeal lies before tribunal.

The Tribunal has no jurisdiction to decide any appeal in respect of following disputes -

1. Baggage
2. Short landing
3. Disputes involving drawback .

The Tribunal has got discretion to refuse to admit any appeal under the following circumstances -

1. Goods are confiscated without option to pay fine in lieu of confiscation ,where the value of the goods does not exceed rs.10,000/-.
2. Difference in duty or duty itself is rs.10,000/- or less, in cases not involving disputes regarding value of the goods or rate of duty.
3. Fine or penalty does not exceed rs.10,000/- .

Who can file an appeal to the Appellate Tribunal

1. Any person / party
2. Department can file an appeal to appellate tribunal, if it is aggrieved by the order passed by collector or collector (appeals).

Time limit for filing appeal before CEGAT

The appeal should be filed within three (3) months from the date of communication of the order of the Collector(appeals) to Collector of customs or the other party preferring the appeal, as the case may be.

It should be noted that in case of department preferring appeal in cegat, the time limit of 90 days starts from the date on which the order was received by Collectorate office of customs and not by the concerned Appraising groups/ Departments.

The Appellate Tribunal may admit an Appeal after the expiry of three months,if it is satisfied that there was sufficient cause for not presenting it,within that period. In almost all cases Tribunal is very strict in condoning the the delay. if there is any delay ,the appellant has to give day to day reasons for condonation of delay. In case the department decides to prefer an appeal against the order of the collector of customs who has adjudicated the case, review proceedings under section 129 -D have to be followed, as per the details given under heading "Review by Board".

Procedure for filing appeal.

The appeal should be filed in form CA.-3 [appeals under sub-section (1) of section 129 a to the appellate tribunal] as given in the appeal rules.

It should be accompanied by a fee of Rs.200/- except when the appeal is being filed by the department. The appeal before the Tribunal should be in quadruplicate with equal number of copies of the order appealed against. Among them atleast one copy of the order appealed against should be a certified copy. Along with the appeal,or within one month from the date of filing of appeal,the appellant should submit a paper-book,containing all copies of the documents, statements etc. referred to in the

appeal. The paper-book should be self-explanatory book containing documents for all points raised in the appeal.

On receipt of notice regarding appeal filed under sec. 129 A (i), the plaintiff can file a memorandum of cross-objection in form CA-4 as specified in appeal rules.

The memorandum of cross-objection should be filed in quadruplicate, within 45 days from the receipt of notice regarding appeal filed.

An appeal under sub-section (4) of sec.129 D, as a result of review by board, should be filed in form C.A.-5, in quadruplicate. It should be accompanied by an equal number of copies of decision or order passed by the Collector of customs, one of which shall be a certified copy and a copy of the order passed by the board under sub-section (1) of sec.129 D, directing such collector to apply to appellate tribunal.

A reference application under sub-section (1) of sec.130 requiring the appellate tribunal to refer to the high court any question of law, should be made in form C.A.-6 in triplicate.

On receipt of the notice, that a reference application has been filed, the other party should file a memorandum of cross-objection under sub-sec.130(2), within 45 days of receipt of such notice, in form C.A.-7 in triplicate.

Fees payable

1. Except in cases of appeals filed by the department, every appeal to the appellate tribunal shall be accompanied by a fee of Rs. 200/-.
2. Applications for statement of case for reference to high court shall, except in cases where the applicant is department be accompanied by a fee of Rs. 200/-.
3. If the tribunal refuses to state a case and the applicant withdraws his application within 30 days of receipt of such refusal, the fee shall be refunded.
4. A memorandum of cross-objection filed by a party against an appeal preferred to the tribunal or against any application made to the tribunal for stating the case for reference to the high court need not be accompanied by any fee.

Who may appear on behalf of appellant

Any party to dispute may, otherwise than when required to attend personally for examination on oath, may appear through an authorised representative who may be :

- (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 practise in any Civil Court in India.

(d) Any person who has acquired such qualifications as the central government may specify by rules made in this behalf.

However in the following cases ,no one shall be entitled to appear as an authorised representative :

(a) One who was a Member of Indian Customs & Central Excise Service - Group A and has retired or resigned from such service after having served for not less than three years in any capacity in that service,shall not be entitled to appear as an authorised representative in any proceeding before an officer of customs for a period of two years from the date of his retirement or resignation.

(b) Who has been dismissed or removed from government service.

(c) Who is convicted of an offence connected with any proceeding under customs act 1962 or central excise and salt act 1944 or gold control act 1968.

(d) Who has become an insolvent.

(e) Who is a legal practitioner and is found guilty of misconduct in his professional capacity.

(f) Who is not a legal practitioner and is found guilty of misconduct in connection with any proceedings under this act.

Review by Under Sec.129 d, The Board has got powers to review any order Board passed by Collector of Customs as an adjudicating authority, for the purpose of satisfying itself to the legality or propriety of such an order. If the board feels that the order passed by the Collector is neither proper nor legally maintainable then the board can direct the adjudicating authority to file an appeal,before appellate tribunal,setting out the points to be determined.such an order by the board should be passed within one year from the date of original order passed, which is sought to be reviewed. Within three months of from the date of communication of such an order passed by board, the adjudicating authority concerned should make an application to the appellate tribunal. such an appeal has to be preferred to appellate tribunal in form C.A-5.

Calculation of time-limit for review by the Board

The time limit of one year for review of orders passed by Collector,starts from the day the order is passed in the file and not from the date of issue of order. To illustrate, assuming in one case the order was passed on 2.1.94 , whereas the order was issued on 15.1.94. In this case the order having being signed on 2.1.94, the last date for review would be 1.1.95 .

This issue was decided by supreme court in case of Collector of central excise vs. m.m.rubber co.[1991(55) elt 289 (sc)] . It has been clearly laid down that the limitation of one year from the date of decision or order would run from the date of signing of the decision or order by the concerned adjudicating authority.

No power of review by CEGAT of its own orders. There is no provision under the act , which authorises the Tribunal to review its own orders. Only the mistakes can be rectified under sub-sec.(2) of sec.129 B.

Under sec.129 B (2), the appellate tribunal may at any time, within four years from the date of its order ,amend such order with a view to rectify such mistake apparent from the record 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.

Any such amendment enhancing the assessment or reducing a refund or increasing the liability of a party will be done only after the tribunal gives notice of its intention to do so , to the concerned party and grant him a reasonable opportunity of being heard in the matter. A copy of the order passed will be sent to the concerned collector and the party to the appeal.

The term `mistake apparent from the record` indicate that it should be something which appears to ex-facie erroneous and is incapable of argument or debate. The power to rectify a mistake is undoubtedly a limited power. It is not a a power of revision or review but restricted to correct only those mistakes which are apparent from the record.

Binding nature the CEGAT orders. Unless orders of CEGAT are stayed or reversed , by a superior forum, the decisions of cegat can not be ignored or brushed aside by Quasi-judicial authorities in the Department.

Reference application to High Court

Under sec.130 of Customs Act 1962, against the orders passed by regional benches of the tribunal,(i.e. cases not involving ,among other things , question relating to rate of duty or valuation of goods for duty purposes) the department or the other party, if aggrieved ,may make an application ,known as `reference application' before the tribunal,asking them to refer the point of law arising out of tribunal order ,to the High Court.

This reference application should be filed within 60 days from the date of receipt of tribunal`s order. The tribunal has got powers to condone the delay for further

period of 30 days if it is satisfied with the reasons given for delay. This reference application has to be filed in form c.a-6, in triplicate, should be accompanied by a fee of Rs.200/-, if the application is made by other party.

On receipt of the notice that reference application has been made, the person/department against whom such application has been made can file a memorandum of cross objection in form C.A-7 in triplicate, within 45 days of receipt of such notice.

If any such question of law is involved, the tribunal will draw up a statement of case and refer it to the high court, after hearing cross-objections from the person against whom such application has been made if any.

If the tribunal feels that there is conflict in decisions of high courts on any particular question of law, it may make the reference directly to the Supreme Court.

In case the tribunal refuses to state a case, on the ground that no question of law is involved, it will be open to the department or the other party to apply directly to the high court within six (6) months of the date of receipt of notice of such refusal and the high court, if it is not satisfied with the correctness of decision of the tribunal, it may require the tribunal to state the case and the tribunal will then do so.

Appeals to Supreme Court

An appeal lies to the Supreme Court from :

1. Any judgement of the High Court delivered on a reference made to it by the tribunal by stating a case, which the high court certifies to be fit for appeal to the Supreme Court.
2. Any order of the Appellate Tribunal involving among other things, any question relating to the rate of duty or valuation of goods for duty purposes.

Working of the Tribunal Co-ordination Unit.

Appeals against the Orders of Collector (Appeals) Section 129 (a) (2) provides that the Collector of Customs may direct the proper officer to appeal on his behalf to the Appellate Tribunal against the order of Collector (Appeals). The proper officer for filing the appeal shall be Assistant Collector TCU. The Tribunal co-ordination unit shall receive Orders-in appeal forwarded by Collector (Appeals), forward the said order-in-appeal to the concerned Assistant Collector I/C of the group within 3 days of its receipt, for their perusal as to whether an appeal is required to be filed against the order. Before sending

the order-in-appeal to the group, all the relevant particulars will be noted and a running serial number will be assigned to the order for proper monitoring.

If the Assistant Collector of the group feels after examination of the order that an appeal has to be filed, he shall prepare the grounds of appeal as provided in form C.A.3 of the Customs (Appeal) rules 1982. The grounds of Appeal shall be submitted by the Assistant Collector of the group within one week of the receipt of the order-in-appeal from A.C. T.C.U., with brief note indicating the reasons for Appeal to the Collector. In case the Collector is of the view that an Appeal is necessary, he will pass a formal order directing the Assistant Collector T.C.U. to file the appeal. All the papers will then be forwarded to the T.C.U. Assistant collector T.C.U. will then go through the statements of facts and grounds of appeal and may call for additional information or data if need be, and prepare the Appeal in form C.A.-3. and the Appeal will be filed within two weeks from the date of receipt of the order of Collector in T.C.U.

Where it is not proposed to file an Appeal, the group shall suitably inform the T.C.U., after obtaining the Collector's order. This should be done within one week of the receipt of the order-in-appeal from T.C.U. The T.C.U. will ensure that all information about filing of the Appeal or otherwise will be entered in the register against the respective serial number wherein all the detailed particulars were entered earlier. All cases where an appeal has to be filed or otherwise has to be decided within 2 weeks of the receipt of the order-in-appeal in the T.C.U.

Appeals In cases where the parties have filed an Appeal against the order filed of Collector (Appeals) and serves a copy of the same on the by the Collector of Customs, the T.C.U. will receive the same. parties The T.C.U. After scrutiny will forward the same to the Assistant and Collector of the respective group. The group will then make filing parawise comments on this Appeal and with all the relevant of records send the same back to the T.C.U. within 3 days from the memoran receipt of the appeal copy. The T.C.U. will ensure that the of parawise comments and all the relevant documents are forwarded cross to the SDR CEGAT within 2 weeks of the receipt of the order-in- Rejection Appeal in T.C.U. Section 129(a) (4) provides that on receipt of a notice that an Appeal has been preferred, the party against whom the Appeal has been preferred may file a Memorandum of cross objection. The group will examine if any cross objection has to be filed. This should also be submitted along with the parawise comments and other documents. The time limit of filing of cross objection is 45 days from the receipt of the party's Appeal. Assistant Collector T.C.U. will scrutinise the cross objection and after taking Collector's approval, send the same to sdr for filing them in cegat. However the T.C.U. must send this within 2 weeks from the date of receipt of the notice of filing the appeal.

Reference In the case of reference application under section 130(1) of the
to the Customs Act, the Collector of Customs can file the
reference
Tribunal application within 60 days from the date of receipt of the
Tribunal's order. The reference application is to refer the matter to the High

Court on any point of law arising out of such order of the tribunal.

In the case of reference application the A.C./T.C.U. will forward the order of the tribunal to the a.c. group within 3 days of receipt of the order. In case the group feels that there exist a point of law to be decided by the high court, they will put up the same with their comments to the Collector of Customs and obtain his order within one week of the receipt of the order of tribunal from T.C.U. The points of law must be clearly set out for Collector's approval. after Collector's approval the same should be sent to A.C./ T.C.U. who will prepare the reference application in form C.A.-6. within one week and after obtaining Collector's approval file the same before the court. A.C./T.C.U. will ensure that the reference will be filed within 3 weeks from the receipt of the order from the tribunal.

Reference to the High Court refusing to under the section receipt. 130(3) of law of approval Customs Act 1962. the	<p>In case the tribunal refuse to refer the case to the high court on the law point, the collector of customs may apply to the court directly.</p> <p>In such cases when on receipt of the tribunals order refer the case to the high court, the A.C./T.C.U. will send same to A.C. group or section concerned within 3 days of its receipt.</p> <p>The concerned A.C. will put up the order with the points of to be considered by the high court. after Collector's approval the high court may be moved. The Collector's approval with the proposals should be sent to the T.C.U. within one week from receipt of the order of the tribunal. A.C. T.C.U. after receipt of the papers will refer the matter to A.C. legal within 2 days of the receipt of the papers from the group or concerned sections. The legal section in turn will prepare the u.o. reference and send the same to the law ministry within 2 days of the receipt of the paper from T.C.U.</p>
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The Law Ministry will send the papers to the panel counsel for filing appeal to the High Court. A.C. legal will ensure that the Appeal is filed within one week from the receipt of the reference by Ministry of Law. the reference will be filed within 3 weeks of the receipt of the order of the tribunal. A.C./T.C.U. will Monitor that the appeal has been filed within the stipulated 3 weeks.

Filing department, of grant	<p>In the case of filing a stay application filed by the Supreme Court/ Tribunal exercise their inherent right to</p>
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Stay a strong application. stay only when the department is in a position to establish prima facie case and where revenue at stake is substantial. Stay application is not to be filed in a routine manner, it should be supported by cogent reasoning and evidences making out a strong case for staying the order passed by the lower authority. A.C. group will prepare the proposal for stay along with the grounds and the exact amount of duty involved, redemption fine, penalty levied. the disputed/outstanding amount should be clearly indicated.

Appeals (e) to the order Supreme court under particulars section yearwise. 130(e) of the acceptance customs act A.C./T.C.U. 1962. In the case of appeals to the supreme court under section 130 of the Customs Act, the A.C./T.C.U. will send the cegat order to the concerned Assistant Collector within three days of its receipt. However before sending this order to the concerned section, T.C.U. will first enter all the relevant in a register and give a running serial number financial The concerned Assistant Collector will then put up the case to the Collector of Customs within one week for either or otherwise, giving the detail comments. After Collectors approval, the file should be immediately sent to who in turn will intimate the Commissioner (jc), board, within 3 days from the approval of the Collector. Where an appeal is to be filed in the supreme court. Certified copies of cegat order will be sent along with the postal copy of the telex. If certified copies are not available then uncertified copies will be sent and certified copies will be obtained as soon as possible and sent to board. No appeal delay should be made on this count.

After sending the required information the file will be returned by T.C.U. to the concerned section. it will be responsibility of A.C./T.C.U. to ensure that the proposal to file the appeal to the supreme court is sent to the Commissioner (review) within three weeks from the receipt of the order.

Power source Under the Custom Act 1962.

 Section 111 of Customs Act 1962 - Confiscation of improperly imported goods. Section 112 of C.A. 1962.- Penalty for improper importation of goods. Section 113 of C.A. 1962. Confiscation of goods attempted to be improperly exported. Section 114 of C.A.1962. Penalty for attempt to export goods, improperly.

Section 115 of C.A. 1962. Confiscation of conveyance.
 Section 116 of C.A. 1962. Penalty for not accounting for goods.
 Section 117 of C.A. 1962. Penalties for contravention etc. not expressly mentioned.
 Section 118 of C.A. 1962. Confiscation of the packages and contents.
 Section 119 of C.A. 1962. Confiscation of goods used for concealing smuggled goods.
 Section 120. of C.A. 1962. Confiscation of smuggled goods notwithstanding the change in form etc.

Section 121 of C.A. 1962. Confiscation of sale proceed of smuggled goods.
 Section 122 of C..A. 1962. Adjudication of confiscations and penalties.
 Section 123 of C.A. 1962. Burden of proof in certain cases.
 Section 124 of C.A.1962. Issue of show cause notice.
 Section 125 of C.A. 1962. Option to pay fine in lieu of confiscation.
 Section 126 of C.A. 1962. On confiscation property vests in central government.
 Section 128 of c.a. 1962. Appeals to Collector (Appeals).
 Section 128A of C.A. 1962. Procedure in appeals.
 Section 129 of C.A. 1962. Appellate tribunal
 Section 129 A of C.A. 1962. Appeals to appellate tribunal.
 Section 129 B of C.A. 1962. Orders of appellate tribunal.
 Section 129 D of C.A. 1962. Powers of Board or Collector of Customs to pass certain orders.
 Section 129DA of C.A. 1962. Powers of revision of Board or Collector of Customs in certain cases.
 Section 129 DD of C.A. 1962. Revision by Central Government.
 Section 129 E of C.A. 1962. Deposit, pending appeal, of duty demanded or penalty levied.
 Section 130 of C.A. 1962. Statement of case to High Court.
 Section 130 A of C.A. 1962. Statement of case to Supreme Court in certain cases.
 Section 130 B of C.A. 1962. Power of High Court or Supreme Court to require statement to be ammended.
 Section 130 C case before High Court to be heard by not less than two judges.
 Section 130 D decision of High Court or Supreme Court in case of reference application on point of law.
 Section 130 E Appeal to Supreme Court.
 Section 130 F hearing before Supreme Court.
 Section 131 of C.A. 1962. Sums due to be paid notwith- standing reference etc.
 Section 131 A exclusion of time taken for copy from period of limitation.
 Section 131 B transfer of certain pending proceedings and transitional provisions from board to appellate tribunal.
 Section 131 C definitions of "Appointed Day", "High Court", "President" ...

Under standing order.

No.6839 dated 24-1-1986.

Gist:- Filing of Appeal against the orders of the Collector (Appeals)

before Cegat and other authorities.

(refer s.o. for full text)

No. 6840 dated 27-1-1986.

(Gist:- Implementation of appellate orders pending final decision by next higher authority.

(refer s.o. for full text)

No. 6844 dated 19-3-1986.

Gist:- Filing of stay applications by the department before the appellate tribunal -- furnishing of details - regarding----

(refer s.o. for full text.)

No. 6880 dated 22-8-1988.

Gist:- Filing of Appeal against orders of Collector(Appeals) before Cegat & other authorities.

(refer s.o.for full text)

No. 6898 dated 28-2-1989.

Gist:- Filing of Appeals to Cegat against the orders of Collector(Appeals) in terms of section 129a of Customs Act, 1962 and filing of Appeals to Cegat under authorisation by the board under section 129d(1) of Customs Act, 1962.

(refer s.o. for full text)

No., 6916 dated 6-9-1989.

Gist:- Speedy implementation of orders -in-appeals/cegat orders.

(refer s.o.for full text)

No.6928 dated 24-11-1989.

Gist :- Norms to be adopted by the Custom house in cases where decisions of the Collector(Appeals)or Cegat are in favour of the party.

(refer s.o. for full text)

No. 7022 dated 24-11-1992.

Gist:- Speedy implementation of orders in Appeal/Cegat -- regarding...

(refer s.o. for full text)

No. 7059 dated 6-4-94

Gist:- Instructions on filing Appeals before Collector (Appeals), Appellate tribunal, reference application to High Court, Appeals to Supreme Court and review of orders by Board/ Collector.

(refer s.o. for full text)

Other Scrutiny of orders passed by CEGAT special benches by Instructions. the concerned collectors for review.

In the recent judgement hon'ble Supreme Court has held that civil appeal against Tribunal's orders are to be filed within 60 days from the date of its receipt in the collectorate office . Supreme Court did not accept the plea that the 60 days time limit be computed from the date of receipt of the order in board's office. it had also been held by supreme court that delay due to inter-departmental correspondences ,etc. is not a sufficient ground for condonation of delay. in case of u o i vs. peanut products pvt. ltd. madras , the apex court even went to the extent of directing that loss of revenue due to late filing of appeal be recovered from the salaries of the officers responsible for the delay.

2. Instructions have been issued from the Board's office on a number of occasions . Nevertheless , it is observed that initiation of timely remedial action against orders adverse to the interest of revenue is tardy in certain instances. On occasions, despite repeated telexes ,the required information/documents are not received in the Board's office well in time. as a result ,many a times cases become delayed, necessitating filing of applications for condonation of delay.

3. We have mooted a proposal to amend the statute so as to make the board a party in the dispute. this would enable the board to file appeals. ammendment of the law is a time consuming process . Till then. some arrangements have to be made in order to avoid appeals being dismissed on the ground of time bar. It has, therefore, been decided that acceptability of the orders passed by special benches of cegat shall be examined by the respective collectors . It would be the primary responsibility of the Collectorate to ensure filing statutory appeals to the supreme court within the prescribed time limit.

4. Whenever it is felt that an appeal has to ,be filed against an order of the cegat in the supreme court , proposal may be prepared and despatched by name to the Commissioner (judicial) within ten days of receipt of the order in the collectorate . the proposal should be sent in the enclosed format alongwith other relevant papers. The original certified copy of the CEGAT order which is required to be filed in original in the Supreme Court should also be enclosed.it should bear on it,date of its receipt in the collectorate.

5. It is needless to reiterate that if the proposal for filing

of appeals to Supreme Court is not received in the Board's office within 15 days of the receipt of the CEGAT order in the Collectorate (despatch by the collector of the proposal for appeal within 10 days + 5 days for its transit), it may not be possible to file the appeal in time. this may lead to serious revenue implications. It is hoped that this matter could be conveniently dealt with by collectors(judicial) would no doubt appreciate the urgency of the matter. D.o.f.no.390 /186/91-j c, dt. 24-10-1991.

Proforma for Collectors comments/report on tribunal's order

1. Number and date of the tribunal order.
2. Date of receipt in the collectorate.
3. Issues involved before the bench.
4. Facts of the case.
5. Tribunal's decision on the issues involved before the bench.
6. Are there any Ministry's / Board's instructions on the issues involved ?
(Please give the file reference number, CBEC Digest reference number etc.)
7. Is there any earlier order of the Tribunal and action taken thereon.?
8. Is there any Supreme Court judgement on the issue involved ?
9. Whether the decision has a recurring effect with respect to the current tariff ?
10. Grounds for preparing appeal.
11. Revenue involved in the matter (Demand/ Refund).
12. Whether revenue implication has recurring effect or not ?

Instructions :

1. Please ensure that comments are sent to the Board's office within 7 days of the receipt of order in the Collectorate.
2. The report may be sent by Speed post and addressed to Commissioner (J).
3. It may be ensured that original certified copy received in the Collectorate and photocopies of order-in-original, order-in-appeal is enclosed

to this report.

Board's circulars not to supersede the judicial pronouncements

Refer board's circular no. 8 dated 1.9.88 issued from f.no. 390/93/88-au regarding implementation of orders passed by CEGAT/Collector (Appeals). Attention of the Collectors is invited to various decisions of courts in the matter of fortuitous benefits and undue enrichment where the assessee is not in the position to refund the amount to the actual person . In addition to the decisions of high courts of Gujarat, Calcutta , Madras , Andhra Pradesh attention is invited to the latest decision of Bombay High Court in the case of Roplas (India) Ltd. versus Union of India in W.P. No. 22042/88 dated 6th july ,1988 wherein the court has also referred to various decision of Supreme Court . Board's circular cited supra does not supersede the judicial pronouncement. [m.f.(d.r.) telex f.no. 390/93/88-au dt. 22.9.88]

Adherence to the orders/directives of Appellate Tribunal within time limit - procedure regarding

During the course of informal discussion by the President of the Customs ,Central Excise and Gold (Control) Appellate Tribunal with the Chairman ,Central Board of Excise and Customs ,it was mentioned by the President that when in any order passed by the Tribunal ,specific time limit has been laid down for complying with certain directions given in the order of the tribunal,the Collectors are not following such directions given in the order in as much as the collectors do not adhere to the time limit mentioned in the order with the result that the affected party has again to come to the tribunal complaining against the non- compliance of the tribunal's order.

In some other cases where the orders are in favor of the party, the same are not given effect to on the ground that the department has filed an appeal either before the tribunal or before the high court or the Supreme court. In such cases also unless an stay order is granted by the appellate authorities the orders of the Judicial & Quasi-judicial authorities should strictly be followed so that there is no complaint from the assessees for not complying with the orders of the judicial & quasi-judicial authorities. [D.O.letter f.no. 383/3/84-a.u. from Shri B.N.Rangwani, Member (Legal & Judicial) Central Board of Excise & Customs]

Furnishing of original record for use by the Departmental representatives

It has been brought to the notice of the Board that the effective presentation of the Departmental cases by the Departmental representatives before the tribunal becomes difficult for want of timely receipt of original case records and comments wherever necessary from the concerned collectorate. It has been further observed that notice by the tribunal fixing date of hearing etc. are sent to the collectors directly by the tribunal only in cases where the collectors concerned are the appellants. The registry of the tribunal has been requested to serve notices on the collectorates also in cases where collectors concerned are respondents.

In order to enable the Department representative to prepare the cases well in advance before the same come up for hearing before the tribunal, in these cases where the collectors received notices from the tribunal regarding the date of hearing etc., it may be ensured that original cases records along with detailed comments on the points raised in the appeal are sent to the concerned departmental representatives immediately after receipt of such notices. [authority: MFdr, CBEC letter F.no. 390/98/83-all. dated 24.3.1984]

Cases in which appeals have been filed before Supreme Court against orders passed by Customs, Excise and Gold (Control) Appellate Tribunal -- Question whether similar cases should be decided based on the decision of the tribunal - reg.

It has been noticed by the Board that though the Collector and Collector (appeals) have been informed or are aware that the decisions of the tribunal in certain cases have been appealed against before the Supreme Court, similar cases are being decided by the Collectors or Collectors (appeals) in favor of the parties basing the decisions on the earlier decisions of the Tribunal. The Board desires that decision in such cases, where question similar to these decided by the tribunal decisions are involved may be kept pending in order to avoid unnecessary work. [f.no. 191-13-15/84-au, dated 20-1-84 Government of India, Ministry of Finance, Department of Revenue, CBEC]

Filing of stay application before the tribunal –furnishing of adequate justification.

An instance has come to notice that a stay application was rejected by the tribunal on the ground that reasons given were too vague as no mention was made of the amount involved and what undue hardship would be caused to the department.

In order that stay applications are not summarily rejected by the tribunal, it should be ensured that the stay applications give the full details including the details of amount involved and also specify the matter of undue hardship caused to the department in case the stay is not granted by the tribunal. Further, in those cases where even though the lower authorities have passed orders for payment of reduced rate of duty or nil duty and the assesseees are not reducing the price of their product the fact can be

brought to the notice of the Tribunal in support of say applications.

In those cases where the application for stay has been filed by the assessee, extract of their records including the balance sheet can be enclosed to the reply or cross-objections furnished to the tribunal in support of the department's plea that no undue hardship will be caused to the assessee in case the stay is not granted to him. This plea may be in addition to any other plea that may be taken by the department to oppose the party's stay application. [Authority-ref.C.B.R.&C. Circular No.20/83-a.u.(f.no.390/92/83 -a.u.) dated 15.10.83]

Issue of Show-cause-cum-demand notices in Central Excise and Customs matters till the decision of the Higher Appellate. Authorities, or Appellate Tribunal or Courts-Procedure-reg.

It is observed that sometimes the lower adjudicating or the Appellate Authorities or Appellate Tribunal give decisions favourable to the assessee but adverse to revenue in customs and central excise matters pertaining the classification and valuation disputes. Adequate provisions exist in the relevant statutes for taking up these matters in appeals before the higher appellate authorities, or the Appellate Tribunal or the Courts. However, these authorities take considerable time in giving a decision on such disputes. Till such time these disputes are decided one way or the other by the higher appellate authorities or appellate tribunal or the courts, the assessee will take advantage of the favourable decision and pay duty at lower or Nil rates. It is likely that the Higher Appellate Authorities or Appellate Tribunal or the Court may give at a later date a decision favourable to revenue. However, during the intervening period between the decision of the lower authority and the higher appellate authority or the appellate tribunal or the courts, it would be necessary to safeguard revenue interests by taking appropriate action.

In this connection specific applications for stay of the orders should be made as per instructions contained in Board's circular no. 20/83-a.u. (f.no.390/192/83-au) dated 15.10.83 incorporated in Calcutta Customs S.O.No. 7/84. Show-cause-cum-demand notices subsequent to the period covered by the orders of Collectors (Appeals) should however be continued to be issued in such cases where it is proposed to file an appeal or the appeal has been filed. This is because the Appellate Tribunal does not normally grant stay of the orders appealed against nor can it grant stay in regard to future clearances. Similar action should be taken when the appeal is filed in the Supreme Court against the Tribunal's decision but stay has not been granted. This is necessary till the necessary amendments are made in the law.

[Authority-ref.Board circular no. 7/84 a.u.f.no. 390/3/84-a.u. dated 23.2.84]

Customs, Central Excise and Gold (control) removal of difficulties order, 1982

G.S.R. 593 (e), Dated the 11th October 1982.-In exercise of the powers conferred by sub-section 3 of sec.50 of the Finance (no.2) Act, 1980 (44 of 1980), the Central Government hereby makes the following order, namely:

1. (1) This order may be called the Customs, Central Excise and Gold (Control) removal of difficulties order, 1982.

(2) It shall come into force on the 11th day of october, 1982.

2. The priod within which an appeal against any order passed before the appointed day, by-

(a) The Central Board of Excise and Customs or the Appellate Collector of Customs under Sec.130 of the Act, as it stood immediately before that day, may be filed, shall, without prejudice to the provisions of sub-section (5) Of Sec.129-A of the act, be six months from the date on which the said order is communicated to the Collector of Customs, or, as the case may be, the other party perferring the appeal.

Explanation.-in this paragraph,-

- (i) "Act" means the customs act, 1962(52 of 1962),
- (ii) "Appointed day" means the date of coming into force of the the amendments to the act specified in part i of the fifth schedule to the finance (no.2) act, 1980 (44 of 1980).

3. The period within which an appeal against any order passed before the appointed day, by-

(a) The Central Board of Excise and Customs or the Appellate Collector of Central Excise under sec.35 of the Act, as it stood immediately before that day;or

(b) The Central Board of Excise and Customs or the Collector of Central Excise under Sec.35-A of the Act, as it stood immediately before that day, may be filed, shall, without prejudice to the provisions of Sub- Section (5) of sec. 35-B of the Act, be six months from the date on which the said order is communicated to the Collector of Central Excise, or as the case may be, the other party perferring the Appeal.

Explanation.-in this paragraph-

(i) "Act" means the Central Excise and Salt Act, 1944(1 of 1944)

(ii) "Appointed Day" means the date of coming into force of the amendments to the act specified in part ii of the fifth schedule to the finance (no.2) act, 1980 (44 of 1980).

4. The period within which an appeal against any order passed before the appointed day, by-

(a) The Administrator, Collector of Central Excise or of the Customs or the Appellate Collector of Customs under Sec.80 of the Act, as it stood immediately before that day;or

(b) The administrator under Sec. 81 of the act, as it stood immediately before that day may be filed, shall, without prejudice to the provisions of sub-section (6) of Sec. 81 of the Act, be six months from the date on which the said order is communicated to the Collector of Central Excise or of Customs, or, as the case may be, the other party preferring the appeal.

Explanation.-in this paragraph-

(i) "Act" means the gold (control) act, 1968(45 of 1968);

(ii) "Appointed day" means the date of coming into force of the amendments to the act specified in part ii of the fifth schedule to the finance (no.2) act,1980 (44 of 1980).

Customs, Excise and Gold (Control) Appellate Tribunal

Constitution of Special Benches & Regional Benches -Their powers & functions.

Order No.2of 1982 dated 16.10.82 (f.no. 103- CEGAT/82

In exercise of the powers conferred by section 129c of the Customs Act, 1962 (52 of 1962) read with Section 35D of the Central Excises and Salt Act, 1944 (1 of 1944) and section 81B of the Gold (control) act,1968 (45 of 1968), the President of the Customs, Excise the Gold (control) Appellate Tribunal hereby constitutes the following Benches and directs that the said benches shall exercise and discharge the following powers and powers and functions, namely:-

2.Four special benches shall be located at New Delhi, and shall deal with matters relating, among other things, to the determination of

any question having a relation to the rate of duty of Custom or of Excise (hereinafter referred to as classification) or to the value of goods for purposes of assessment or duty of Customs or of Excise (hereinafter referred to as valuation).

3. Four regional benches as shown in column (2) of the table below shall be located at such places as shown in column (3) of the said table against each of such benches and shall deal with matters other than those falling within the jurisdiction of the special benches.

4. A matter falling under sub-section (4) of section 129c of the Customs act, 1962 may be disposed of by the Technical Member of the concerned regional bench, sitting singly; and a matter falling under sub-section (3) of Section 35D of the Central Excises and Salt Act, 1944, or under Sub-Section (2) of Section 81B of the Gold (control) Act, 1968 may be disposed of by the judicial member of the concerned regional bench sitting singly.

5.(1) In any case where there is a doubt regarding jurisdiction, the president shall allocate the matter to such bench as he may consider appropriate.

(2) Where a number of the bench having jurisdiction in a matter has decided or dealt with that matter for any reason, to deal with the matter, the president shall allot the matter to a reconstituted bench which does not include that member, or to another bench, as he may consider appropriate.

6. The expression 'matters' used in this order includes applications made under Section 129D or Section 130 of the Customs act, 1962 or under Section 35E or Section 35G of the Central Excises and salt act, 1944, or under section 82 or section 82b of the gold (control) act, 1968, and pending proceedings under section 131 of the Customs act, 1962, or under Section 36 of the Central Excises and Salt act, 1944, or under Section 82 of the gold (control) act, 1968, as they stood immediately before the 11th october, 1982.

The Table

S. No.	Title of the Bench Jurisdiction.	Location
1.	North Regional Bench	New Delhi. Matters where the first order was passed by the collector or any

- officer of the following
 Formations:- collectorate of custom
 central excise, delhi,
 collectorates of central excise
 customs, allahabad, chandigarh,
 and merrut; and collectorate
 central excise, indore and
 other
 and
 jaipur
 of
 kanpur.
2. South Regional Bench
 was
 by the collector or any
 officer of the following
 Formations:- custom house, madras
 visakhapatnam, collectorate
 customs and central excise,
 collectorate of central
 and customs, bangalore
 madurai, and collectorates
 excise guntur, hyderabad
 madras.
 Madras. Matters where the first order
 passed
 other
 and
 rate of
 cochin,
 excise
 and
 central
 and
3. East Regional Bench
 was
 by the collector or any
 officer of the following
 Calcutta Matter where the first order
 passed
 other

formations:-

house, calcutta collectorate
 customs (preventive), patna,
 collectorate of customs and central
 shilong, collectorate
 central excise and customs
 bhubaneswar and west bengal;and
 excise collectorate
 and patna.

Custom
 of
 excise,
 of
 central
 calcutta

4. West Regional Bench
 was

by the collector or any
 officer of the following

formations:-

house, bombay, collectorate
 customs (preventive), bombay,
 Collectorates of Customs & Central
 Ahmedabad and Goa,
 Collectorate of central excise and
 pune, and central excise
 Collectorate, baroda, bombay-1
 and Nagpur.

Bombay Matter where the first order

passed
 other

Custom
 of
 Excise,

Customs

Bombay-2

Customs, Excise and Gold (Control) Appellate Tribunal
Jurisdiction of Special Benches order no.3 of 1982 Dt.18.10.82
(f.no.103-cegat/82)

Whereas, by order no, 2 of 1982, the 16th october, 1982
Four Special Benches of the Customs, Excise and Gold (control) Appellate
tribunal have been constituted.

2. Now, therefore, the president of the said tribunal
hereby assigns to the said special benches the categories of matters shown
against the respective special benches in the table below.

3. The Special Bench referred to as special bench 'A' in
column (2) of the said table, shall deal with matter relating, among other
things, to the determination of any question having a relation to the value of
goods for purposes of assessment of duty of Customs or of Excise (hereinafter
referred to as valuation), other than the matters specified in paragraph 4.

4. (1) The other three special benches, referred to as
Special Bench 'B' special bench 'C' and special Bench 'D' in column (2) of said
table, shall deal with matters relating, among other things, to the
determination of any question having a relation to the rate of duty of Customs
or of Excise (hereinafter referred to as classification) in respect of the
classes of goods mentioned in column (3) of the said table against the
respective Special Benches.

(2) Among the three special benches dealing with
classification matter the jurisdiction will be determined with reference to the
tariff items under which the goods in question have been classified by the
authority against whose order the appeal or application to the tribunal is
filed.

(3) Any matters relating to both classification and
valuation shall be dealt with by the special bench concerned with the
classification matter.

5. (1) In any case where there is a doubt regarding
jurisdiction, the president shall allocate the matter such bench as he may
consider appropriate.

(2) Where a member of the bench having jurisdiction, in a matter
has decided or dealt with that matter in any other capacity or does not consider
it proper, for any other reason, to deal with that matter, the president shall
allot the matter to a reconstituted bench which does not include that member, or
to another bench, as he may consider appropriate.

6. The expression 'matters' used in this order includes applications made under section 129d or Section 130 of the customs act, 1962, or under Section 35E or Section 35G of the central excises and salt act, 1944, or under Section 82 or Section 82b of the gold (control) act, and pending proceeding under section 36 of the central excises and salt act, 1944, or under section 82 of the gold (control) act, 1968, as they stood immediately before the 11th october, 1982.

The Table.

Sl.	Title of Bench.	Jurisdiction
1.	Special bench "A"	(1) Valuation matters.
2.	Special bench "B"	(2) Classification matters relating to-

(a) Goods comprised in the following chapters of the first schedule to the Customs tariff act, 1975 (hereinafter referred to as the Customs Import tariff):- Chapters 73 to 92.

(b) Goods comprised in the following items of the first schedule to the central excises and salt act, 1944 (hereinafter referred to as the central excises tariff items 24, 25, 26, 26a, 26aa, 26b, 27, 27a, 28, 28a, 29, 29a, 30, 30a, 30b, 31, 32, 33, 33a, 33b, 33c, 33d, 33dd, 33e, 33f, 34, 34a, 34b, 37a, 37b, 37bb, 37c, 37cc, 44, 45, 47; and item 68 [goods corresponding to those comprised in the chapters of the custom import tariff specified in part (a) of this entry].

3. Special Bench "C" Classification matter relating to:

(a) Goods comprised in the following chapters of the customs import tariff:- chapters 15 and 25 to 40.

(b) Goods comprised in the following items of the central excise tariff:- items 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 12, 13, 14, 14a, 14aa, 14b, 14bb, 14c, 14d, 14dd, 14e, 14f, 14ff, 14g, 14h, 14hh, 15, 15a, 15aa, 15c, 15cc, 15d, 16aa, 17, 23; and item 68 (goods corresponding to those comprised in the chapters of the customs import tariff specified in part (a) of this entry).

4. Special Bench "D" (1) classification matters relating to all goods other than those falling within the jurisdictions of special bench 'b' and special bench 'c'.

(2) Classification matters relating to the second schedule to the customs tariff act, 1975, or relating to export cases.

Customs (Appeals) Rules, 1982

Notification (mfd) 212- customs/82 dt. 10-9-82

In exercise of the powers conferred by sub-section (1) of sec. 156 of the customs act, 1962 (52 of 1962), the central government hereby makes the following rules, namely:

Chapter I

Preliminary

1. Short title and commencement.- (1) these rules may be called the customs appeals rules, 1982.

(2) They shall come into force on such date as the Central Government may, by Notification in the official gazette, appoint.

Comments

Rule shall prevail over administrative instructions.- The Supreme Court and India in the case of C.L. Verma v. State of M.P, held that administrative instructions cannot compete with a statutory rule and if there be contrary provisions in the rule and if there be contrary provisions in the rule the administrative instructions must give way and the rule shall and the rule shall prevail.

2. Definitions.- In these rules, unless the context otherwise requires,-

- (a) "Act" means the customs act, 1962 (52 of 1962);
- (b) "Form" means a form appended to these rules;
- (c) "Section" means a section of the act.

Chapter II

Appeals to collector (appeals)

3. Form of appeal to collector (appeals). - (1) an appeal under sub-section (1) of Sec.128 to the collector (appeals) shall be made in form no. CA-1.

(2) The grounds of appeal and the form of verification as

contained in form no. CA-1 shall be signed:

(a) In the case of an individual by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.

(b) In the case of a Hindu undivided family, by the karta and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.

(c) In the case of a company or local authority, by the principal officer thereof;

(d) In the case of a firm, by any partner thereof, not being a minor;

(e) In the case of any other association by any member of the association or the principal officer thereto, and

(f) In the case of any other person, by that person or some person competent to act on his behalf.

(3) The form of appeal in form no. CA-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

4. Form of application to the Collector (Appeals).-(1) An application under sub-section (4) of sec,129-d to the Collector (Appeals) shall be made in form no. CA-2.

(2) The form of application in form no. CA-2 shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be certified copy) and a copy of the order passed by the collector of customs directing such authority to apply to the collector (appeals).

Comments

This rule provides the procedure for making an application to the Collector (appeals) in form no. CA-2.

5. Production of additional evidence before the Collector (Appeals).-(1) The appellant shall not be entitled to produce before the Collector (Appeals) any evidence, whether oral or documentary, other than the

evidence produced by him during the course of proceedings before the adjudicating authority, except in the following circumstances, namely;

(a) Where the adjudicating authority has refused in admit evidence which ought to have been admitted; or

(b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority; or

(c) Where the appellant was prevented by sufficient cause from producing before the authority any evidence which is relevant to any ground of appeal; or

(d) Where the adjudicating authority has made the the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Collector (Appeals) records in writing the reasons for its admission.

(3) The collector (appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority, has been allowed a reasonable opportunity;

(a) To examine the evidence or documents or to cross- examine any witness produced by the appellant, or

(b) To produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the powers of the collectors (appeals) to direct the production of any witness, to enable him to dispose of the appeal.

Comment

This rule provides that in what cases and circumstances the additional evidence before the collector (appeals) may be produced

Chapter III

Appeals to Appellate Tribunal

6. Form of appeals, etc. to the appellate tribunal.-(1) an appeal under sub-section (1) of Sec. 129-A to the Appellate tribunal shall be made in form no. CA-3.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (3) of Sec. 129-A shall be made in form No. CA-4.

(3) Where an appeal under sub-section (1) of Sec. 129-A or a memorandum of cross-objections under sub-section (4) of that section is made by any person other than the collector of customs, the ground of appeal, the grounds of cross-objections and the forms of verification as contained in form nos. CA-3 and CA-4 or as the case may be, respectively shall be signed by the person specified in sub-rule (2) of rule 3.

(4) The forms of appeal in form no. CA-3 and the form of memorandum of cross-objections in form no. CA-4, shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy.)

7. Form of application to the appellate tribunal.- (1) an application under sub-section (4) of Sec. 129-d to the appellate tribunal shall be made in form no. CA-5.

(2) The form of application in form no. CA-5 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order passed by the collector of customs (one of which at least shall be certified copy) and copy of the order passed by the Board directing such collector to the appellate tribunal.

Comment

Form no. CA-5 is the prescribed form for making an application to the appellate tribunal.

8. Form of application to the appellate tribunal for reference to high court.- (1) an application under sub-section (1) of Sec. 130 requiring the Appellate tribunal to refer to the high court any question of law shall be made in form no. CA-6 and such application shall be filed in triplicate. (2) A Memorandum of cross-objections under sub-section (2) of Sec. 130 to the appellate tribunal shall be made in form no. CA-7 and such memorandum shall be filed in triplicate.

(3) Where an application under sub-section (1) of sec. 130 or a memorandum of cross-objections under sub-section (2) of that section is made by any person other than the collector of customs, the application, the memorandum and the forms of verification as contained in form nos. CA-6 and CA-7, respectively shall be signed by the person specified in sub-rule (2) of rule 3.

8-A form of revision-application to the Central Government.-

(1) A revision-application under sub-section (1) of Sec. 129-DD to Central Government shall be in form no. CA-8.

(2) The grounds of revision-application and the form of verification, as contained in form CA-8, shall be signed by the person specified in sub-rule (2) of rule 3.

(3) Where the revision-application is signed by the authorised representative of the applicant, the document authorising such representative to sign and appear on behalf of the applicant shall be appended to such revision-application.

(4) The revision-application in form no. CA-8 shall be filed in duplicate and shall be accompanied by an equal number of copies of the following documents, namely:

(i) Order passed by the Collector of Customs (Appeals) under Sec. 128-A; and

(ii) Decision or order passed by the Customs officer which was the subject-matter of the order referred to in Cl. (i).

8-B. Procedure for filing revision -Application.-(1) the revision-application in form CA-8 shall be presented in person, to the Under-Secretary, Revision applications, Ministry of Finance Department of revenue, Central secretariat, New Delhi-1, or sent by registered post addressed to the said Under-secretary.

(2) The revision-application sent by registered post under sub-rule (1) shall be deemed to have submitted on the date on which it is received in the office of the said under-secretary.]

Chapter-IV

Authorised representative

9. Qualifications for authorised representative.-For the purposes of Sec. 146-A, an authorised representative shall include a person who has acquired any of the following qualifications, being the qualification specified under Cl. (d) of sub-section (2) of the said Sec, 146-A, namely:

(a) A chartered accountant within the meaning of the chartered accountants act, 1949 (38 of 1949), or

(b) A cost accountant within the meaning of the cost and works accountants act, 1949 (23 of 1949), or

(c) A company secretary within the meaning of the company secretaries act, 1980 (56 of 1980), who has obtained a certificate of practice under sec.6 of that act, or

(d) Post-graduate or a honours, degree holder in commerce or a post-graduate degree or diploma holder in business administration from any recognised university, or

(e) Person formerly employed in the Departments or Central Excise or Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said departments for not less than ten years in the aggregate.

Explanation-in this rule, "recognised university", means any of universities specified below, namely:

i. Indian universities-Any Indian university incorporated under any law for the time being in force in India:

ii. Rangoon university.

iii. English and Welsh universities-The universities of birmingham, bristol, cambridge, durham, leeds, liverpool, london, manchester, oxford, reading, Sheffield and wales;

iv. Scottish universities-The universities of aberdeen,

v. Irish universities.-The universities of Dublin (trinity college), the queen's university, belfast and the national university of dublin.

vi. Pakistan universities-Any Pakistan university incorporated under any law for the time being in force.

vii. Bangladesh universities.-Any Bangladesh university incorporated under any law for the time being in force.

10. Authority under Sec. 146-a (5) (b).-The Collector of Customs having jurisdiction in the proceedings in which a person who is not a legal practitioner is found guilty of misconduct in connection with the proceeding under the act shall be the authority for the purposes of cl. (b) of sub-section (5) of sec. 146-a.

Chpater -V

Miscellaneous

[* * * * *]

Form of appeals to collector (appeals) and appellate tribunal (customs & gold control)

Every application in appeal filed before the collector (appeals) and the appellate tribunal would be in the form prescribed under the customs (appeals) rules 1982 and under the gold control (appeals) rules 1982. The relevant forms as prescribed under the rules are reproduced as under. Every appeal application preferred before the appeallate tribunal would have to be accompanied by a fee of Rs.200/- as prescribed under Section -129(a)(b) of the Customs act 1962,as amended. the fee should be paid through a cross bank draft drawn in favour of the Asstt. Registrar of the Bench of the tribunal on a branch of any nationalised bank located at the place where the bench is situated and the demand draft shall be attached with the application.

Form no CA-1
(see rule 3)

Form of appeal to the collector (appeals) under sec.128 of the customs act,1962

1. No.....of.....19.....
2. Name and address of the appellant.
3. Designation and address of the officer passing the decision or order appealed against and the date of the decision or order
4. Date of communication of the decision or order appealed against to the appellant.
5. Address to which notices may be sent to the appellant.
6. Whether duty or penalty or both is deposited, if not whether any application for dispensing with such deposit has been made. (a copy of the challan under which the deposit is made shall be furnished). 2[6-a. whether the appellant wishes to be heard in person.]
7. Reliefs claimed in appeal.
Statement of facts.
Grounds of appeal.
(i)
(ii)
(iii)etc.

Signature of authorised representative, Signature of appellant.

Verification

I.....the appellant, do hereby declare that what is stated information and belief.

Verified today, the.....day of.....19.....

Place.....

Date.....

Signature of the authorised representative, Signature of the appellant. if any

Notes.-

1. The grounds of appeal and the form of verification shall be signed by the appellant in accordance with the provisions of rule 3 of the customs (appeals) rules, 1982.

2. The form of appeal, including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

Form no. CA-2
(see rule 4)

Form of application to the collector (appeals) under sec. 129-d(4) of the customs act, 1962

appeal no.....of.....19.....

Applicant
vs
Respondent

1.Designation and address of the applicant (if the applicant is not the adjudicating authority, a copy of the authorization from the collector of custom to make the application should be enclosed).

2. Name and address of the respondent.

3. Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.

4. Date on which the order under sub-section (2) of sec.129-d had been passed by the collector of customs.

5. Date of the communication of the order referred to in (4) above to the adjudicating authority.

6. Reliefs claimed in the application

Statement of fact.

Grounds of appeal

- (i)
- (ii)
- (iii)etc.

Signature of the applicant.

Note.- The form of application, including the statement of facts and the grounds of application shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order of the collector of customs under sub-section (2) of sec. 129-d of the act.

Form no. CA-3

Form of appeal to the appellate tribunal under sec. 129-a(i) of the customs act,1962. in the customs, excise and gold (control) appellate tribunal.

Appeal no.-____ of_____

Applicant.

vs.

Respondent.

1. The designation and address of the authority passing the order appealed against.
2. The number and date of the order appealed against.
3. Date of communication of the order appealed against.
4. State/union territory and the collectorate in which the order/decision of assessment/penalty/fine was made.
5. Designation and address of the adjudicating authority in cases where the order appealed against is an order of the collector (appeals).
6. Address to which notices may be sent to the appellant.
7. Address to which notices may be sent to the respondent.
8. Whether the decision or order appealed against involves any question having a relation to the rate of duty or to the value of goods for purposes of assessment, if not the difference in duty involved or value of goods involved, as the case may be.
9. Whether duty or penalty is deposited, if not, whether any application of dispensing with such deposit has been made. (a copy of the challan under which the deposit is made shall be furnished).
[9-a. whether the applicant wishes to be heard in person].
10. Reliefs claimed in appeal.

Statement of fact

Grounds of appeal.

- (i)
- (ii)
- (iii)etc.

Signature of the authorised representative, if any.

Signature of the appellant

Verification

I.....the respondent do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the.....day of 19..... Signature of the authorised representative, if any

Signature of the respondent

Notes.-

1. The grounds of cross-objections and the form of verification shall, if the memorandum is filed by any person other than the collector of customs, be signed by the respondent in accordance with the provisions of rule 3 of the customs (appeals), rules, 1982.

2. The form of appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of the order appealed against (one of which at least shall be a certified copy).

3. The form of appeal should be in English (or in Hindi) and should set forth, concisely and under distinct heads, the grounds without any argument or narrative and such grounds shall be numbered consecutively.

4. The fee of Rs.200 required to be paid under the provisions of the act shall be paid through a crossed bank draft drawn in favor of the Assistant Registrar of the bench or the tribunal on a branch of any nationalised bank located at the place where the bench is situated and the demand draft shall be attached to the form of appeal.

[see rule 6 (2)]

Form of Memorandum of Cross objections to the appellate tribunal
Under sec. 129-a(4)of the customs act, 1962

In the customs, excise and gold (control) appellate tribunal
cross-objection no.....of.....19.....in appeal/application no.....
of-----19-----

Appellant/Applicant.

vs.

Respondent

1.State/ Union territory and the collectorate in which the order/
decision of Assessment/penalty/fine was made.

2. Date of receipt of notice of appeal or application filed with
the appellate tribunal by the appellant or as the case may be, the collector of
customs.

3. Address to which notices may be sent to the respondent.

4. Address to which notices may be sent to the appellant/applicant.

5. Whether the decision or order appealed against involves any
question having a relation to the rate of duty of customs or to the value of
goods for purpose of assessment, if not, the defference in duty or duty
involved, or amount of fine or penalty involved or the vlaue of goods involved,
as the case may be.

6. Reliefs claimed in the memorandum of cross-objections.

Grounds of cross objections

- (1)
- (2)
- (3)
- (4)etc.

Signature of the authorised representative, if any

Signature of the respondent.

Verification

I.....the respondent, do hereby declare that what is stated
above is true to the best of my information and belief.

Verified today the.....day of 19..... Signature of the authorised

representative, if any.

Signature of the respondent.

Verification

I.....the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the....day of 19..... Signature of the authorised representative, if any.

Signature of the respondent.

Notes.-

1. The grounds of cross-objections and the form of verifications shall, if the memorandum is filed by any person, other than the collector of customs, be signed by the respondent in accordance with the provisions of rule 3 of the customs (appeals) rules,1982.

2. The form of memorandum of cross-objection shall be filed in quadruplicate.

3. The form of memorandum of cross-objections should be in english (or in hindi) and should set forth, concisely and under distinct heads of grounds of cross-objections without any argument or narrative and such grounds should be numbered consecutively.

4. The number and year of appeal/application is allotted by the appellate tribunal and appearing in the notice of appeal/application Received by the respondent is to be filed by the respondent.

Form no.CA-5
(see rule 7)

Form of application to the appellate tribunal under Sec.129-d(4) of the Customs act, 1962.

In the customs, excise and gold (control) appellate tribunal appeal.....
of.....

1.Designation and address of the applicant (if the applicant is not the adjudicating authority, a copy of the authorisation from the collector of customs to make the application should be enclosed.)

2. Name and address of the respondent.

3. Designation and address of the officer passing the decision or

order in respect of which this application is being made and the date of the decision or order.

4. State/union territory and the collectorate in which the decision or order was made.

5. Date on which order under sub-section (1) of sec. 129-d has been passed by the board.

6. Date of the communication of the order referred to in (3) above, to the adjudicating authority.

7. Whether the decision or order appealed against involves any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment, if not the difference in duty or duty involved, or amount of fine or penalty involved or value of goods involved.

8. Reliefs claimed in the application.

Statement of fact.

Grounds of application.

- (i)
- (ii)
- (iii)etc.

Signature of the

applicant.

Notes.-

The form of application including the statement of facts and the grounds of application shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order of the collector of customs (one at least of which shall be a certified copy) and a copy of the order of the Board under sub-section (1) of sec. 129-d.

Form no. CA-6
[see rule 8 (1)]

Form of application to the appellate tribunal under sec.130(1) of the Customs Act, 1962.

In the customs, excise and gold (control) appellate tribunal. in the matter of appeal no.....(name of the appellant) reference application no.....of.....19.....(to be filed in by the office)
Applicant. V/s. Respondent.

1. State or union territory and the collector from which the

application is filed.....

2. Number of the appeal which gives rise to the reference.....

3. Address to which notices may be sent to the applicant.

4. Address to which notices may be sent to the respondent.

5. The appeal noted above was decided by the.....bench of the appellate tribunal on.....

6. The notice of the order under sec. 129-b of the customs act, 1962, was served on the applicant on.....

7. The facts which are admitted and/or found by the appellate tribunal and which are necessary for drawing up a statement of the case, are stated in the enclosure for ready reference.

8. The following questions of law arise out of the order of the appellate tribunal.

1.

2.

3.etc.

9. That the applicant, therefore, requires under sub-section (1) of Sec.130 of the customs act,1962, that a statement of the case be drawn up and the questions of law referred in para.8 above be referred to the high court.

10. The documents or copies thereof as specified below (the translation in english of the documents, where necessary, is annexed) be forwarded to the high court with the statement of the case.

Signature of the authorised
representative if any.

Signature of the applicant.

Note.-

1. The application and the form of verification shall, if the application is made by any person, other than the collector of customs, be signed by the applicant in accordance with the provisions of rule 3 of the customs (appeals) rules, 1982.

2. The application shall be filed in triplicate.

3. The fee of Rs.200 required to be paid under the provision of the act shall be paid through a crossed bank draft drawn in favour of the assistant registrar of the bench of the tribunal on a branch of any nationalised bank located at the place where the bench is situated and the demand draft shall be attached to the form of application.

Form of memorandum of cross objections to the appellate tribunal in the master of reference to the high court under sec.130(2) of the customs act, 1962.

In the customs, excise and gold (control) appellate tribunal cross reference application no.-----of-----19------(to be filled in by the office)-----in reference application no.-----of-----19----- applicant.

Applicant.
vs.
Respondent.

1. State/union territory and the collectorate from which the memorandum of cross-objections is filed.
2. Date of receipt of notice of application filed with the appellate tribunal by the respondent.
3. Address to which notices may be sent to the applicant.
4. Address to which notices may be sent to the respondent.
5. The facts which are admitted and/or found by the appellate tribunal and which are necessary for drawing up a statement of the case, are stated in the enclosure for ready reference.
6. The following questions of law arise out of the order of the appellate tribunal:
 - (1)
 - (2)
 - (3)
7. The respondent, therefore, requires under sub-section (1) of sec. 130 of the customs act, 1962, that a statement of the case be drawn up and the questions of law referred to in para, 6 above be referred to the high court.
8. That the documents or copies thereof as specified below (the translation in english of the documents where necessary, is annexed) be forwarded to the high court with the statement of the case.

Signature of the authorised
representative, if any.
respondent

Signature of the

Verification

I,-----, the respondent do hereby declare that what is stated above

is true to the best of my information and belief.

Verified today, the-----day of-----19-----

Signature of the authorised
representative if any.
respondent.

Signature of the

Note.-

1. The memorandum of cross-objections and the form of verification shall, if the memorandum is filed by any person other than the collector of customs be signed in accordance with the provisions of rule 3 of the customs/appeals rules, 1982.

2. The memorandum of cross-objection shall be filed in triplicate.

[Form no. CA-8]

Form of revision application to the central government under Section 129-DD of the customs act, 1962.

1. Revision Application no.....of.....
2. Name and Address of the applicant.
3. Designation and address of the authority passing the order against which the revision-application is filed.
4. The number and date of the order.
5. Date of communication of the order.
6. Designation and address of the authority against which the order has been passed by the collector (appeals).
7. Addrss towchich notice/communications may be sent to the applicant.
8. Whether duty of penalty, if any, has been deposited (a copy extract of the challan/account current, as the case may be, under which the deposit is made, shall be furnished.

[8-a. whether the applicant wishes to be heard in person.]

9. Reliefs claimed in application:

Statement of facts.
Grounds of appeal.

- (i)
- (ii)
- (iii)etc.

Signature of authorised,
Agent, if any.

Verification

I,.....,the applicant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today, the.....day of.....19.....

Notes.-

(1) The grounds of application and the form of verification shall be signed by the applicant in accordance with the provisions of sub-rule (2) of rule 8A.

(2) The application including the statement of facts and the grounds of application, shall be filed in duplicate and shall be accompanied by an equal number of copies of the orders against which the application is filed and also the decision/order of the authority against which collector of customs (appeals) passed the order.

(3) The form of application shall be in English (or Hindi) and shall set forth, concisely and under distinct heads, the grounds of application without any argument or narrative and such grounds should be numbered consecutively.

(4) The fee of Ruppess two hundred required to be paid under the provisions of the act shall be paid under TR- 6 challan and the duplicate copy of the TR-6 challan shall be filed along with the application for revision.

(5) Where the application is signed by the authorised representatives of the applicant, the document authorising the representative to sign and appear on behalf of the applicant shall be appended to the application.]

The Customs Excise and Gold (Control)
Appellate Tribunal (Procedure)
Rules, 1982

Notifn. no. 1/CEGAT/82, dated 25th October, 1982. In exercise of the powers conferred by sub-section (6) of sec. 129-c of the Customs act, 1962 (52, of 1962), read with sub-section (1) of sec. 35-d of the Central excises and

salt act, 1944, and sub-section (1) of sec. 81-B of the gold (control) act, 1968 (45 of 1968), the customs, excise and gold (control) appellate tribunal hereby makes the following rules, namely:

1. Short title and commencement.- (1) These rules may be called the Customs, Excise and Gold (control) Appellate Tribunal (procedure) rules, 1982.

(2) They shall come into force on the 25th october, 1982.

2. Definitions.-In these rules, unless the context otherwise requires

(a) "Acts" means the customs act, the central excises act and the gold (control)act:

(b) "Administrator" means the administrator appointed under sec.4 of of the gold (control) act;

(c) "Authorized representative" in relation to any proceedings before the tribunal means-

(i) A person authorized by the person referred to in sub- section (1) of sec. 146-a of the customs act or, as the case may be sub-section (1) of sec. 35-q of the central excises act or sub- section (1) of sec. 10]-a of the gold (control) act, to appear on his behalf in such proceedings; or

(ii) A person duly appointed by the central government by notification in the official gazette as authorized representative to appear plead and act for the collector or administrator, in such proceedings;

(d) "Bench" means a bench of the 'tribunal and includes a special bench and a member sitting singly;

(e) "Central excises act" means the central excises and salt act, 1944 (1 of 1944);

(f) "Certified copy" means the original copy of the order received by the party or a copy (including a photostat copy) thereof duly authenticated by the concerned department;

(g) "Collector" means the collector of customs or the collector of central excises as the case may be;

(h) "Customs act" means the customs act, 1962(52 of 1962);

(i) "Departmental authorities" means the customs authorities as central excise authorities or gold (control) authorities, as the case may be;

(j) "Gold (control) act" means the gold (control) act, 1968 (45 of 1968);

(k) "Member" means a member of the tribunal including the president and a vice-president;

(l) "Prescribed" means prescribed by or under these rules;

(m) "President" means the president of the tribunal;

(n) "Resistrar" means the person who is for the time being discharging the functions of the registrar of the tribunal, and "registry" means

the office of the tribunal;

(o) "Special bench" means a bench constituted by the president under sub-section (3) of sec.129-c of the customs act, or sub-section (2) of sec. 35-d of the central excises act;

(p) "Tribunal" means the custom, excise and gold (control) appellate tribunal constituted under sub-section (1) of sec.129 of the customs act, and includes, where the context so requires, the bench exercising and discharging the powers and functions of the tribunal; and

(q) "Vice-president" means a vice-president of the tribunal and includes a senior vice-president appointed by the central government.

Comment

General principles of construction.- There is one principle on which there is complete unanimity of all the Courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicit, unclouded and unobscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external aids. In such cases the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words therefrom. Where the language is plain, and unambiguous the court is not entitled to go behind the language so as to add or supply omission and thus play the role of a political reformer or of a wise counsel to the legislature.

3. Sittings of bench.-Subject to such general or special order as may be made by the president, a bench shall hold its sittings either headquarters or at such other place falling within its jurisdiction as it may consider expedient.

4. Powers of Bench.-(1) A Bench shall hear and determine such appeal and applications made under the acts as the president may by general or special order direct.

(2) Where two or more benches are functioning at any place, the president, or in his absence the senior amongst the vice-presidents present, or in their absence the seniormost member present, may transfer an appeal or application from one bench to another.

Comment

The seniormost member may transfer an appeal or application from one bench to another, if the president and the senior amongst the vice-presidents is absent.

5. Language of the tribunal.-(1) The language of the tribunal shall be English; Provided that the parties to a proceeding before the tribunal may file documents drawn up in Hindi if they so desire:

Provided further that a bench may in its discretion, permit the use of Hindi in its proceeding ;so however, the final order shall be in English.

(2) Notwithstanding anything contained in sub-rule (1), the tribunal may pass such orders in Hindi, as and when it deems fit:

Provided that every such order shall be accompanied by a translation in English of the same, duly attested by the bench concerned.

Comment

The rule provides facility for drawing up of documents in Hindi if the parties so desire.

6. Procedure for filing appeals.- A memorandum of appeal to the tribunal shall be presented in the relevant form by the appellant in person or by an agent to the registrar or an officer authorized in this behalf by the registrar, or sent by registered post addressed to the registrar or such officer.

(2) A memorandum of appeal sent by post under sub-rule (1) shall be deemed to have been presented to the registrar or the officer authorized by the registrar, on the date on which it is received in the office of the the registrar, or as the case may be, in the office of such officer.

Explanation.-for the purposes of this rule, "form" means a form prescribed for the purpose of presenting an appeal under the customs (appeal) rules, 1982, or the central excise rules, 1944, or, as the case may be, the gold (control) appeal rules, 1982.

7. Date of presentation of appeals.- The registrar or, as the case may be the officer authorized by him under Rule 6, shall be endorsed on every memorandum of appeal the date on which it is presented or deemed to have been presented under that rule and shall sign to endorsement.

8. Consent of a memorandum of appeal.-Every memorandum of appeal shall set forth, concisely and under distinct heads, the grounds of appeal and such grounds shall be numbered consecutively and shall be typed in double space on one side of the paper.

9. What to accompany memorandum of appeal.-(1) Every memorandum of appeal shall be filed in quadruplicate and shall be accompanied by four copies (at least one of which shall be a certified copy) of the order appealed against and where such order is an order passed in appeal or revision, four copies (at least one of which shall be a certified copy) also of the order of the adjudicating authority.

(2) In an appeal filed under the direction of the collector or the

administrator, the memorandum of appeal shall also be accompanied by an attested copy of the order containing such direction.

10. Grounds which may be taken in appeal.-the appellant shall not except by leave of the tribunal, urge or be heard in support of any grounds not set forth in the memorandum of appeal, but the tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or those taken by leave of the tribunal under these rules:

Provided that the tribunal shall not rest its decision on any other grounds unless the party who may be affected thereby has a sufficient opportunity of being heard on that ground.

Comment

The tribunal rest its decision on the ground other than which is mentioned in the memorandum of appeal only when the party likely to be affected thereby has been given a sufficient opportunity of being heard on that ground.

11. Rejection or amendment of memoradum of appeal.-(1) The tribunal may in its discretion, on sufficient cause being shown, accept a memorandum of appeal which is not accompanied by the documents referred to in rule 9 or is in any other way defective, and in such cases may require the appellant to file such documents or, as the case may be, make the necessary amendments within such time as it may allow.

(2) On representation of any memorandum of appeal after making the necessary amendments referred to in sub-rule (1), the memorandum of appeal shall be signed and dated by the officer competent to make the endorsement under rule 7.

12. Who may be joined as respondents.-(1) In an appeal or an application by a person other than the collector or the administrator, the collector concerned or the administrator shall be made the respondent to the appeal or, as the case may be, the application.

(2) In an appeal or an application by the collector or the administrator the other party shall be made the respondent to the appeal, or as the case may be, the application.

(3) The provisions of sub-rules (1) and (2) shall apply to a proceeding transferred to the tribunal under Sec.131-B of the Customs act, sec. 35-p of the central excises act or sec. 82-k of the gold (control) act.

13. Document authorizing representative to be attached to the memorandaum of appeal.-(1) Where the parties to an appeal or application are being represented in such appeal or application by authorized representatives,

the documents authorizing such representatives of appeal on their behalf shall be appended to the memorandum of appeal, application or memorandum of cross-objections if they are signed by the authorized representatives and the said documents shall indicate clearly the status of the authorized representative as to whether they are relatives or regular employees of the parties and details of the relationship or employment or, in cases where they are not relatives or regular employees, their qualifications to act as authorized representative under the acts or in the case of a person referred to in rule (2) (c) (ii), particulars of the notification by which he has been appointed:

Provided that where the authorized representatives is a legal practitioner, such document of authorization shall be a duly executed vakalatnama.

Comment

This rule requires the documents of authorization to be a duly executed vakalatnama for a legal practitioner.

14. Filing of authorization at a later stage.- Where the document referred to in rule 13 had not already been appended as required under that rule, the tribunal may in its discretion allow such documents to be filed before the commencement of the hearing.

15. Filing of memorandum of cross- Objections and applications.- Every memorandum of cross-Objections filed, and every application made under provisions of the acts, shall be registered and numbered, and the provisions of these rules, relating to appeals shall, so far as may be, apply so such memorandum or application.

16. Preparation of Paper book.- (1) The appellant shall, along with the appeal or within one month of filing of the appeal, submit in such number or as of copies (sic) of the memorandum of appeal, a paper book containing copies of the documents, statements of witnesses and other papers on the file of, referred to in the orders of the departmental authorities, which he proposes to rely upon at the hearing of the appeal.

(2) The respondent may also file a paper book containing such document as are referred to in sub-rule (1), which he proposes to rely upon at the time of hearing of the appeal, in such number of copies as of the memorandum of appeal, within one month of the service of the notice of the filing of the appeal on him, or within two weeks of the service of the paper book, whichever is later.

(3) The tribunal may, in its discretion, allow the filing of any paper book referred to in sub-rule (2) after the expiry of the period referred

to therein.

(4) The tribunal may on its own motion direct the preparation of as many copies as may be required of a paper book by and at the cost of the appellant or the respondent containing copies of such statements, paper or documents as it may consider necessary for the proper disposal of the appeal.

Comment

The tribunal is discretion to allow the filing of any paper book after the expiry of the period of one month.

17. Endorsing copies to the other party.- a copy of the memorandum of appeal and paper book shall be served on the other party as soon as they are filed.

18. Date and place of hearing to be notified.- (1) the tribunal shall notify to the parties the date and place of hearing of the appeal or application.

(2) The issue of the notice referred to in sub-rule (1) shall not by itself be deemed to mean that the appeal or application has been admitted.

19. Hearing of appeal.- (1) on the day fixed or any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The tribunal shall then, if necessary, hear the respondent against the appeal and in such a case the appellant shall be entitled to reply.

Comment

The word "shall" -meaning of-it has been laid down consistently by the supreme court that the mere use of the word "shall" by itself in the statute does not make the provision mandatory, but it is the duty of the courts of justice to try to get at the real intention of the legislature By carefully attending to the whole scope of the statute to be construed. in each case, one has to look to the subject-matter, consider the importance of the provisions and the relation of that provision with the general object intended to be secured by the act and upon the review of case in that aspect decide whether the enactment is mandatory or only directory.

20. Action of appeal for appellant's default.- Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the tribunal may, in its discretion, wither dismiss the appeal for

default or hear and decide it on merits;

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing the tribunal shall make an order setting aside the dismissal and restore the appeal.

Comment

The tribunal is empowered to dismiss the appeal or hear and decide it on merits, if the appellant does not appear on the day fixed for the hearing of appeal.

21. Hearing of appeals Ex-parte.-Where on the day fixed for the hearing of the appeal or on any other day to which the hearing is adjourned the appellant appears and the respondent does not appear when the appeal is called on for hearing, the tribunal may hear and decide the appeal ex parte.

Comment

The tribunal is empowered to hear and decide the appeal ex parte, if the appellant appears and the respondent does not appear on the day for hearing the appeal.

22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application.-Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest the executor, administrator, receiver, liquidator, or other legal representative of the appellant or applicant or respondent as the case may be:

Provided that every such application shall be made within a period of sixty days of the occurrence of the event:

Provided further that the tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within the period so specified, allow it to be presented within such further period as it may deem fit.

Production of additional evidence.-(1) The parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the tribunal, but if the tribunal is of opinion that any documents should be produced or any witness should be examined or any affidavit

should or revisional authority has decided the case without giving sufficient opportunity to any party to adduce evidence on the points specified by them or not specified by them, the tribunal may for reasons to be recorded, allow such documents to be produced or witness to be examined or affidavits to be filed or such evidence to be adduced.

(2) The production of any document or the examination of any witness or the adducing of any evidence under sub-rule (1) may be done either before the tribunal or before such departmental authority as the tribunal may direct.

(3) Where any direction has been made by the tribunal to produce any documents or to examine any witness or to adduce any evidence before any departmental authority, the authority shall comply with the directions of the tribunal and after such compliance send the documents, the record the deposition of the witnesses or the record of the evidence adduced, to the tribunal.

(4) The tribunal may, of its own motion, call for any documents or summon any witnesses on points at issue, if it considers necessary to meet the ends of justice.

24. Adjournment of appeal.- The tribunal may, on such term as it thinks fit and at any stage of the proceedings, adjourn the hearing of the appeal.

25. Proceedings to be open to public.- The proceedings before the tribunal shall be open to the public:

Provided that the tribunal may, if it thinks fit, order at any stage of the proceedings of any particular case that the public generally or any particular person shall not have access to, or be or remain, in the room or building used by the tribunal.

Comment

The tribunal is empowered to restrict the entry of public generally or any person to the room or building used by the tribunal at the stage of the proceeding of any particular case.

26. Order to be signed and dated.- Every order of the tribunal shall be in writing and shall be signed and dated by the members constituting the bench concerned.

27. Publication of orders.-Such of the orders of the tribunal as are deemed fit for publication in any authoritative report or the press, may be released for such publication on such term and conditions as the tribunal any

lay down.

28. Procedure for filing & disposal of stay petitions.-(1)(a) Every application preferred under the provisions of the act for stay of the requirement of making deposit of any duty demanded or penalty levied shall be presented in triplicate by the appellant in person or by his duly authorised agent, or sent by registered post to the register or any other officer authorized to receive memoranda of appeal in respect of which the application for stay arises.

(b) One copy each of such application shall be served on the authorized representative of the collector or, as the case may be, administrator simultaneously by the applicant.

(2) Every application for stay shall be neatly typed on one side of the paper and shall be in english and the provisions of rule 5 shall apply to such applications.

(3) An application for stay shall set forth concisely the following:

(a) The facts regarding the demand of duty or penalty, the deposit whereof is sought to be stayed;

(b) The exact amount of duty or penalty and the amount disputed therefrom and the amount outstanding;

(c) The date of filing of the appeal before the tribunal and its number, if known;

(d) Whether the application for stay was made before any authority under the relevant act or any civil court and, if so, the result thereof (copies of the correspondence, if any, with such authorities to be attached);

(e) Reason in brief seeking stay;

(f) Whether the applicant is prepared to offer security and, if so, in what form;and

(g) Prayers to be mentioned clearly and concisely (state the exact amount sought to be stated),

(4) The contents of the application shall be supported by an affidavit sworn to be appellant or his duly authorized agent.

(5) Every application for stay shall be accompanied by three copies of the relevant orders of the authorities of the department concerned, including

the appellant orders, if any, against which the appeal is filed to the appellate tribunal by the appellant and other documents, if any:

Provided, however, that the tribunal may, at the request of the applicant in its discretion dispense with the requirements of filing of the copies of such orders.

(6) Any application which does not conform to the above requirements is liable to be summarily rejected.

(7) An application for stay shall be decided by the bench having jurisdiction to hear the appeal to which the application relates.

29. Reference to High Court.-(1) An application for reference to the High Court shall be filed in triplicate and shall be accompanied by a list of documents (particulars whereof shall be stated) which, in the opinion of the applicant, should form part of the case and a translation in english of any such documents, where necessary, and three copies of the order passed by the tribunal in the appeal concerned.

(2) Where an application for reference is filed by any person other than the collector or the administrator, the collector or the administrator, the collector or the administrator shall be made by the respondent, and where the application for reference is filled by the collector or the administrator, the other party shall be made the respondent.

(3) The provisions of rules relating to the filing of appeals shall, so far as may be, apply to the filing of an application under this rule.

30. Reference to Supreme Court in conflict of decisions of High Court.-Where on an application for reference to a high court, the tribunal considers it expedient, on account of conflict in decisions of high courts in respect of any particular question of law, to make a reference direct to the supreme court, such reference shall inter alia set out concisely the decisions of the high courts and the points of conflict in the decisions.

Comment

The rule enables the tribunal to make reference to the Supreme court, when there is a conflict of decisions of the High court.

31. Same bench to hear the reference applications.-The same bench which heard the appeal giving rise to the application for reference to the high court or supreme court shall hear such application unless the president directs otherwise.

32. Submission of reply to reference applications.-The respondent, if he desires to be heard shall, within three weeks from the date on which he was served with a copy of the application for reference, submit a reply in writing to the reference-application.

33. Contents of reply.-(1) The reply referred to in rule 32 shall be filed in triplicate and shall specifically admit or deny whether any question of law as formulated by the applicant arises out of the order of the tribunal.

(2) If any question formulated by the applicant is defective, the reply under rule 32, the tribunal is of the opinion that a question of law which arises out of the said order.

(3) The reply shall be accompanied by a list of documents (the particulars of which shall be stated) which in the opinion of the respondent, should form part of the case and a translation in English of any such documents, where necessary.

34. Statement of case.-(1) Where, after hearing the applicant and the respondent if he has filed a reply under rule 32, the tribunal is of the opinion that a question of law arises out of its order, it shall draw up a statement of the case.

(2) The tribunal shall append to the statement of the case a list of documents which, in its opinion should form part of the reference.

(3) Within such time after the statement of the case is drawn up as the tribunal may direct, the applicant or respondent, as the case may be, at whose instance any such document is included in the list, shall file as many certified and uncertified copies of the documents which form part of the reference as are required to be forwarded to the high court or supreme court:

Provided that the tribunal may, at the request of the parties, in its discretion, allow further time to enable the parties to file copy of such documents.

35. Communication of orders to parties.-Any order passed in appeal or an application shall be communicated to the appellant or the applicant and to the respondent either in person or by registered post.

36. Same bench to deal with requisition from high court or Supreme court.-Where a requisition to state the case from the high court or where a direction to make any addition or alteration in a statement of the case from the high court or the supreme court is received by the tribunal under the acts, it shall be dealt with by the same bench referred to in rule 31, unless otherwise directed by the president.

37. Receipt of judgment of the high court or supreme court.-Where a copy of the judgment of the high court or the supreme court is received by the tribunal, it shall be sent to the bench as directed by the president for such orders as may be necessary.

38. Copying fees.-(1) Copying fees shall be charged at the rate of two rupees for the first two hundred words or fraction thereof and one rupee for every additional one hundred words or fraction thereof.

(2) Except in cases where copies are supplied free under the rules or instructions for the time being in force, the scale of fees to be charged for the supply of copies urgently shall be twice the rate specified under sub-rule (1).

(3) Copying fee shall be payable in cash in advance.

(4) No fees is required to be paid by any departmental authority connected with the matter in question before the tribunal.

Comment

Departmental authorities are exempted from paying the copy fees if they are connected with the matter in question before the tribunal.

39. No fees for inspection of records.-no fees shall be charged for inspecting the records of a pending appeal or application by a party thereto.

40. Control over departmental authorities in certain matters.- the tribunal shall exercise control over the departmental authorities in relation to all matters arising out of the exercise of the powers or of the discharge of the functions of the tribunal.

41. Orders and directions in certain cases.-the tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders to prevent abuse of its process or to secure the ends of justice.

42. Sittings of offences of the tribunal, etc.-Except on Sundays and other public holidays, the offices of the tribunal shall, subject to any order made by the president to open daily from 10 a.m. to 5 p.m., but no work, unless of urgent nature, shall be admitted after 12.30 p.m. on Saturdays, nor on any Sundays and other public holidays.

(2) The sitting hours of the tribunal shall ordinarily be from 10.30 a.m. to 1 p.m. and from 2 p.m. to 4 p.m.

44. Officers of the tribunal and their functions.-(1) The registrar shall have the custody of the records of the tribunal and shall exercise such other functions as are assigned to him under these rules or by the president by separate order.

(2) The registrar may, with the approval of the president, delegate to an assistant registrar any function required by these rules to be exercised by the registrar.

(3) In the absence of the Registrar, the Assistant registrar may exercise all the functions of the registrar.

(4) Official seal shall be kept in the custody of the registrar.

(5) Subject to any general or special directions given by the president, the seal of the tribunal shall not be affixed to any order, summons or other processes save under the authority in writing of the registrar or assistant registrar.

(6) The seal of the tribunal shall not be affixed to any certified copy issued by the tribunal save under the authority in writing of the registrar or assistant registrar.

Comment

Sub-rule (6) prohibits the affixation of the seal of the tribunal to any certified copy issued by the tribunal without the authority in writing of the Registrar or Assistant registrar.

45. Additional powers and duties of the registrar.-In addition to the powers conferred by other rule, the registrar shall have the following powers and duties subject to any general or special order of the president, namely:

(i) To require any memorandum of appeal, application petition or other proceeding presented to the tribunal to be amended in accordance with the practice and procedure of the tribunal or to be represented after such requisition as the registrar is empowered to make in relation thereto has been compiled with;

(ii) Subject to the directions of the respective benches, to fix the date of hearing appeals, applications, petitions or other proceedings and issue notices thereof;

(iii) To settle the index in cases where the record is prepared in the tribunal;

(iv) To direct any formal amendment of record; and

(v) To order the grant of copies of documents to parties to proceedings, and to grant leave to inspect the records of the tribunal under rule 39.

46. Seal and Emblem.-The official seal and emblem of the tribunal shall be such as the president may prescribe.

47. Dress for the Members.-The dress for the members shall be such as the president may prescribe.

48. Dress for the parties.-Every authorized representative other than a relative or regular employee of a party shall appear before the tribunal in his professional dress, if any, and if there is no such dress,-

(i) If a male, in a close-collared black coat, or in an open-collared black coat, with white shirt and black tie;

(ii) If a female, in a black cost over a white sari or any other white dress.

Statement showing the type of forms to be used for filing appeals/memorandum of cross-objections/applications, the number of copies to be filed and the maner of their verification under the various provisions of customs (appeals) rules,1982, the central excise (11th amendment) rules, 1982, and the gold (control) appeals rules, 1982, respectively. Customs

Sl. no.	Short title to the form	Description of the form which prescribed	Rules under Page no.
	number of copies to be filed, documents to be enclosed, fees payable,		

etc.

1	2	3	4	
	5		6	

1. CA-1 Form of appeals to Rule 3 .. 1. The grounds of appeal C-7

The collector
(appeals) under
Sec.128 of the
appellant
the customs act, 1962.
provisions of rule 3 of
customs (appeals)
rules,1982.
form of appeal,inclu-
statement of
and the grounds of
shall be filed in
duplicate and shall be
accompanied by a copy
decision or order
against.

and the form of veri-
fication shall be
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of the
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2. CA-2 Form of application rule 4 .. The form of application C-8

To the collector
statement
(appeals)under sec.
grounds

including the
of facts and the

129-d(4) of the
 shall be
 customs act, 1962.
 and
 accompanied by
 copies of, the decision
 passed by the
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 copy of order of
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 sub-section (2) of
 sec.129-d of the act.

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3. CA-3 Form of appeal to
 the appellate/
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 signed by the appe-
 accordance with
 provisions of Rule 3
 customs (Appeals)
 1982.

Rule 6(1) 1. The grounds of appeal C-9
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 of the
 Rules,

2. The form of appeal inclu-

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 and the grounds of
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 form of appeals should
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 should set forth,
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 heads the grounds
 appeal without any
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 grounds should
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 be paid under the
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Assistant Registrar of the bench of the
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 located at the Place where the bench
 situated and the demand draft shall be
 to the form
 appeals.

tribunal
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 of

4. CA-4 Form of Memorandum Rule 6(2) 1. The grounds of cross- c-11
 of cross objections objections and
 the
 to the appellate form of verification
 tribunal under sec. shall, if the
 memo-
 129-a(4) of the randum is filed
 by any
 customs act, 1962. person other than
 the
 Collector of customs, be
 by the respondent signed
 accordance with in
 provisions of rule 3 of
 Custom (Appeals) the
 1982. Rules,
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 cross-objections shall of
 in quadruplicate. be filed
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in

English (or Hindi) and
 set forth, concisely
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 cross-objections
 any argument
 narrative and such
 should be numbered
 consecutively.
 number and year of
 appeal/application as
 by the office
 appellate tribunal
 appearing in the
 of appeal/application
 received by the
 respondent is to be filled in by the
 respondent.

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 grounds

4. The

allotted
 of the
 and
 notice
 citation

5. CA-5 Form of application Rule 6
 c-13
 to the appellate
 statement
 tribunal under sec.
 grounds 129-d(4) of the
 shall be
 customs act, 1962.

The form of application
 including the
 of facts and the
 of application
 filed in

quadruplicate and
 accompanied by an
 number of copies of
 decisions or order of
 board under sub-section (1) of sec. 129-d.

shall be
 equal
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6. CA-6 Form of application to the verification Appellate tribunal under Sec.130 person (1) of the customs Collector act,1962. be signed by

Rule 8(1) .

1. The application and c-14 form of

shall, if the
 is made by any
 other than the
 of Customs,
 the

applicant in accordance
 provisions of
 of the Customs

with the
 Rule 3

(Appeals) rules, 1982.

2. The

application shall be
 triplicate.

filed in

fee of Rs.200 required

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to be

the act shall be

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assistant registrar of

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branch of any

nationalised bank located

at the

place where the

bench is

situated and the

demand

draft shall be

attached

to the form of

application.

7. CA-7 Form of memo-
c-16

Rule 8(2) ..

1. The memorandum of

rundum of cross-
and

cross-objections

objections to
appellate tribu-
nal in the matter
reference to the
high court under

the form of verifica-
tion shall, if the
memorandum is filed by
any person other than
the Collector of

customs

be signed in

sec.130 (2) of the
accordance

with the provisions

customs act, 1962.
of

Rule 3

of the customs

(Appeals) rules,1982.

2. The

memorandum of cross-

objections shall be

filed in

triplicate.

Central Excise

1. EA-1 Form of appeal
E-8

Rule 213(1..

1. The grounds of appeal &

to the Collector
(Appeals) under
by the
Sec.35 of the
Central excises
provisions of
and salt act,1944.
central
rules.

form of appeal
including the statement
and the grounds
appeal shall be filed
duplicate and shall be
accompanied by a copy
against.

2. EA-2 Form of application
E-10
to the collector
(Appeals) under
of
Sec.35-e(4)of the
be
Central excises
duplicate and
and salt act, 1944.
two copies
decision or order
Collector of
excise under
sub-section (2) of sec.

The form of verification
shall be signed
appellant in accordance
with the
rule 213 if the
excise

2. The

of facts
of
in

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Rule 214 ..The form of application
including statement of
facts and grounds
application shall
filed in
accompanied by
of the
of the
Central
35-e of

the act.

3. EA-3 Form of appeal to e-10 Appellate Tribunal verification under Sec.35-B of appeal is the Central Excises person, other and Salt act,1944. of excise, be signed appellant in accordance with rule 213 Central Excise appeal including the statement of fact and the of appeal shall be quadruplicate and accompanied by an number of copies of order appealed against which at least shall certified copy).
3. The form of appeal shall English (or Hindi) should set forth,
- Rule216(1).. 1. The grounds of appeal & the form of shall, if the made by any than the Collector Central by the of the rules. 2. The grounds filed in shall be equal the (one of be a 3. The be in and

concisely and under heads, the grounds appeal without any or narrative and grounds should be consecutively. fee of Rs.200 required paid under the provisions of the act shall through a crossed draft drawn in favour Assistant Registrar of bench of the Tribunal branch of any Nationalised Bank located at place where the bench situated and the demand shall be attached to appeal.

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4. EA-4 Form of memorandum Rule216(2). 1. The grounds of cross-E-12 of cross-objection objections and the to the appellate tribunal under sec. form of verification shall be signed by the

35-b of the central
accordance
excises and salt act,
provisions of rule
1944.
Central Excise
Rules,1944.

respondent in
with the
213 of the

form of Memorandum of
cross-objections shall be
quadruplicate.

2. The

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cross-objections should
English (or Hindi) and
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argument of narrative
and such grounds

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4. The

appeal/application as allotted by the office

of the

Appellate Tribunal and appearing in the notice

of

appeal/application received by the respondent

is to be

filed in by the respondent.

5. EA-5 Form of application Rule217 .. The form of application
EA-14
to the appellate tribunal under sec. 35-e (1) of the central excises and salt act,1944. shall be accompanied by an equal number of copies of the decision or order passed by the Collector of central Excise (one of which at least shall be a certified copy) and a copy of the order passed by the Board under sub-section (1) of Sec 35-e.
6. EA-6 Form of reference Rule218(1).. 1.The applciation and
E-15 application under form of verification sec.35-g(1) of shall be signed by the the central applicant in accordance excises and salt with the provisions of act, 1944. Rule 213 of the central Excise rules,1944.
2. The application shall be filed in tribplicate.
3. The fee of Rs.200 required to the paid under the provisions of the act shall be paid through a crossed bank draft drawn in favour of the Assistant Registrar of the bench

tribunal on a
of any nationalised
located at the place
the bench is
and the demand
shall be attached
form of reference-
application.

of the
branch
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where
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to the

7. EA-7 Form of memorandum Rule 218(2).. 1. The Form of memorandum E-
cross-objections of

cross-objections
to the appellate
tribunal in the
matter of reference
the
to the high court
under sec.35-g(2).

and the form of verifi-
cation shall be signed
in accordance with
provisions of rule 213
of the Central

Excise
1944.

Rules,
2. The

memorandum of cross-
objections shall be filed
triplicate.

in

Gold (control)

1. GA-1 Form of appeal to Rule 3 ..
G-8
the collector
of verifi-
(appeals) under
signed
sec.80 of the

1. The grounds of appeal
and the form
cation shall be
by the person in

gold(control)act. 1968.
 provisions of rule 3
 gold (control)
 rules, 1982.
 form of appeals,
 including the state-
 facts and the
 of appeal shall
 in duplicate
 shall be accompanied
 copy of the decision
 appealed against.

2. GA-2 Form of applica-Rule4 ..
 g-10
 tion to the colle-
 ctor (appeals)
 under sec.82 of
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 the gold(control)
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 of application
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order of the collector
central excise of
customs under sub-
(2) of sec.82
act.

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section
of the

3. GA-3 Form of appeal of Rule 6(1) ..
g-12

appellate tribunal
under sub-section
the appeal
(1), (2) or (3)
of sec.81 of the
gold (control) act,
central
1968.
signed by the

1. The grounds of appeal

and the form of verifi-
cation shall, if
is made by any person,
other than the collector
of customs or

Excise, be

appellant in accordance
provisions of
of the gold (control)
rules,1982.

with the
Rule 3
appeals

form of appeal shall
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form of appeal including the statement and grounds of should be in (or Hindi) and set forth concisely under distinct heads, grounds of appeal any argument narrative nature and grounds should be consecutively. fee of Rs.200 required paid under the provisions of the shall be paid through crossed bank draft favour of the assistant registrar of bench of the tribunal branch of any nationalised bank located place where the bench

of facts appeal English should and the without of such numbered 4. The to be act a drawn in the on a at the is

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form of appeal.

4. GA-4 Form of memorandum Rule 6(2) .. 1. The grounds of cross-g-14

of cross-objections

objections and

form of

to the appellate
tribunal under sub-

verification shall, if
the memorandum is

filed

section (5) of
sec.81 of the gold

by any person, other than
the collector of

customs

(control) act, 1968.

central excise,

be signed

by the

respondent in

accordance with the

provisions of rule 3 of

the gold

(control) appeals

rules,

1982.

2. The

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5. GA-5 Form of applica-Rule 7 .. The form of application
 G-16
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 sec.82 of the of application shall be
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 triplicate and shall be
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 passed by the
 adjudicating authority

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a certified copy)
order passed by
administrator under
sub-section (1) of sec.82
gold (control) act,

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shall be
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1968.

6. GA-6 Form of applica- Rule 8(1) ..
G-18

tion under sec.
82-d of the gold
application
(control) act, 1968.
person

than the collector
Customs or Central
be signed in

accordance with the
provisions of rule 3

gold (control)
rules, 1982.

application shall be
triplicate.

fee of Rs.200
to be paid under

1. The form of the appli-

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shall, if the

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Excise,

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 favour of
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7. CA-7 Form of memorandum Rule 8(2) .. 1. The memorandum of G-10

of cross-objections
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 to the Appellate
 verification shall,
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 the collector of
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gold (control)

rules, 1982.

memorandum of cross-

objections shall be filed

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appeals

2. The

in

The Customs and Excise Revenues Appellate Tribunal act,
1986 (No. 62 of 1986)

Received the assent of the president on the 23rd december,1986 an act to provide for the adjudications, by an appellate tribunal, of disputes with respect to the determination of the rates of duties of Customs and Central Excise on goods and to the valuation of goods for the purposes of assessment of such duties, in pursuance of art. 323-b of the constitution and for matters connected therewith or incidental thereto. be it enacted by parliament in the thirty-seventh year of the Republic of India as follows:

Chapter I

Preliminary

1. Short title, extent and commencement.-(1) this act may be called the Customs and Excise Revenues Appellate Tribunal Act, 1986.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official gazette, appoint.

2. Definitions.-In this act, unless the context otherwise requires.-

(a) "appellate tribunal" means the Customs and Excise Revenues Appellate tribunal constituted under Sec.3;

(b) "appointed day" means the date with effect from which the appellate tribunal is established, by notification, under sec.3;

(c) "bench" means a bench of the appellate tribunal;

(d) "Board" means the central board of excise and customs constituted under the central boards of revenues act, 1963 (54 of 1963);

(e) "Central Excise act" means the central excises and salt act, 1944 (1 of 1944);

(f) "Central Excise Tariff Act" means the Central Excise Tariff act, 1985 (5 of 1986);

(g) "Customs act" means the Customs act, 1962 (52 of 1962);

(h) "Customs, Excise and Gold (Control) Appellate Tribunal" means the Customs, Excise and Gold(Control) Appellate Tribunal constituted under Sec.129 if the Customs Act;

(i) " Customs tariff act" means the customs tariff act, 1975 (51 of 1975);

(j) "Judicial Member" means a member of the appellate tribunal appointed as such under this act, and includes the president who possesses any of the qualification specified in sub-section (2) of sec.5;

(k) "Member" means a member (whether judicial or technical) of the appellate tribunal and includes the president;

(l) "Notification" means a notification published in the official gazette;

(m) "President" means the president of the appellate tribunal;

(n) "Prescribed" means prescribed by rules;

(o) "Rules" means rules made under this act;

(p) "Supreme Court" means the Supreme Court of India;

(q) "Technical Member" means a member of the Appellate Tribunal who is not a Judicial Member within the meaning of cl.(j);

(r) Words and Expressions used in this act but not defined herein and defined in the Central Excises Act, central Excise Tariff Act, Customs act or Customs tariff act, or the rules made thereunder, shall have the meanings respectively assigned to them by such act or the rules made there under.

Chapter II

Establishment of the appellate tribunal and benches thereof

3. Establishment of the Appellate tribunal.- The Central Government shall, by notification, establish an appellate tribunal to be known as the customs and excise duties appellate tribunal, to exercise the jurisdiction, powers and authority conferred on such appellate tribunal by or under this act.

4. Composition of the Appellate Tribunal and Benches thereof.-(1)
The appellate tribunal shall consist of a president and such number of judicial and technical members as the central government may deem fit, and subject to the other provisions of this act, the jurisdiction, powers and authority of the appellate tribunal may be exercised by benches thereof

(2) A bench shall consist of one Judicial Member and one Technical member.

(3) Notwithstanding anything contained in sub-section (1), the president:

(a) May, in addition to discharging the functions of the Judicial member or the Technical member of the bench to which he is appointed, discharge the functions of the judicial member or, as the case may be, the Technical member, of any other bench;

(b) May transfer a member from one bench to another bench; and

(c) May authorise the Judicial member or the Technical member appointed to one bench to discharge also the functions of the Judicial Member or the technical member, as the case may be, of another bench.

(4) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the President or any other Member authorised by President in this behalf to function as a bench consisting of a single member and exercise the jurisdiction, powers and authority of the appellate tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the president may, by general or special order, specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the president or member that the case or matter is of such a nature that it ought to be heard by a bench consisting of two members, the case or matter may be transferred by the president or, as the case may be, referred to him for transfer to, such bench as the president may deem fit.

(5) Subject to the other provisions of this act, the benches of the Appellate tribunal shall ordinarily sit at new delhi and at such other places as the president may deem fit.

5. Qualifications for appointment as President or Member.-(1) A person shall not be qualified for appointment as the president unless he-

(a) Is, or has been, a Judge of a High Court;

(b) Has, for at least two years, held the office of a judicial member or a technical member.

(2) A person shall not be qualified for appointment as a judicial member unless he-

(a) Is, or has been, or is qualified to be, a Judge of a High Court;

or

(b) Has been a Member of the Indian Legal Service and has held a post in grade i of that service or any equivalent or higher post for at least five years.

(3) A person shall not be qualified for appointment as a Technical member unless he has been a member of the Indian Customs and Central Excise Service, Group 'A' for a period of at least Thirty years, and has held during this period the post of Collector of Customs or Central Excise or any equivalent or higher post for at least ten years.

6. Appointment of President and Members.-(1) Subject to the provisions of sub-section (2), the President and every Member shall be appointed by the President of India.

(2) Appointment of a person as the president or a member shall be made in consultation with a selection committee consisting of-

(a) A Chairman who shall be nominated by the chief Justice of India;

and

(b) Such other Members as may be nominated by the Central Government

7. Member to act as President or to discharge his functions in certain circumstances.- (1) In the event of the occurrence of any vacancy in the office of the president by reason of his death, resignation or otherwise, such one of the members as the Central Government may, by notification, authorise in this behalf, shall act as the president until the date on which a new president, appointed in accordance with the provisions of this act to fill such vacancy enters upon his office.

(2) When The President is unable to discharge his functions owing to absence, illness or any other cause, such one of the members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the president until the date on which the President resumes his duties.

8. Term of officer.-The President or other Member shall hold office as such for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

9. Resignation and Removal.- (1) The President or other member may, by notice in writing under his hand addressed to the President of India, resign his office:

Provided that the President or other Member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The President or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a judge of the Supreme Court in which such president or other member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the president or other member referred to in sub-section (2).

10. Salaries and Allowances and other terms and conditions of president and other Members.- The salaries and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, The President and other Members shall such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the president or other member shall be varied to his disadvantage after his appointment.

11. Provision as to the holding of Offices by President and Members on ceasing to be such president or member.-on ceasing to hold office,-

(a) The President shall be ineligible for further employment either under the Government of India or under the Government of a state;

(b) A Member (other than the president) shall, subject to the other provisions of this act, be eligible for appointment as the President, but not for any employment either under the Government of India or under the Government of a state;

(c) The President or other Member shall not appear, act or plead before the Appellate tribunal or the Customs, Excise and Gold (control) appellate tribunal.

Explanation.-For the purposes of this section, employment under the the Government of a state includes employment under any local or other authority within the Territory of India or under the control of the Government of India or under any corporation or society owned or controlled by the government.

12. Financial and Administrative powers of President.-The president shall exercise such financial and ADMINISTRATIVE POWERS OVER THE BENCHES as may be vested in him under the rules:

Provided that the president shall have authority to delegate such of his financial and administrative powers as he may think fit to any Member or officer of the appellate tribunal, subject to the condition that the member or such officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the president.

13. Staff of the Appellate tribunal.-(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the appellate tribunal in the discharge of its functions and provide the appellate tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the appellate tribunal shall discharge their functions under the General Superintendent of the President.

(3) The salaries and allowances and conditions of service of the officers and other employees of the appellate tribunal shall be such as may be specified by rules.

Chapter III

Jurisdiction, Powers and Authority of the Appellate Tribunal

14. Jurisdiction, Powers and Authority of the Appellate Tribunal.-(1) save as otherwise expressly provided in this act, the appellate tribunal shall

exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable in relation to an appeal against-

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

(b) An order passed by the Collector (Appeals) under Sec. 35-A or Sec. 35-E of the Central Excises Act;

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

(d) An order passed by the Collector (Appeals) under Sec. 128-A or Sec. 129-D of the Customs Act, in which the determination of any question having a relation to-

(i) The rate of duty of excise for the time being in force, whether under the central excise tariff act or under any other central act providing for the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of february, 1986; or

(ii) The rate of duty of customs for the time being in force, whether under the customs tariff act or under any other central act providing for the levy and collection of any duty of customs in relation to any goods on or after the 28th day of february, 1986;or

(iii) The value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of february, 1986; or

(iv) The value of goods for the purposes of assessment of any duty of customs in cases where the assessment is made on or after the 28th day of february, 1986, is in issue or is one of the points in issue.

Explanation.-For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question-

(a) Whether any goods are excisable goods or whether the rate of duty on any goods is nil;

(b) Whether any goods fall under a particular heading or sub-heading of the schedule to the central excise tariff act or the additional duties of excise (goods of special importance) act, 1957 (58 of 1957) or the additional duties of excise (textiles and textile articles) act, 1978 (40 of 1978), or fall under the first schedule or the second schedule to the customs

tariff act, as the case may be, or that any goods are or not covered by a particular notification or order issued by the central government or the board, granting total or partial exemption from a duty of excise or customs, as the case may be;

(c) Whether the value of any goods for the purposes of assessment of a duty of excise or customs shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in the central excises act or the customs act.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall preclude the entertainment of an appeal in relation to any of the matters dealt with in sub-section (1) by the customs, excise and gold (control) appellate tribunal or the disposal thereof during the period commencing on and from the 28th day of February 1986 and ending with the appointed day and any order passed by the said tribunal on such appeal during that period shall, for all purposes, have effect as an order of the appellate tribunal constituted under this act shall apply to such order.

15. Bar of Jurisdiction of the appellate tribunal in certain cases.- notwithstanding anything contained in Sec.14, no appeal shall lie to the appellate tribunal and the appellate tribunal shall not have jurisdiction to decide any appeal in respect of any decision or order referred to in sec. 14 if such decision or order relates only to-

(a) A case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse or in storage whether in a factory or in a warehouse;

(b) A rebate of duty of excise on goods exported to any country or territory outside india or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) Goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) Any goods imported or exported as baggage or by post;

(e) Any goods loaded, or deemed to have been loaded in accordance with an import manifest or import report, in a conveyance for importation in to india, but which are not unloaded at their place of destination in india, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at destination are short of the quantity required to be unloaded at that destination or any goods which have been lost or destroyed after being unloaded at any such destination;

(f) Payment of drawback as provided in chapter x of the customs act

and the rules made thereunder.

16. Power to punish for contempt.-the appellate tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a high court has and may exercise, and, for this purpose, the provisions of the contempt of courts act, 1971(70 of 1971), shall have effect subject to the modifications that-

(a) The references therein to a high court shall be construed as including a reference to the appellate tribunal;

(b) The references to the Advocate-General in Sec. 15 of the said act shall be constructed, in relation to the Appellate Tribunal, as a reference to the Attorney-general or the Solicitor- general or the Additional Solicitor-General.

17. Distribution of business amongst the appellate tribunal and its benches.- (1) Where any benches of the Appellate tribunal are constituted, the president may, from time to time, by order, make provisions as to the distribution of the business of the appellate tribunal amongst the benches and specify the matters which may be dealt with by each bench.

(2) If any question arises as to whether any matter falls within the perview of the business allocated to a bench of the appellate tribunal, the decision of the president thereon shall be final.

Chapter IV

Procedure

18. Appeals to the Appellate Tribunal, -(1) Subject to the other provisions of this act, every appeal to the appellate tribunal under this act shall be filed within three months from the date on which the decision or order sought to be appealed against in communicated to the person aggrieved by the decision or order or to the collector of central excise or the collector of customs, as the case may be.

(2) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such decision or 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 (1).

(3) 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 (1) or sub-section (2), if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) Every 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 preferred by the proper officer or a memorandum of cross-objections referred to in sub-section (2), be accompanied by a fee of two hundred rupees.

19. Procedure and powers of the appellate tribunal.- (1) The appellate tribunal shall not be bound by the procedure laid down in the code of civil procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this act and of any rules made by the Central Government, the appellate tribunal shall have power to regulate its own procedure, including the fixing of places and times of its hearing.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this act, the same powers as are vested in a civil court under the code of civil procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery, inspection and production of books of account and other documents;

(c) reviewing its decisions;

(d) dismissing an appeal for default or deciding it ex parte; &

(e) any other matter which may be prescribed.

20. Deposit, pending appeal, of duty demanded or penalty levied.- where in any appeal under this act, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the central excise authorities or the customs authorities, as the case may be, or any penalty levied under the central excises act or the customs 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 appellate tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the appellate tribunal may dispense with such

deposit subject to such person, the appellate tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose to as to safeguard the interests of revenue.

21. Right of applicant to take assistance of legal practitioner and government to appoint representing officers.- (1) A person preferring an appeal to the appellate tribunal under this act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the appellate tribunal.

(2) The central government may authorise one or more legal practitioners or any of its officers to act as presenting officer and any person so authorised by it may present its case with respect to any appeal before the appellate tribunal.

22. Conditions as to making of interim orders.- Notwithstanding anything contained in any other provisions of this act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an appeal under this act unless-

(a) Copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is preferred; and

(b) Opportunity is given to such party to be heard in the matter: provided that the appellate tribunal may dispense with the requirements of cls. (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the appellant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the appellate tribunal has continued the operation of the interim order.

23. Power of president to transfer cases from one bench to another.- on the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the president may transfer any case pending before one bench, for disposal, to any other bench.

24. Procedure for deciding the case where the members of a bench differ in opinion.- If the members of a bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the president who shall either hear the point or points himself or refer the case for hearing on such points by one or more of the other members and such

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

25. Orders of the 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 Central Excise or the Collector of Customs, as the case may be, 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 central excise or the collector of customs, as the case may be, and the other party to the appeal.

Chapter V

Miscellaneous

26. Exclusion of jurisdiction of Courts except the Supreme Court.- On and from the appointed day, no court (except the supreme court) or the customs, excise and gold (control) appellate tribunal shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to matters in respect of which appeals would lie to the appellate tribunal under sec.14.

27. Transfer of pending cases.-(1) every suit, appeal or other proceeding pending before any court or other authority or the customs, excise and gold (control) appellate tribunal, immediately before the appointed day, being a suit a appeal or other proceeding which would have been within the jurisdiction of the appellate tribunal, if it had arisen after such day, shall stand transferred on that day to the appellate tribunal:

(2) Where any suit, appeal or other proceeding stands transferred from

any court, tribunal or other authority to the appellate tribunal under sub-section (1).-

(a) The court or other authority or the customs, excise and gold (control) appellate tribunal shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the appellate tribunal; and

(b) The appellate tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of a appeal under sec.18 from the stage which was reached before such transfer or from any earlier stage or de novo as the appellate tribunal may deem fit.

(3) Any person, who immediately before the appointed day, is an advocate or authorised representative entitled to practice in any court or other authority or the customs, excise and gold (control) appellate tribunal and was authorised to appear or to act in any proceedings transferred from the said court, other authority or tribunal to the tribunal under this section shall have the right to appear or to act, as the case may be, before the appellate tribunal in relation to the said suit, appeal or other proceeding.

28. Proceedings before the appellate tribunal to be judicial proceedings.- all proceedings before the appellate tribunal shall be deemed to be judicial proceedings within the meaning of secs. 193, 219 and 228 of the Indian Penal Code (45 of 1860).

29. Members and staff of the appellate tribunal to be public servants.- The president and other members and the officers and other employees of the appellate tribunal shall be deemed to be public servants within the meaning of sec. 21 of the Indian Penal Code (45 of 1860).

30. Protection of action taken in good faith. - No suit, prosecution or other legal proceedings shall lie against the central government or against the president or other member, or any other person authorised by such president or other member for any thing which is in good faith done or intended to be done in pursuance of this act or any rule or order made there under.

31. Act to have overriding effect.- The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this act.

32. Power to make rules.- (1) The Central Government may, by notification, make rules to carry out the provisions of this act.

(2) Without prejudice to the generality of the foregoing power, such

rules may provide for all or any of the following matters, namely:

(a) The salaries and allowances and other terms and conditions of service of president and other members under sec. 10;

(b) The financial and administrative powers which the president may exercise over the benches under sec.12;

(c) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of sec.13;

(d) The form in which every appeal to the appellate tribunal shall be filed and the manner in which such appeal shall be verified under sub-section (4) of sec. 18; and

(e) The rules subject to which the appellate shall have power to regulate its own procedure under sub-section (1) of sec.19 and the additional matters in respect of which the appellate tribunal may exercise the powers of a civil court under cl.(e) of sub- section;and

(f) Any other matter which has to be, or may be, prescribed by rules under this act.

(3) Every rule made under this act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be;so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

33. Power to remove difficulties.-(1) If any difficulty arises in giving effect to the provisions of this act, the Central Government may, by order published in the official gaseue, make such provisions, not inconsistent with the provisions of this act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each house of parliament.

34. Consequential Amendments in the Central Excises act and the customs act.- on and from the appointed day, the following amendments (being amendments of a consequential nature) shall be made in the central excises act and the customs act, namely:

(a) In the Central Excises Act,-

(i) For sub-section (2) of Sec.35-b, the following sub-section shall be substituted, namely:

(2) The Collector of Central Excise may, if he is of opinion that an order passed by-

(a) The Appellate Collector of Central Excise under Sec. 35, as it stood immediately before the Appointed day, or

(b) The Collector (Appeals) under Sec. 35-A, is not legal or proper, direct any Central Excise officer authorised by him in this behalf (hereafter in this chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise revenues Appellate tribunal established under sec.3 of the Customs and Excise revenues appellate tribunal act, 1986, against such order.";

(ii) In Sec. 35-E.-

(a) After the words "Appellate Tribunal", wherever they occur, the words and figures "or, as the case may be, the Customs and Excise revenues appellate tribunal established under sec.3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted;

(b) In sub-section (4), after the words, figures and letter "section 35-b", the words and figures "or, as the case may be, the provisions of the customs and excise revenues appellate tribunal act, 1986" shall be inserted; (b) in the customs act,-

(i) for sub-section (2) of Sec.129-A, the following sub-section shall be substituted, namely:

(2) The Collector of Customs may, if he is of opinion that an order passed by-

(a) The Appellate Collector of Customs under Sec.128, as it stood immediately before the appointed day, or

(b) The Collector (Appeals) under Sec. 128-A, is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate

Tribunal or, as the case may be, the Customs and excise revenues appellate tribunal established under Sec.3 of the customs and Excise revenues Appellate Tribunal act, 1986, against such order.";

(ii) In Sec. 129-D,-

(a) After the words "appellate tribunal", wherever they occur the words and figures "or, as the case may be, the customs and excise revenues appellate tribunal established under sec.3 of the customs and excise revenues appellate tribunal act, 1986" shall be inserted;

(b) In sub-section (4), after the word, figures and letter "sec.129-a", the words and figures "or, as the case may be, the provisions of the customs and excise revenues appellate tribunal act, 1986 shall be inserted.

Statement of Objects and Reasons [appended to the Customs and Excise Revenues Appellate Tribunal bill (bill no. 13 of 1986)]

Article 323-b of the constitution stipulates that the appropriate legislature may, by law, provided or the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in Cl. (2) of that article with respect to which such legislature has power to make laws. one of the matters enumerated in the said clause is the levy, assessment, collection and collection and enforcement of any tax including any matter incidental thereto.

2.. The bill seeds to give effect to the aforesaid constitutional provision by the establishment of an Appellate tribunal to provide for the adjudication of disputes with respect to the determination of The rates of duties of customs and central excise on goods and to the valuation of goods for the purposes of assessment of such duties. The Bill also provides for-

(a) The jurisdiction, powers and authority which may be exercised by the appellate tribunal;

(b) The procedure (including provision as to limitation and rules of evidence) to be followed by the appellate tribunal;

(c) Exclusion of the jurisdiction of all courts, except that of the supreme court, relating to matters falling within the jurisdiction of the appellate tribunal;

(d) The transfer to the appellate tribunal of any suit, appeal or other proceedings pending before any court, etc., immediately before the established of the tribunal which would have been within the jurisdiction of the tribunal if such suit, appeal or other proceedings had arisen after such

establishment.

3. The establishment of the appellate tribunal under the aforesaid provision of the constitution has become necessary as in recent years there had been an enormous increase in litigation relating to customs and excise cases. many of these cases relate to disputes pertaining to the determination of the rate of duty and value of goods for purposes of levy of customs and excise duties. it is expected that the establishment of the appellate tribunal will reduce litigation and will also impart greater certainty in the administration of the said duties.

4. The notes on clauses explain in detail the various provisions of the bill.

5. The bill seeks to achieve the above objects.

(a) As the matters with respect to which rules may be made under Cl.32 pertain to matters of procedure or detail, the delegation of legislative powers is of a normal character.

(b) Clause 33 of the bill empowers the Central Government to remove by order any difficulty which may arise in giving effect to the provisions of the proposed legislation. this is by way of abundant caution and for covering difficulties which it is not practicable to visualise. it has, however, been provided that no such order shall be made after the expiry of a period of three years from the date of establishment of the appellate tribunal. it has also been provided that a copy of every such order made shall be laid before each house of parliament.

A p p e a l S e c t i o n

Appeal Section :-Working: This department deals with appeals filed against the appealable orders of :-

- 1.Assistant collector of customs
- 2.Deputy collector of customs
- 3.Additional collector of customs

These appeal lies with the Collector of Customs (Appeal).However, the appeals against orders passed by the Collector of Customs will lie with the Customs & the Central Excise & Gold control appellate tribunal (CEGAT).

The function of the Appraisers in Appeal department is to Assist Collector of Customs (Appeals). In nut-shell, an Appraiser is supposed to perform inter-alia the following functions :-

1. To see that the appeal is filed in proper format.
2. To see that the appeal is within the time limit.
3. To assist the Collector (Appeals) regarding clarification of import or export trade control policy, tariff act, notifications etc. if asked for.
4. To put up brief facts of the case, where appeal has been filed.

-: Procedure for filing appeal :-

 An appeal under sub-section (1) of sec. 128 to the collector (appeals) shall be made in form no. CA-1. The grounds of appeal and the form of verification as contained in form No.CA-1 shall be signed:

(a) In the case of individual, by the individual himself or where the individual is absent from india by the individual concerned or by some person duly authorised by him in this behalf and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.

(b) In the case of hindu undivided family, by the karta and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.

(c) In case of a company or local authority, by the principal officer thereof;

(d) In the case of a firm, by any partner thereof, not being a minor;

(e) In the case of any other association, by any member of the association or the principal officer thereto, and

(f) In the case of any other person, by that person or some person competent to act on his behalf.

The form of appeal in form no.CA-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against. an application under sub-section (4) of Sec.129-D to the Collector (Appeals) shall be made in form no.CA-2.

The form of application in form no.CA-2 shall be filed in duplicate and shall

be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order passed by the collector of customs directing such authority to apply to the Collector (appeals).

This rule provides the procedure for making an application to the Collector (Appeals) in form no.CA-2

The appellant shall not be entitled to produce before the collector (appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the adjudicating authority, except in the following circumstances, namely :

(a) Where the adjudicating authority has refused to admit evidence which ought to have been admitted, or

(b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority, or

(c) Where the appellant was prevented by sufficient cause from producing before the authority any evidence which is relevant to any ground of appeal; or

(d) Where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

No evidence shall be admitted under sub-rule (1) unless the collector (appeals) records in writing the reasons for its admission.

The Collector (appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority, has been allowed a reasonable opportunity

(a) To examine the evidence or documents or to cross-examine any witness produced by the appellant, or

(b) To produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule(1).

Nothing contained in this rule shall affect the powers of the collector (appeals) to direct the prosecution of any witness, to enable him to dispose of the appeal.

Functioning of the Appellate Collector :-

Any agrieved party which may include the department i.e. the Collector

of Customs can prefer an appeal against the order passed by the

1. Assistant Collector of Customs.
2. Deputy Collector of Customs.
3. Additional Collector of Customs.

However the time limit is three months from the date of communication of the order. However the Appellate Collector may extend the time limit by another three months, on sufficient grounds. The Appellate Collector after hearing both the side and taking into consideration the facts of the case pass the following decisions:-

1. He confirms the appealable order.
2. He may modify the appealable order.
3. He may annul the appealable order.
4. He may refer back the case for De-novo

consideration with or without directions.

Power source under the Customs Act.

Section 128 of C.A. 1962. Appeal to collector (appeals).

Section 128a Procedure in appeal.

Section 129 Constitution of appellate tribunal.

Section 129a Appeals to appellate tribunal.

Section 129b Orders of appellate tribunal.

Section 129c Powers & functions of appellate tribunal.

Section 129d Powers of Board or collector of customs to pass certain orders.

Section 129da Powers of revision of board or collector of customs in certain cases.

Section 129dd Revision by Central Government.

Section 129e Deposit pending appeal of duty demanded or penalty levied.

Section 130 Reference application to require the appellate tribunal to refer to high-court any question of law.

Section 130a Reference to supreme court due to conflict in decision of high-courts in respect of "question of law."

Section 130b Power of High-Court or Supreme Court to require statement to be amended.

Section 130c Reference case to be heard by not less than two judges of the high-court.

Section 130d Decision of High-Court or Supreme Court in the case stated.

Section 130e Appeal to Supreme Court.

Section 130f Hearing before Supreme Court.

Section 131 Sums due to be paid notwithstanding reference application.

Section 131a Time taken for copy of order excluded from period of limitation for appeal.

Section 131b Transfer of certain cases from board to appellate tribunal.

Standing Order.

----- (for full text refer s.o. here only the gist given)
S.O.no. 7062 dated 24-6-94

Sub : Non availing of opportunity of personal hearing
by the department with cc (appeals) - Reg.

Whenever an appeal is filed by the department it should avail of the opportunity of personal hearing. Where in the appeals filed before cc(appeals) department is respondent, the concerned officer should make appearance and explain the case ,especially where the case is having heavy revenue stakes or is complex in nature.

Other Instructions

Note : Some of the insructions contained in this chapter have been issued prior to the formation of appellate tribunal.these instructions may be followed to the extent they are applicable after the forma- tion of the appellate tribunal.

Jurisdiction

The customs act laydown procedures of appeal and thereafter revision petition against the orders passed by executive authorities .every person who feels himsele aggrieved by any order passed by duly empowered executive authorities has a right to prefer an appeal to the appropriate authorities against such an order.the appropriate appellate authorities under the customs act are those as have been prescribed in sec.128 of the customs act.it is a matter of common knowledge that nobody would prefer an appeal if he is satisfied by the order passed or decision taken by the empowered executive authorities. it is only such persons who feel aggrieved by the orders passed by such empowered authorities that would file appeals.it therefore becomes the reponsibility of all appellate authorities to examine each and every point made by the appellatnts,to find out whether any relief is due or wannated by the merits and circumstances of the case .it is thus enjoined on all appellate authorities to apply themselves personally to the matters brought up in the appeals, and, if such authorities ,after examining all the points at issue, find that punishment in any case is either unnecessary or is more than necessary , these authorities should not hesitate to reduce such punishments to the proper level they think fit in order to meet the ends of justice.

Formal representation against the executive decision or orders of the customs officers such as warning issued in I.T.C. cases, general orders in

valuation branch for purposes of debit to licences, orders on drawback on aviation fuel and oil etc. should not be considered as an appeal under sec.128 customs act'1962 dealt with by the appellate collector [collector (appeals)] of customs in view of the specific provision under section 5(3) of the customs act'1962.

Section (5) of the customs act ,1962 relate to the powers of officers of customs .sub-section (3) thereof provides that notwithstanding anything contained in that section,an appellate collector [collector(appeals)] of customs shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in chapter xv and sec.108. it would appear from this provision in sub-section (3) that the sphere of activities of an appellate collector [collector(appeals) of customs are limited as provided therein. sec.108 relates to power to summon persons to give evidence and produce documents, whereas chapter xv, which relates to appeals and revisions, provides in sec.128 ,sub-sec.(1) in that chapter that any person aggrieved by any decision or order passed under that act may where the decision or order has been passed by an officer of customs lower in rank than a collector of coustoms , appeal to the Appellate collector [collector(appeals)] of customs.From this provision it would appear that the powers which the Appellate Collector [collector (appeals)] is to exercise under sec.128sub-section (1) ,are only in respect of appeals which could be preferred to it against decisions or orders passed under the Customs Act,1962. it has accordingly been decided by the board that such formalrepresentation against executive decisions should be dealt with by Deputy collector of customs,if any,in the custom house if the representation is against the decision of the asstt.collector.In case the original decision has been given by the Deputy Collector of customs,the representation should be dealt with the collector.

[f.no. 1/1/65-cus.vi,govt.of india ,min.of(finance deptt.of rev.& ins.),new delhi dt.11-4-68 and f.1/37/63-cus.vi dated 24-12-63]

Time period - Method of computing

The period of limitation should count from the date of actual receipt or serving of the adjudication order on the party concerned . every order or decision should therefore be sent by registered post acknowledgement due and the acknowledgement receipt should be kept with the papers of the case.for this purpose the despatching clerk of the concerned department should note the number of the order/decision in the acknowledgement receipt back from the parties. it will be the responsibility of the despatch section of the concerned section to see that acknowlegement receipts are received back in all such cases.if in a particular case the acknowledgemant receipt is not received in the custom house within a week of the despatch of the order-in- original or the order in appeal ,enquiries should be initiated with the respective post masters to know the date of delivery of the registered letters sent to by the custom house through that post office.the dispatch cleark will be responsible

for the noting in the respective file the date on which the adjudication order is served on the party as indicated by the acknowledgement receipt or the intimation received from the postal authorities. [c.b.r.letter f.no.1/27/57 -cus vi dated 24-7-57]

The actual date of receipt should be excluded for purpose of this calculation.

When an appeal is sent by post , the date on which it is presented to the appellate authority is not the date on which it is posted but the date on which it is received in the office of the appellate authority. Though by reason of sub-section (2) of section 10 of the general clause act, that section does not apply in terms, its principles should be followed. in other words when the office, to whom an appeal is addressed , is closed on the last day of the period of limitation , the appeal should deemed to be in time if received on the next working day thereafter. [board's instructions (customs) no.2 of 1935 r.dis.566/35]

Time Barred appeals how to deal

The orders passed by the appellate authorities on appeals which are time barred under sec.128 of the customs act should be passed as `order-in-appeal` subject only to revision by the Central Govt. under Sec. 131 ibid. [c.b.r. no. 30(15)-cus-ii/50 dated 18-2-50]

Relaxation of time limit prescribed under section 188 (sec.128 customs act 1962) of the sea customs act should not be recommended. where it is felt that special consideration is called for on the merit of a case , the appropriate course to follow in such cases is either for the Board to review the case in exercise of its power under Sec.190 (sec. 129-d,customs act 1962) if it is a case of remitting a penalty or confiscation or for the govt. of india to deal with it as a revision application under sec. 191 of the sea customs act (sec. 129-dd customs act 1962). in cases which can appropriately be dealt with by the board, recommendations on merits should therefore be made in the future. [c.b.r. letter no. 60(196)cus/47 dated the 11-6-1947]

When an appeal is time-barred ,it remains open

(i) To the Central Government to entertain an application in in revision under section 131 (129-dd) of the customs act against the order or decision that could otherwise have been the subject of appeal ; and

(ii) To the Board to review the case under section 130 (129-d) of the customs act if the case is one in which a decision or order has been passed under the act by an officer of customs.

Power of attorney when submitted after expiry of time period

A case was brought to the notice of the ministry of finance (deptt of revenue and insurance) wherein an appeal filed by the defence counsel under the central excise and salt act,1944 within the prescribed time limit but without power of attorney executed by the appellant in favour of the counsel which was later on submitted after the expiry of the time limit, was rejected as time barred. the ministry of law was consulted on the legal point at issue . the opinion given by the ministry is reproduced below :

"On a strict legal interpretation ,the collector is right in rejecting the appeal as time barred,as in this case the attorney signed the appeal paper without filling the power of attorney. the case, however , would be otherwise if the party himself signs the appeal papers and some one else present them.but such a strict lagal view may not be taken and that is why out of practical consideration , the court are entertaining r.a.s.even though the power of attorney is filed later on. the board may, therefore , decide whether not to follow the existing practice especially when it is remembered that they are exercising the powers of tribunal and if strict legal view is taken in ,it would result is hardships even in genuine cases." in accepting the above advice of the Ministry of Law,the ministry have decided that in the circumstances like the one referred to an appeal should not be rejected as time barred merely on ground that the power of attorney is filed after the prescribed time limit and that the case be decided in appeal on merit.

[ref.no. 40/72/68-cx.i, Govt. of India, Min. of Finance (d.r.&i) new delhi, dated 26.8.68]

Unstamped or insufficiently stamped appeals:

Every appeal presented to the chief customs authority under section 188 of the sea customs act(sec.128 of customs act'62) and every application made to the central government under section 191(sec.129-dd of customs act,1962) of the said act, shall be accompanied by a copy of the decision or order by which the appellant or the applicant, as the case may be, is aggrieved.

[c.b.r.notfn. c.no. 725-cus./25 dated the 19th august, 1925]

An appeal cannot be considered unless the appeal as well as the copy of the decision of order appealed against (which must accompany it) are each stamped with a proper court fee stamp.

No distinction should be made between the unstamped and insufficiently stamped appeals. such appeals should be returned to the party with the direction that they should be sent back to the appellate authority duly stamped within one month. if the deficiency in stamp, whether total or partial, is not supplied within the said time or such further extension thereof as may have been given, or within the period of limitation whichever is later, the

appeal may be rejected not as time-barred or on merits, but for non-compliance with the provisions of the court fees act, 1870.

The instructions mentioned above in respect of appeal shall also apply to unstamped or insufficiently stamped copies of the order appealed against.

An unsigned appeal may be returned to the appellant for rectification within one month.

[f.no.7/46/63-cx.i dated 16.7.64 & f.no.1.4.64-cus.i
dated 16.4.64]

Where an appeal is preferred under section 128(1)(b) customs act'62 is accompanied by a copy of the order (original) appealed against, the copy of the order too should bear a court fee stamp of 50 paise only over and above the appeal itself bearing the requisite court fee stamp of 50 paise. if however the order in original itself accompanies the appeal no such court fee stamp will be required to be affixed thereon.

Penalty & duty-predeposit of-before consideration of appeal

The Ministry of Law, who were consulted on the question regarding the appropriate order to be made if there is default in making the deposit of penalty etc. under section 129(1) [129e] of the customs act, 1962, have now opined that the correct procedure in such cases, unless the appellate authority decides to waive the condition regarding the payment of penalty under proviso to section 129(i) [129e] would be formally to desmiss the appeal by passing an order under section 121(128-a) after giving due opportunity to the appellant to make the deposit within a time to be specified. in the order of dismissal, however, it should be made clear that the appeal is dismissed for non-deposit as required by section 129(i)[129e] hereafter the order dismissing the appeal for non-compliance with the provisions of section 129(i) should be communicated in the usual order in-appeal-form.

[Board's f.no. 1/44/60-cus. vi dated 8.7.1963(instruction
No.7/63-CUS.VI]

An appeal filed within the period of limitation is not time-bared by reason of the fact that any duty or penalty payable under the decision or order appealed against is not deposited within that period, and the appellate authority, in informing the appellant that the appeal cannot be admitted unless the amount in question is deposited, may allow a reasonable time for compliance. on expiry of the time allowed, if the amount has not been deposited the appeal should be dismissed for 'non-compliance with the provisions of section 189 of the sea customs act (section 129e customs act'62). for this

purpose "penalty" does not include a fine payable in lieu of confiscation.

When the appellate authority is of the opinion that the case merits consideration, he should simultaneously with dismissing the appeal inform the appellant that he is free to move the board to exercise its powers under section 190a of the act (section 129 dd customs act '62)
[board's f. 18/27/56-cus. i/vi dated 22.7.57]

The Board has decided that the following guiding principles should be kept in view by the appellate authority while exercising the discretion vested in the authority under proviso to sub-section (1) of section 129 (129e) of the customs act, 1962. the condition of predeposit of duty and/or penalty may be waived by the appellate authority in his discretion in any of the following circumstances, viz.:-

(i) Where the demands made in the decision appealed against appear to the appellate authority as patently illegal and not supported by law;

(ii) Where the decision appealed against shows a prima facie disregard of the principles of natural justice, and the appellate authority is tentatively of the opinion that the impugned orders are likely to be struck down by him on this ground alone;

(iii) Where the amount involved is very substantial and having regard not only to the largeness of the amount but its relation to the resources of the appellant, the appellate authority considers that the insistence on predeposit would cause 'undue hardship' to the appellant; it is left to the Appellate authority to consider whether he should secure the amount by imposing other conditions such as rendering of a bond hypothecation of movable/immovable property including plant, machinery, stock-in-trade etc

These guiding principles are illustrative and are not intended to be exhaustive and to provide a rationale for the proper exercise of discretion and to free it from a charge of caprice. If other types of cases arise where the appellate authority feels that it causes undue hardship to the appellant if prepayment of the duty demanded and/or penalty levied is insisted upon such cases may be reported to the board for instruction.

The appellate authority should also record on the file a note of the reasons for waiving the predeposit. The Bond (Annexure I & II) and the hypothecation deed (Annexure III) should be rendered in prescribed forms the specimen of which are given in Forms no. 41,42, 43 appendix. the bonds should be executed on non-judicial stamp paper of appropriate value (to be paid by the obligor) which may be inquired from the stamp collector of the place where any of them is to be executed. every page of the document should be got signed from the executants. Registration is not necessary unless any immovable

property is charged or hypothecated. the officer who accepts the above bond must be one who has been duly authorised to do so under article 299(1) of the constitution. [bd's f.no. 24/49/64-cxi dated 25.1.65 & f.no. 40/57/65-cx dated 26.12.66]

Annexure I

Specimen form of Bond I with bank surety to be submitted in place of duty or penalty in appeal cases when so ordered

 Know all men by these presents that I/We.....
 (insert the full name(s) and address(es) of the obligor) hereinafter called the obligor (which expression shall, unless repugnant to the context will mean and include his heirs, executors and administrators/their respective heirs, executors and administrators (in case of limited companies-its successors) and we.....(insert the name and full address of the surety bank) hereinafter called the "bank" (which expression shall, when the context so admits, include its successors and assigns) are held and firmly bound into the President of India, hereinafter called the government in the sum of Rs.....(in words) to be paid to the "government" (which expression shall when the context so admits, include his successors and assign) for which payment to be well and truly made, we the obligor and the bank bind ourselves jointly and severally and firmly by these presents; Dated this.....day of..... Whereas the obligor has been assessed to payment of duty and/or penalty in respect of the goods more particularly described in the schedules hereunder written assessable under the central excises & salt act, 1944.

And whereas the obligor has preferred an appeal to(name the appellate authority from the said order/assessment, being appeal no.....) and whereas the obligor is found to deposit with the appellate authority the amount of the said duty and/or penalty pending the decision of appeal.

And whereas the obligor represented to the said appellate authority that it would cause the obligor undue hardship to make a deposit of the said sum and so requested the appellate authority to dispense with such deposit in its discretion on such terms and conditions as it may think fit. And whereas the appellate authority after considering the said representation of the obligor has agreed to dispense with such deposit on the obligor executing a bond in favour of the government with such condition and in such manner and in such form as herein contained.

And whereas the bank has agreed to execute this bond,
 Now the condition of the above mentioned bond is such that, if the obligor on his aforesaid appeal being decided forwith and in any event not later than ten days of the service of the appellate order on the obligor, pays to the government all duty and/or penalty levied either by virtue of the original assessment/order and/or by virtue of such order of the appellate

authority.

Then, and in such event the above mentioned bond shall become void, otherwise the same shall remain in full force and virtue. And it is hereby agreed and declared that the obligor and the bank have executed the above bond under the orders of the central government in which the public are interested.

And it is hereby further agreed by and between the parties as follows:-

The decision of the Collector of Central Excise,as to whether obligor has or has not fulfilled the conditions of the bond shall be final and binding on the obligor and the bank. Any change in the constitution either of the obligor or the bank shall not affect the obligations undertaken hereunder by the obligor and the bank to the government. That the bank shall not be discharged or released from its obligations under those presents by virtue of any arrangement made between the government and the obligor whether with or without the knowledge or consent of the bank or by reason of the government showing to the obligor any indulgence or forbearance without the bank's knowledge or consent whether as to payment, time, performance or any other matter whatsoever, which under the law but for this provision may have the effect of releasing the bank from its liability under this bond, nor shall it be necessary for the government to sue the obligor before suing the bank for the amount that may become due hereunder.

The Bank's obligations hereunder shall remain in full force and effect up to and inclusive of..... day of.....or the expiry of the extended period, if any, provided, however, that if any claim or cause of action arises on or before the last mentioned date such claim shall be enforceable against the Bank notwithstanding the fact that any proceedings to enforce the same are taken against the Bank after the last mentioned date viz.....day of.....and notwithstanding anything contained in this bond.

In witness whereof the said obligor and the bank have hereunto set their respective hands and seals the day and year first hereinabove written.

Schedule above referred to

(insert full particulars of the goods)

Signed and delivered by the within named

.....obligor in the presence of

Witnesses

(1)

(2)

Accepted:

by.....

(for and/on behalf of the President of India) the revised model form of Bank Guarantee Bond

(Proforma shown after form no.9) is to be conveniently incorporated in the above Bond Proforma.

Annexure II

Specimen Form of Bond II without Bank surety to be submitted in place of duty or penalty in appeal cases when so required

 Know all men by these presents that I/We(insert the full name(s) and address(es) of the obligor)hereinafter called the obligor text, willmean and include his heirs, executors and administrators, their respective heirs-executors and administrators (in case of limited companies-its successors) and we.....(insert the name and full address ofthe surety) hereinafter called the "surety" (which expression shall when the context so admits include his successors and assigns are held and firmly bond unto the President of India, hereinafter called the "Government" (which expression shall when the context so asmits include his successors and assigns) in the sum of Rs..... (in words) to be paid to the government for which payment to be well and truly made, we the obligor and the surety bind ourselves jointly and severally and firmly by these presents:

Dated this.....day of19 . Whereas the obligor has been assessed to payments of duty and/or penalty in respect of the goods more particularly described in the schedule hereinunder written under the central excises & salt act, 1944.

And whereas the obligor has preferred an appeal to.....(name the appellate authority) from the said order/assessment bearing appeal no.....

And whereas the obligor is bond to deposit with the Appellate Authority the amount of the said duty and/or penalty pending the decision of the said appeal.

And whereas the obligor represented to the said appellate authority that it would cause the obligor undue hardship to make a deposit of the said sum and requested to appellate authority to dispense with such deposit in its discretion on such terms and conditions as it may think fit. And whereas the Appellate Authority after considering the said representation

of the obligor has agreed to dispense with such deposit on the obligor executing a bond in favour of the government with such condition and in such manner and in such form as hereincontained.

And whereas the surety has agreed to execute this Bond.

Now the condition of the above mentioned bond is such that, if the obligor on his aforesaid appeal being decided forthwith the in any event not latter than 10 days of the service of the Appellate order on the obligor pays to the government all duty and/or penalty levied either by virthe of the original assessment order and/or by virtue of such order of the Appellate Authority.

Then, and in such event the above mentioned Bond shall become void, otherwise the same shall remain in full force and virtue. And it is hereby further agreed by and between the

Parties hereto as follows:-

1. The Decision of the Collector of Central Exciseas to whether obligor has or has not fulfilled the conditions of the Bond shall be final and binding on the oblitor and the surety.

2. Any change in the constitution either of the obligor or the surety shall not affect the obligations undertaken hereunder by the obligor and the surety to the Government. That the surety shall not be discharged or released from his obligations under these presents by virtue of any arrangement made between the Government and the obligor with or without the knowledge or consent of the surety or by reason of the Government showing to the obligor any indulgence or for-bearance without the surety's knowledge or consent whether as to payment, time, performance or any other matter whatsoever, which under the law but for this provision may have the effect of releasing the surety from his liability under this bond, nor shall it be necessary for the government to sue the obligor before suing the surety for the amount that may become due hereunder.

In witnes whereof the said obligor and the surety have hereunder set their respective hands and seals the day and year first hereinabove written.

Schedule above referred to (insert full particulars of the goods sold)

Signed and delivered by the within named..... obligor in the presence of:

Witnesses:

- (1)
- (2)

Signed and delivered by the within named surety in the presence of:

Witness:

- (1)
- (2)

Accepted:

by.....

(for and on behalf of the President of India.)

Annexure III

Specimen form of Hypothecation deed to be submitted in place of penalty or duty in appeal cases when so ordered

This indenture made this.....day of..... one thousand nine hundred and.....between M/s.....(hereinafter called the "mortgagor" which expression shall, unless excluded by or repugnant to the subject or context, include their heirs, executors, administrators and assigns) of the one part and the President of India (hereinafter called the "mortgagee" which expression shall unless excluded by or repugnant to the subject or context, include his successors in office and assigns) of the other part. Whereas the mortgagor is the absolute owner and is seized and possessed of well and sufficiently entitled to the land/building/plant/machinery/stock in trade vessels/utensil/Govt. promissory notes/national plan savings/certificates/and other articles hereinafter described in the schedule hereunder written (hereinafter referred to as the "said mortgaged property").

Whereas a partnership firm/a limited company/ consisting of the registered under the partmenrship act/ company's act is carring on business at having its Registered office at the where as the Customs department have demanded payment of the sum of rupees. And whereas the Assistant Collector of Customs in his order no. datedhas confirmed the demand/imposed a penalty and demanded a duty of rupees from the mortgagor. And whereas aggrieved by the said order, the mortgagor has filed an appeal before the Collector of Customs (Appeals) may be pleased to grant stay of collection of the said sum of Rs.... And whereas the Collector of Customs (Appeals) has directed the mortgagor to do furnish proper security therefor, I/we do hereby bind myself/ourselves, my?our heirs, executors, administrators and assigns to the president of India in the sum of Rs..... to be paid to the President of India in the event of such order being passed on the appeal for which payment I/We convey, transfer

and hypothecate the properties described in the schedule as security for any sum that may be adjudged in the order-in-appeal and I/We agree that the said sum may be realised out of the said mortgaged properties. Description of properties etc.

In witness thereof, I set my hand herein at
.....the day and year furnish above written witness.

Witnesses:

- 1.
- 2.

(c.b. ex. & cus. lr. no. f. 24/49/64-cii dated 25.1.65 and
f.n. 40/57-cxi dated 26.12.66 collr's order dated 17.2.67, cvii-37/65).

Duty predeposit in case of goods confiscated - Not
required:

Deposit of duty should not be considered as a prerequisite for hearing appeals against orders confiscating the goods so long as the importers do not want to clear them. if however the order adjudicates the amount of duty payable on the goods, and the appeal lies against such adjudication, the appellants will be required in terms of section 189 sea customs act (section 129e customs act '62) to deposit the amount of duty so adjudicated before the appeal can be heard under Section 188 sea Customs act (section 128 customs act '62) order in appeal-requirements thereof:

(1) Every order in appeal should bear the notes as indicated in proforma reproduced below.

Where appeals are required to be rejected on merits, the order-in-appeal should be concluded in the following form- "The Board sees no reason to interfere with the order passed by the collector of customs. accordingly, the board confirms the order appealed against."

The above instructions may be noted for guidance and the orders passed by the appellate collectors on appeals may also be adapted suitably on the above lines.

[board's no. 1/23/60-cus.vi dated 10.5.1960 instruction no. 16/60-cus.vi]

Proforma I

By Registered A.D.

Office of the Collector of Customs (Appeals), Bombay.

- a. File no.-----
 b. Order-in-appeal no.-----
 passed under section 128a (3) of the customs act, 1962.
 c. Passed by-----
 issued on-----
 d. Arising out of order-in original no-----
 dated-----passed by the-----

e. Name & address of the appellant-----
 

f. Notes for guidance

1. An appeal against this order shall be under section 129 a of the customs act, 1962 with the customs, excise & gold (control) appellate tribunal within three months from the date of communication in terms of sub-section 129 a of the customs act 1962. the appeal against decision or order relating among other things to be determined having a relation to the rate of duty of customs or to the value of the goods for purposes of assesment should be presented to the special bench of tribunal. west block, r.k. puram, new delhi-110 006 and in other cases to the concerned regional bench at bombay.

2. The appeal to the appellate tribunal should be field in form CA-3 in quadruplicate and accompanied by four copies of the order appealed against (one of which at least shall be a certified copy) also of the order of adjudicating authority.

3. The appeal should be accompanied by a fee of rupees two hundred paid through a crossed bank draft drawn in favour of the assistant registrar of the bench of the tribunal, on a branch of any nationalised bank located at the place where the bench of the tribunal is situated and the demanded draft shall be attached to the form of appeal.

4. The appeal should be presented to the registrar or an officer authorised in this behalf by the registrar in the office of the Customs Excise gold (control) Appellate Tribunal or sent by registered post addressed to the Registrar of the said office.

5. One copy each of the appeal, the order appealed against the order of the adjudicating authority, shall bear a court fee stamp of 0.50 paise as prescribed under schedule i, item 6 of the court fees at. 1870 as amended.

6. Attention is also invited to governing these and other related matters contained in customs (appeals) rules, 1982 and the customs Excise & gold (control) appellate tribunal (procedure) rules 1982.

Proforma II

(Proforma for order-in-appeal of cases under baggage, short landings and drawback)

By Registered A. D.

Office of the Collector of Customs (Appeals) Bombay.

- a. File no.....
b. Order-in-appeal no.....
passed under section 128(a) (3) of the customs act 1962.
c. Passed by..... issued
on.....
d. Arising out of order (original)
no.....
Dated.....Passed by.....
e. Name and address of the appellant
.....
f. Notes for guidance :-

1. An application for revision under section 129 dd of the customs act, 1962 shall lie with the joint secretary to the govt. of india, ministry of finance department of revenue, new delhi.

2. As provided in section 129 dd (2) of the customs act, 1962 the application to the jt.secretary shall be made within three months from the date of communication to the appellant, of the order against which the application is being made.

3. The application shall be made in Form No. C.A- 8 duly verified and shall be presented in person to the Under Secretary, Revision application. Ministry of Finance, Department of Revenue Central Secratariate, New Delhi-110 001, or sent by registered post addressed to the said Under Secretary.

4. the application shall be accompanied by a fee of ruppes two hundred only which shall be paie under T.R.- 6 challan and the duplicate copy of the TR.6 challan shall be field alongwith the application for revision.

5. The application to the JT. Secretary to the Govt. of India, shall be filed in duplicate and be accompanied by two copies of the order appealed against (one of which atleast shall be certified copy) and two copies (atleast one of which shallbe certified copy) also of the order of the adjudicating authority.

6. One copy of each of the application, the order appeals against and order of the adjudicating authority shall bear a court fee stamp of 0.50 ps. as prescribed under schedule-1, item 6 of the court fee act, 1870 as amended.

7. Attention is also invited to rules governing these and other related matters contained in customs (appeal) rules 1982 and the customs (appeals) amendment rules, 1985.

This order-in-appeal should be self-contained as far as possible and contain briefly the facts of the case, and the issues, whether of fact or law. Each fresh issue and such point/points on which the appellate authority disagrees with the adjudicating officer should also be discussed. The reasons leading to the conclusions should be clear enough to convince the aggrieved party of the reasonableness of the same. The reasons for not admitting the appeal should be set out in detail in the appellate order to enable the aggrieved party to prefer revision petitions. If the party has been heard either in person or through a counsel, the fact should be stated in the orders.

[board's f.1/19/63-cus. vi dated 17.9.68]

Order in appeal to sign in full:

All adjudication, appeal and revision orders passed on the note portion of the relevant file should be signed in full by the adjudicating authority similarly the draft order prepared on that basis should also be signed in full by that authority. It is, however, not necessary that the copies of the order which are forwarded to the party and to the officers concerned should also be signed by the adjudicating authority himself; there is no objection to these copies being authenticated by some gazetted officer duly authorised by the adjudicating authority to so authenticate them.

[board's f.no. 30/124/57-genl.658) dated 14.10.57]

Hearing in appeal-presence of adjudicating officer to avoid:

There could be no objection to the papers being put up by the same officers who dealt with the case at the stage of original adjudication. It should however be ensured that the officers against whose orders appeals had been preferred were not present at the time hearing were granted or the appeals decided.

Although the adjudicating officer should not be present at the appellate stage before the appellate authority as it is likely to give the impression to the appellant that the appellate authority is being influenced by the adjudicating officer, there is no objection to the lower officer, being sent for during a hearing to explain any technical points. [Board's f.no. 1/2/63-cus.vi dated 11.10.1963] hearing in appeal-when asked for not to refuse- [see orders on natural justice, principles of. given in chapter on adjudication]

Personal Hearing - Grant of procedure regarding

Recently a question arose whether on consideration of natural justice it is obligatory on the part of the Govt. of India to grant a personal hearing at the revision stage when such hearing has not been given by the collector at the appeal stage even though asked for and when the party concerned asks for such hearing at the revision stage.

2. In the light of various legal pronouncements on the subject, the principle that the party should be heard before an order to his prejudice is passed, does not mean that he should be heard in person in every case. In view of this, the normal practice prevailing at the revision stage viz. not to grant personal hearing is in order. However, the position would be different where the collector disposes of an appeal without giving opportunity to the aggrieved party to represent his case in person although the party had prayed for such an opportunity. The law ministry have advised that in such cases it would be obligatory on the part of the Govt. of India to grant a personal hearing at the revision stage, when a request to that effect is made by the party.

3. To obviate the need for the Govt. of India having to grant personal hearing at the revision stage, the collector should not refuse a hearing if one is asked for at the appeal stage, as otherwise, the Govt. of India will have to hear the petitioner at the revision stage. The hearing would not of course be necessary if even before the hearing stage it has been decided to grant completely the reliefs claimed by the appellant. [m.f.(d.r.) f.no 1/31/59-cus. vi, dated 20-9-1959] (ins. no. 14/sc act./cus vi/59)

Withdrawal of appeal - issue of order-in-appeal

When a formal, duly stamped, appeal is filed by an aggrieved party against an order of a subordinate officer, and the party then files another application for withdrawal of the appeal, a formal order should still be issued. The order-in-appeal should be worded as under:-

(1) "Read the appeal and the party's subsequent letter no.dated"

(2) As the appellants have, vide their letter no..... dated.....requested for the withdrawal of the appeal, the appeal is hereby dismissed." [G.O.I.M.F. Adjudication manual para 85, page 48]

Minor technical discrepancies-prior reference to the Government of India:

A large number of revision applications come up for decision by Government of India when appeals are rejected because of minor technical discrepancies and not because of any substantial defect in the applicant's case. In such circumstances it is preferable for the collector before rejecting the appeals to make a prior reference to the Government, and obtain a decision generally, as otherwise unnecessary work would be created all

round. [c.b.r.l.r.f. no. 40/8/57-cus. iv dated 20.3.57]

Appeal when order in original passed after reference to collector of customs.

 A decision arrived at by an Assistant Collector of Customs after reference to the Collector of Customs for instructions should be regarded as a decision of the Collector of Customs himself, an appeal against which will lie to the Central Board of Excise & Customs when therefore, such an adverse decision is actually communicated to a member of the public, it should be done by the Collector of Customs himself and not by the Assistant Collector.

[C.B.R.instruction no. 1 dated 27.5.48 lr. 1161/48 r.dis. 14617]

Test reports from outside agencies-due consideration of - at appeal stage:

 In the case of appeals and revision petitions against decisions based on test reports of the local laboratory, the appellate and revisionary authorities are not precluded from taking into consideration the advice of outside agencies when necessary. However while such of the evidence of outside agencies as may be produced by the appellants may be taken into account and given due consideration, the appellate authority cannot take upon itself the task of consulting such outside agencies at the dictates of appellants.

[G.I.M.F.(D.R) F.No. 25/5/59-Cus. (CRC) dated 10.9.59 w.r.t. f.7/13/59 -cus.(crco)]

Re-adjudications when order in appeal:-

 (i) By same officer cannot be said prejudiced:

 An appellate authority remanding a case may direct that it shall be heard by a lower authority other than the one which heard it originally. In the absence of such a direction there is no maxim of law under which it can be generally stated that the same officer who adjudicated the case previously gets prejudiced if he has to do de novo adjudication. [law ministry's advice - board's letter f.no. 40/29/66 cx. dated 19th April, 1966]

(ii) When principles of natural justice not observed:

 The Attorney Generals opinion is that in a case where the adjudicating authority under section 182 of the Sea Customs act (section 122 customs act'62) has failed to observe the principles of natural justice in making the adjudication -

(1) The adjudication is not void (but is voidable); it is not permissible to the adjudicating authority to ignore its own earlier order and to

proceed to hold a fresh adjudication on that ground;

(2) It is not open to the appellate authority to -

(i) Either quash the decision and remand the matter for a fresh adjudication by the authority acting under section 182 of sea customs act (section 122 customs act'62).

(ii) Itself proceed to take steps to comply with the requirements of natural justice which the adjudicating authority failed to comply with and thereafter adjudicate upon the matter;

(3) Since the adjudication is voidable because of the principles of natural justice having not been observed, the appellate authority may quash or annul it on that ground without doing more, and the decision having been thus annulled or avoided or quashed and there being no adjudication left, the adjudicating authority may thereafter proceed to make a fresh adjudication under Section 182 of the sea customs act (section 122 customs act '62)

To sum up therefore, in all cases where an adjudication under section 182 (section 122 of customs act'62) *ibid*, has taken place without observance of the Principles of natural justice, the correct procedure which should hence forward be followed is for the appellate authority (the Board or the Appellate Collector concerned, as the case may be) to annul or quash the order on that ground alone without touching upon the merits of the case, separately to issue executive instructions to the Adjudicating authority requiring a fresh adjudication to be made after due compliance with the Principles of natural justice. such a course may, it is realised, lead sometimes to practical difficulties such as the goods having left customs control on delivery having been taken on payment of the fine fixed in lieu of confiscation as originally adjudicated. These difficulties should themselves serve to emphasise the need for adjudicating authorities to exercise the utmost caution to ensure that the Principles of natural justice are in no case lost sight of and are scrupulously observed. [c.b.r.no. 66/7/52-cus.i dated the 25th july, 1952]

Where orders are set aside for failure of compliance of natural justice—above adjudication to initiate

 The question whether appellate or revisionary order setting aside the orders contested on grounds of non compliance of the Principles of natural justice should themselves contain a direction of remand and readjudication has been considered by the board in consultation with the ministry of law. It has now been decided that such directions in each order would not be necessary. causes in which orders are set aside for non compliance of the principles of natural justice should invariably be taken up for readjudication unless there are instruction to the contrary.

[circular letter misc.no. 33/69-cx.i & f.no. 40/30/67-cx.i dated 6.6.1969.]

Goods sold in auction question of filing appeal:

There any goods are sold by the port authorities under the relevant provisions of their act, it is the practice to impose a fine in lieu of confiscation in regard to the goods covered by the sales Bill of Entry submitted by the Port Trust on the basis that the importation and clearance of these goods without an import trade control licence infringes the Import Trade Control regulations.

There may be some cases where the owner (Importer) whose goods have been sold by the Port authorities deems himself aggrieved by the order of fine and files an appeal against it. There is no objection in such cases to hearing an appeal from such persons and dealing with it on merits, provided it is submitted in time. (board's no. 13/75/55-cus.iii dt. 7.11.1955)

Order in appeal to issue by registered post:

The Board desires that all the orders-in-appeal passed should be sent by registered post. (board's no. 1/27/57-cus.vi dated 28.12.1957)

Orders on customs appeals passed by the Board should also be issued by registered post acknowledgement due. (board's no. 1/27/57-cus.vi dated 31.3.1958)

Valuation at appeal stage-owners representative to attend:

In a case at the appeal stage the valuation of the goods was in dispute, the goods were examined by the appellate collector for the purpose of rvaluation when the party was not present. at the r.o. stage, the party expressed doubt as to whether the goods were actually revalued and complained against the valuation made by the custom house. it later transpired that the appellate collector had examined the goods without requiring the presence of the appellant, in order to expedite disposal and to avoid any possible harassment to the appellant.

To avoid similar complaints such re-examination should not be carried out in the absence of the owner or his representative. (letter f.no.3/25/63-cus. vi c.b. of ex & cus. new delhi, the 4th september, 1968.)

Order no.1724 to 1726 of 1979 of india on customs revision application passed by

Shri D.N.Lal in the case of M/s. Greatway Private ltd. intrepertation of section 128 of the customs act,1962

 A copy of order-in revision no. 1724 to 1726 of 1979 passed by the J.S.(RA) on 22-8-79 in revision application filed by M/s. Greatway Private Ltd. is appended. As this decision has an important bearing on issues of similar nature, this is being circulated for information [c.b.e & c.f.no. 491/6/80-cus. vi, dt. 26-6-80.]

Subject- Revision applications. read:- 3 application nos(1) gpl/nd/78(2) gpl/nd/78(3)d/78 dated 30-5-78.

From M/s. Great Way Pvt. Ltd
 for revision of the order-in-appeal nos. (1) s/49/363/77 l dated 7-2-78 (2) s/49-364/77 l dated 6-1-78 (3)s/49-357/77 l dated 7-2-78.

Passed by the Appellate collector of customs, bombay. order

 The petitioners have filed 3 petitions on identical issues and as such the government of india are passing a consolidated order covering these 3 petitions. the appeals in the subject cases have been dismissed by the appellate collector, on the ground that "these communications purporting to be `appeals' have been filed without stating any grounds" and that "an appeal if it is to be one, must necessarily state why a person making the appeal is aggrieved"

At the time of hearing, Shri D.P. Anand, consultant to the petitioners, submitted before the Government of India that section 128 of the customs act, 62, does not stipulate that the appeal filed under section 128 should state all the grounds for appeal expressly and clearly. he pointed out that the appellants in these particular cases mentioned in their appeals to the appellate collector that the learned deputy collector had erred in imposing the personal penalty on the party under section 112 of the customs act, 1962. it was also requested that their appeals should be taken on file for the purpose of limitation and the appeal number may be communicated to the party. this, according to the petitioners, shows that they were aggrieved against the order of the deputy collector against which the petitioners had eventually moved in appeal. Secondly, Shri Anand pointed out that it was clearly mentioned in their appeal to the appellate collector that they were interested in a personal hearing. it was, therefore, not permissible for the Appellate collector to decide the appeals under section 128 of the customs act, 1962 without hearing the party. The Government of India have carefully considered the facts of the case as also the written and oral submissions of the petitioners. as regards the first point of the petitioners, the government of india observe that section 128(1) of the customs act, 1962. does not stipulte that the memorandum of appeal should set forth the grounds of objection to the order against which the appeal has been filed. Section 128(1) merely provides that "any person aggrieved by any

decision or order passed under this act may, within 3 months from the date of communication to him of such decision or order... appeal to the Appellate Collector of Customs" what is logically implied in this section is that the person appealing under section 128 is to be an aggrieved person. as to the question who is an aggrieved person, Mr. Justice Hidayatullah of the Supreme Court observed in the case of *Adi Pherozshan Gandhi, appellant V/.s H.M Seervai, Advocate General, Maharashtra, Bomay, respondent (air 1971, s.c. 385)* that "he (the aggrieved person) must be disappointed of the benefit which he should have received if the order had gone the other way. the order must cause him a legal grievance by wrongfully depriving him of something."

There is however no doubt that the petitioners (appellate before the lower authority) has an appealable interest arising out of a legal grievance as the Deputy Collector's order adversely affected their pecuniary interests. undoubtedly, therefore, the petitioners were entitled to submit the impugned appeals to the appellate collector of customs.

The Government of India are surprised that though the appellate collector did not consider the impugned communications filed by the petitioners to be appeals within the scope of section 128(1) of the customs act 62, he passed an order-in-appeal. in the preamble as also in the annexure to his order-in appeal the so-called `communications' have been referred to as appeals. the same were received in the department and admitted for consideration of the appellate collector as appeals. These facts would nullify the contention of the Appellate Collector, and act as an estoppel on him to deny the legal existence of the appeals in question. If there was no appeals, filed under section 128(1) of the customs act, 62, it would logically follow that the appellate collector did not have the authority and jurisdiction to pass an order-in appeal under the customs act, as he has done in the instant cases. If the Appellate collector was of the view that the communications of the party purporting to be `appeals' were not be considered as appeals under the customs act, it was open to him to inform the party by means of an ordinary communication that their letters could not be considered as appeals under the customs act. it was also open to the appellate collector to ask the party to submit their grounds for appeal either orally or in writing within a specified period of time. the Government of India are of the view that once an order-in-appeal has been passed there cannot be any denying of the fact that an appeal had been filed by the petitioners.

As to the legality of the Appellate Collector's contention the Government of India observe that though the rules of court under order SLI, rule 1(2) of the code of civil procedure (v of 1908) require that the memorandum of appeal shall set forth, concisely and under distinction heads the grounds of objection to the decree appealed from, without any argument or narrative; and such grounds shall be numbered consecutively", such procedural requirement in a court of law cannot be stretched or extended to the appeal procedure under the customs act, 1962 for want of a similar provision in the said act. As regards the

second point of the petitioners that the grant of a personal hearing to them was obligatory under section 128(2) of the customs act, 1962, there is no denying that under the provisions of Section 128(2) an opportunity ought to have been given to the appellants to be heard, as they evidently requested for the same. As the Appellate collector has considered the appeal and passed an order-in-appeal, his refusal to grant a personal hearing to the appellants has got no justification, which, in fact, amounted to denial of natural justice.

In view of the above reasons, the Government of India set aside the impugned orders-in-appeal which are Ex-facie bad in law. The revision petitions are allowed on the limited question of legality of the appellate orders. It is now open to the Appellate Collector to examine the cases de novo, on merits, after granting an opportunity of personal hearing to the party.
f.no.371/1817-1819/78 cus.ii.

Section 128. of custom act 1962.

Power to appeal to the collectors 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.

"Meaning of order or decision"

The words "a order or decision passed by an officer of customs under this act" used in Section .128 of the customs act 1962, must mean a real and not a purported determination a determination, which takes into consideration factors which the officer has no right to take into account, is no determination. in such cases the provision excluding jurisdiction of civil courts cannot operate so as to exclude an enquiry by them. the expression "any decision order" are of wide amplitude and include all orders or decisions passed under this act.the authorities deciding the appeal, viz. the collector (appeals) and the appellate tribunal are functioning as quasi-judicial authorities. the expression used under sec. 128 to designate the collectors (appeal) and the appellate tribunal is "appellate authority". When a person is designated as an

appellate authority there is a legal dispute between the appellant who pays the duty and the revenue; and the order passed by the appellate authority is subject to revision by the central Government. the power exercised under this section by the Collector (appeals) or by the appellate tribunal being of a quasi-judicial nature, no authority, however high placed, can control the decision of a judicial or a quasi-judicial authority. this is the essence of our judicial system.

Time-limit for filing appeal :-

Any appeal filed under Sec.128 must be filed within Three months from the date of the communication to him of the decision or order.

Delay of condonation :-

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 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. a simple perusal of the same sec.128 (1) of customs act, 1962, shows that the collector (appeals) has got power to condone the delay upto 3 months. beyond that he has no power to condone the delay.

Sections 128, 128-a, 137 :-

Sections 128, 128-a and 137 provide a complete machinery for affording relief against the levy of duty by the customs authorities. the liability to pay duty arises by virtue of customs act and in respect of any grievances arising in consequence of enforcement of that liability, this machinery has been provided by the act. having regard to the complicated nature of the question which arise in the determination of liability to pay duty of customs, the legislature has invested the power of determining the liability and the manner of enforcement thereof, to a specially authorized hierarchy of tribunals.

Order under Sec. 128 must be a speaking order :-

Any order passed by virtue of the Customs act must give reasons and in the absence of reasons, the order is liable to be quashed. The order of the Collector of customs and the appellate tribunal should be speaking orders, upon which the memorandum of appeal would be based in a case where Collector of Customs could not give his reasons for assessment of the value of goods at a higher figure than that declared by the petitioner and the board also

did not give any reasons for dismissing the appeal, the orders passed were quashed on the ground that they were not speaking orders.

When a law confers a right of appeal, the legislature intends that right should be an effective right and that right can only be an effective right if the officers or authority from whose order an appeal lies, gives reasons for his decision. It is only then that the appellate court can properly discharge its function. It is only then that the appellate court could consider whether the decision of the lower authority was correct or not. A right of appeal is conferred upon the assessee against the assessment order, made by the assessing authorities. But notwithstanding this right of appeal, the Assessing authority have not thought fit, to give reasons for their decision. It would have been open to courts to take the view that the matter should go back to the Assessing authorities with a direction that they should give reasons for the decision and then those reasons could have been tested by High Court, if the requisite writ has been filed. even where reasons are not given, if the reasons are disclosed in affidavits at the trial, then the court would look into those reasons and consider those reasons as if they were the reasons embodied in the order itself.

Vires of provision of customs act cannot be challenged in appeal under the act.

In an appeal filed under sec.128 there could be no challenge to the provisions of the customs act as ultra vires, since challenge to the provisions of the particular act as ultra vires cannot be brought before the tribunal constituted under the act. even the high court cannot go into that question in reference from the decisions of the tribunals.

Personal hearing under Sec.128 whether necessary:-

Personal hearing has to be given only where the appellants desires it. it is not that the collector (appeals) or the appellate tribunal should give personal hearing to the appellant, except in case where -

(a) The appellant desires such a hearing ; or
(b) The appellate authority proposes to enhance any penalty or fine in lieu of confiscation or confiscating goods or higher value. There is no rule of natural justice that at every stage a person is entitled to a personal hearing and specially where the appeal is time-barred. there is no violation of any rule of natural justice if the appeal is dismissed without hearing the appellant.

Deposit of amount of penalty.

Appeal as whole is liable to be dismissed for failure of the appellant to deposit the amount of penalty :- Here, the appellant has

failed to deposit. The appellant also does not pray for time, to deposit the amount of penalty. there is no specific provision in sec.129-e that in the case where the appellant fails to pre-deposit the amount of penalty, the appeal should be dismissed.

Right of appeal conferred on aggrieved party only :- The right of appeal is a statutory right and not a common law remedy. Section 128 of the customs act provides an appeal against the order passed by an officer of customs lower in rank than a Collector of customs to the collector (appeals) by an aggrieved person. thus, the right is conferred on the aggrieved person and not on any other person. therefore, it is necessary for the appellant to allege in the appeal memo that the appellant was the aggrieved by the order of the lower authority. orders set aside by appellate authority on the ground of procedural irregularity :-

When the order of an officer was set aside by an appellate authority not on merits but on the ground of procedural irregularity, the original authority was entitled to proceed afresh unless there was any statutory power preventing or prohibiting such proceedings; that there was no provision in the customs act expressly or by implication which would have the effect of preventing the assistant collector from instituting proceedings afresh against the petitioner.

Failure to give opportunity to cross-examine the witnesses breach of principles of natural justice :- The tribunal has time and again held that denial of cross-examine witnesses whose statements are relied upon by the department amounts to violation of the fundamental principle of natural justice.

When alternative remedy is available, writ jurisdiction cannot be invoked :-

In the case where for example, the impugned order had come to be passed by the Deputy collector of customs. (therefore, an appeal would lie against an order passed by the deputy collector of custom under sec. 128 of the act. section 129-A Cl.1 provides for a further appeal to the tribunal. Incidentally, it also provides for suo motu powers under Sec. 129-B of the act. After all these, Sec.130-E provides for an appeal to the Supreme Court in cl.(b) which says that an appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal 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. Therefore, if one has regard to the entire pattern of Chapter XV of the Customs act.1962,

It would be clear that the High Court does not come into the picture with reference to a matter of this kind. appeal against order of

assistant collector, filling of assessment order not necessary - Copy of Bill of Entry on which order was passed has been filed. :-

If the adjudication authority has passed an order on the Bill of Entry. it is of the view that order on the Bill of Entry has to be treated as an order and as such was appealable before the appropriate forum.

Procedure in appeal :- The collector (appeals) shall give an opportunity to the appellant to be heard if he so - desires.

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 ground of appeal was not willful or unreasonable.

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 Sec. 28 to show cause against the proposed order.

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

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.

:- Customs (Appeals) Rules, 1982 :-

Cus-52/82-83 Ministry of Finance, Department of Revenue New delhi, dated 10th september 1982.

Gsr.no.564-f. Notification no. 212-customs/82.

In exercise of the powers conferred by sub-section(1) of section 156 of the customs act, 1962 (52 of 1962), the central government hereby makes the following rules, namely :-

Chapter-I

----- Preliminary -----

1. Short title and commencement :- -----

(1) These rules may be called the customs (appeals) rules, 1982.

(2) They shall come into force on such date as the central government may, by notification in the official gazette appoint.

2. Definitions :- -----

In these rules, unless the context otherwise requires :-

- (a) "Act" means the customs act, 1962 (52 of 1962);
- (b) "Form" means a form appended to these rules;
- (c) "Section" means a section of the act.

Chapter II

----- Appeals to Collector (Appeals) -----

3. Form of appeals to collector (appeals) :- -----

(1) An appeal under sub-section(1) of section 128 to the collector (appeals) shall be made in form no. CA-1

(2) The grounds of appeal and the forms of verification as contained in Form F.No.CA.-1 shall be signed.

(a) In the case of an individual, by the individual himself or where the individual is absent from india, by the individual concerned or by

some person duly authorized by him in this behalf and where the individual is a minor is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.

(b) In this case of a Hindu undivided family, by the karta and, where the karta is absent from india or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) In the case of a company or local authority, by the principal officer thereof;

(d) In the case of a firm, by any partner thereof, not being a manor;

(f) In the case of any other person, by that person or some person competent to act on his behalf.

(3) The form of appeal in form no.CA-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

4. Form of application to te Collector (Appeals)

(1) An application under sub-section(4) of Section 129-D to the Collector(Appeals) shall be made in Form No.CA.-2.

(2) The form of application in form no.CA.-2 shall be filed in dupliate and shall be accompanied by two copies of the deision or order passed by the adjudicating authority (one of which at least shall be certified copy) and a copy of the order passed by the collector of customs directing such authority to appeal to the collector (appeals).

5. Production of additional evidence before the Collector(appeals)

(1) The Appealant shall not be entitled to prodce the Collector (appeals) any evidene, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the adjudicating authority, except in the following circumstances, namely:-

(a) Where the adjudiating authority as refused to admit evidence which ought to have been admitted; or

(b) Where the appellant was prevented by suffiient cause from producing the evidence which he was called upon to produce by that authority; or

(c) Where the appellant was prevented by sufficient cause from

producing before the authority any evidence which is relevant to any ground of appeal;or

(d) Where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal

(2) No evidence shall be admitted under sub-rule (1) unless the Collector (Appeals) records in writing the reasons for its Admission.

(3) The collector (appeals) shall not take any evidence produced under sub-rule(1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity

(a) To examine the evidence or documents or to cross-examine any witness produced by the appellant;or

(b) To produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule(1).

(4) Nothing contained in this rule shall affect the powers of the collector (appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

Chapter III

Appeals to Appellate Tribunal

(6) Form of appeals, etc., to the appellate tribunal:

(1) An appeal under sub-section (1) of section 129a to the appellate tribunal shall be made in form no.CA.-3

(2) A memorandum of cross-objections to the appellate tribunal under sub-section (4) of section 129a shall be made in form no.CA.-4

(3) Where an appeal under sub-section (1) of section 129a or a memorandum of cross-objections under sub-section (4) of that section is made by any person other than the collector of customs, the grounds of appeal, the grounds of cross-objection and the forms of verification as contained in form nos.CA.-3 and CA-4 as the case may be respectively shall be signed by the person specified in sub-rule (2) of rule 3.

(4) The form of appeal in form no.CA-3 and the form of memorandum of cross-objections in form no.c.a.-4 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

7. For of application to the appellate tribunal:

(1) An application under sub-section (4) of section 129d to the appellate tribunal shall be made in form no.CA.-5

(2) The form of application in form no.CA.-5 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order passed by the collector of customs(one of which at least shall be a certified copy) and a copy of the order passed by the board directing such collector to apply to the appellate trubinal.

8. Form of application to the appellate tribunal for reference to High Court.

(1) An application under sub-section (1) of section 130 requiring the Appellate Tribunal to refer to the High Court any question of law shall be made in Form no.CA.-6 and such application shall be filed in triplicate

(2) A memorandum of cross-objections under sub-section (2) of section 130 to the appellate tribunal shall be msde in form no.CA.-7 and such memorandum shall be filed in triplicate.

(3) Where an application under sub-section (1) of section 130 or a memorandum of cross-objections under sub-section (2) of that section is made by any person other than the collector of customs,the application,the memorandum and the forms of verification as contained in form nos.CA.-6 and CA.-7 respectively shall be signed by the person specidied in sub- rule (2) of rule 3.

Chapter IV

Authorised representative

9. Qualifications for authorised representatives for the purposes of section 146a an authorised representative shall include a person who has acquired any of the following qualifications,being the qualifications specified under clause(d) of sub-section(2) of the said section 146a,namely:-

(a) A chartered accountant within the meaning of the chartered accountants act,1949 (38of 1949),or

(b) A cost accountant within the meaning of the cost and works

accountants act,1959 (23 of 1959);or

(c) A company secretary within the meaning of the company secretaries act,1980 (56 of 1980),who has obtained a certificate of practice under section 6 of that act;or

(d) A post-graduate or an honours degree holder in commerce or a post-graduate degree or diploma holder in business administration from any recognised university;or

(e) A person formerly employed in the departments of customs or central excise or narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said departments for not less than ten years in the aggregate.

Explanation:- in this rule,"recognised university"means any of the universities specified below,namely:-

i. Indian universities:- Any Indian university incorporated under any law for the time being in force in India;

ii. Rangoon university

iii. English and welsh universities the universities of birmingham,bristol,cambridge,durham,leeds liverpool,london,manchester,oxford,reading,sheffield and wales;

iv. Scottish universities: the universities of aberdeen,edinburgh,glasgow and st.andrews

v. Irish universities the universities of dublin (trinity college),the queen's university,belfast and the national university of dublin.

vi. Pakistan universities: any pakistan university incorporated under any law for the time being in force.

vii. Bangladesh universities: any bangladesh university incorporated under any law for the time being in force.

10. Authority under section 146a (5)(b) the collector of customs having jurisdiction in the proceedings in which a person who is not a legal practitioner is found guilty of misconduct in connection with that proceeding under the act shall be the authority for the purposes of clause (b) of sub-section (5) of section 146-a.

Chapter V

Miscellaneous

11. Language of the appellate tribunal:

(1) The Language of the Appellate Tribunal shall be English.

(2) Notwithstanding anything contained in sub-rule(1),the parties to a proceeding before the appellate tribunal may file documents drawn up in hindi if they so desire.

12. Procedure for filing appeals etc.

(1) An appeal in Form no.CA.-3 or a memorandum of cross-objection in form no.CA.-4 or form no.CA.-7,or an application in form no.CA-5 or form no.CA.-6 shall be presented in person to the registrar or an officer authorised in this behalf by the registrar,or sent by registered post addressed to the registrar or such officer.

(2) An appeal or a memorandum of cross-objections or application sent by post under sub-rule (1) shall be deemed to have been presented to the registrar or to the officer authorised by the registrar,on the date on which it is received in the office of the registrar,or as the case may be in the officer of such officer.

13. Date of presentation of appeals etc.

The registrar or as the case may be,the officer authorized by him under rule 12 shall endorse on every appeal or memorandum of cross-objections or application the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

14. Who may be joined as respondents.

(1) In an appeal by a person other than the collector of customs the collector concerned shall be made the respondent to the appeal.

(2) In an appeal or an application by the collector of customs, the other party shall be made the respondent to the appeal or application,as the case may be.

15. Document authorising authorised representatives to be attached to the appeal etc.

In any appeal,or memorandum of cross-objections or application,filed by any person other than a departmental authority,where it is signed by his authorised representative the document authoriseing the representative to sign and appear for him shall be appended to such appeal or memorandum of cross-objections or application.

16. Endorsing copies to the other party:

(1) (a) Every application preferred under the provisions of the act for stay of the requirement of making deposit of any duty demanded or penalty levied shall be presented in triplicate by the appellant in person or by his duly authorised agent, or sent by registered post to the registrar or any other officer authorised to receive appeals.

(b) One copy each of such application shall be served on the authorised representative of the collector simultaneously by the applicant.

(3) An application for stay shall set forth concisely the following:-

(a) The facts regarding the demand of duty or penalty, the deposit whereof is sought to be stayed.

(b) The exact amount of duty or penalty and the amount undisputed therefrom and the amount outstanding.

(c) The date of filing of the appeal before the tribunal and its number, if known;

(d) Whether the application for stay was made before any authority under the act or any civil court and, if so, the result thereof (copies of the correspondence, if any, with such authorities to be attached);

(e) Reasons in brief for seeking stay;

(f) Whether the applicant is prepared to offer security and, if so, in what form;

(g) Prayers to be mentioned clearly and concisely (state the exact amount sought to be stayed);

(4) The contents of the application shall be supported by an affidavit sworn to by the appellant or his duly authorized agent.

(5) Every application for stay shall be accompanied by three copies of the relevant orders of the authorities of the department concerned, including the appellate orders, if any, against which the appeal is filed to the appellate tribunal by the Appellant and other documents, if any:

Provided, however, that the appellate tribunal may in its discretion and at the request of the applicant, dispense with the requirements of filing of the copies of such orders.

(6) Any application which does not conform to the above

requirements is liable to be summarily rejected.

Form no.CA.-1

Form of Appeal to the Collector (Appeals) under section 128 of the Customs Act,1962

1. No. _____ of _____ 19 _____
2. Name and Address of the Appellant.
3. Designation and address of the officer passing the decision or order appealed against and the date of the decision or order.
4. Date of communication of the decision or order appealed against to the appellant.
5. Address to which notices may be sent to the Appellant.
6. Whether duty or penalty or both is deposited; if not, whether any application for dispensing with such deposit has been made. (a copy of the challan under which the deposit is made shall be furnished).
7. Reliefs claimed in appeal.

Statement of facts

Grounds of appeal

i)

ii)

iii)

Signature of authorised representative,

Signature of the if any.

appellant.

Verification

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the day _____ of _____ 19 _____

Place _____

Date _____

Signature of the authorised representative, if any.

Signature of the appellant.

Note- 1. The grounds of appeal and the form of certification shall be

signed by the appellant in accordance with the provisions of rule 3 of the customs(appeals)rules,1982.

2. The form of appeal,including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

Form No.CA.-2

Form of application to the collector (appeals)under section 129d(4)of the customs act,1962.

Appeal no. _____ of _____ 19 _____
_____ applicant
_____ respondent

1. Designation and address of the applicant (if the applicant is not the adjudicating authority, a copy f the authorisation from the collector of customs to make the application should be enclosed).

2. Name and address of the respondent.

3. Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.

4. Date on which the order under sub-section (2)of section 129d has been passed by the collector of customs.

5. Date of the communication of the order referred to in (4) above to the adjudication authority.

6. Reliefs claimed in the application.

Statement of facts

Grounds of application

- i)
- ii)
- iii)

etc.

Signature of the
applicant.

Note; form of application,including the statement of facts and the grounds of application shall be filed in duplicate and shall be accompanied by two copies

of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order of the Collector of customs under sub-section(2) of Section 129d of the act.

Form no.CA.-3
(see rule 6 (1))

Form of appeal to the appellate tribunal under

Section 129a(1) of the customs act,1962 in the customs,excise and gold(control)appellate tribunal.

Appeal no. _____ of _____
_____ applicant
vs.
_____ respondent

1. The designation and address of the authority
2. The number and date of the order appealed against.
3. Date of communication of the order appealed against.
4. State/union territory and the collectorate in which the order/decision of assessment/ penatly/fine was made.
5. Designation and address of the adjudicating authority in cases where the order appealed against is an order of the collector(appeals),
6. Address to which notices may be sent to the appellant.
7. Address to which notices may be sent to the respondent.
8. Whether the decision or order appealed against involves any question having a relation to the rate of duty or to the value of goods for purposes of assessment,if not,the difference in duty involved or amount of fine or penalty involved or value of goods involved as the case may be.
9. Whether duty or penalty is deposited;if not, whether any application for dispensing with such deposit has been made(a copy of the challan under which the deposit is made shall be furnished)
10. Reliefs claimed in appeal.

Statement of facts

Grounds of appeal

- i)
- ii)
- iii)

etc.

Signature of the authorised
representative,if any.

Signature of the appellant

Verification

I,_____the appellant do hereby declare that what
is stated above is true to the best of my information and belief.

Verified today the _____ day of _____ 19_____
signature of the authorised representative,

Signature of the authorised
representative, if any.

Signature of the appellant

Notes

1. The grounds of appeal and form of verification shall if the
appeal is made by any person,other than the collector of customs,be signed by
the appellant in accordance with the provisions of rule 3 of the
customs(appeals) rules,1982,

2. The form of appeal including the statement of facts and the
grounds of appeal shall be filed in quadruplicate and shall be accompanied by an
equal number of copies of the order appealed against (one of which at least
shall be a certified copy).

3. The form of appeal should be in english (or hindi)and should
set forth,concisely and under distinct heads,the grounds of appeal without any
argument or narrative and such grounds should be numbered consecutively.

4. The fee of rs.200/-required to be paid under the provision of
the act shall be paid through a crossed bank draft drawn in favour of the
assistant registrar of the bench of the tribunal on a branch of any nationalised
bank located at the place where the bench is situated and the demand draft shall
be attached to the form of appeal.

Form no.CA-4
see rule 6(2)

Form of memorandum of cross-objections to the appellate
tribunal under section 129a(4)of the customs act,1962

In the customs,excise and gold (control)appellate
tribunal cross-objection no._____of_____19_____ in

appeal/application no. _____ of _____ 19 _____
 _____ appellant / applicant
 _____ respondent

1. State/union territory and the collectorate in which the order/decision of assessment/ penalty/fine was made.
2. Date of receipt of notice of appeal or application filed with the appellate tribunal by the appellant or as the case may be, the collector of customs.
3. Address to which notices may be sent to the respondent.
4. Address to which notices may be sent to the appellant/applicant.
5. Whether the decision or order appealed against involves any question having a relation to the rate of duty of customs or to the value of goods for purpose of assessment; if not, the difference in duty or duty involved, or amount of fine or penalty involved or the value of goods involved, as the case may be.
6. Reliefs claimed in the memorandum of cross-objections.

Grounds of cross-objections

- 1.
 - 2.
 - 3.
 - 4.
- etc.

Signature of the authorised representative, if any.	Signature of the respondent.
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Verification

I, _____ the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the _____ day of 19 _____
 signature of the authorised respondent signature of the representative, if any.

note:

1. The grounds of cross-objections and the form of verification shall, if the memorandum is filed by any person, other than the collector of

customs, be signed by the respondent in accordance with the provisions of rule 3 of the customs (appeals) rules, 1982.

2. The form of memorandum of cross-objections shall be filed in quadruplicate.

3. The form of memorandum of cross-objections should be in English (or in Hindi) and should set forth, concisely and under distinct heads the grounds of cross-objections without any argument or narrative and such grounds should be numbered consecutively.

4. The number and year of appeal/application as allotted by the office of the appellate tribunal and appearing in the notice of appeal application received by the respondent is to be filled in by the respondent.

Form no. CA.-5

(see rule 7)

Form of application to the appellate tribunal under section 129 d (4) of the customs act, 1962

In the customs, excise and gold (control) appellate tribunal appeal
no. _____ of _____
_____ appellant
vs.
_____ respondent

1. Designation and address of the applicant (if the applicant is not the adjudicating authority, a copy of the authorisation from the collector of customs to make the application should be enclosed)

2. Name and address of the respondent.

3. Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.

4. State/union territory and the collectorate in which the decision or order was made.

5. Date on which order under sub-section (1) of section 129d has been passed by the board.

6. Date of the communication of the order referred to in (3) above, to the adjudicating authority.

7. Whether the decision or order appealed against involves any question having a relation to the rate of duty of customs or to the value of

goods for purposes of assessment if not the difference in duty or duty involved, or amount of fine or penalty involved or value of goods involved.

8. Reliefs claimed in the application.

Statement of facts

Grounds of application

- i)
- ii)
- iii) etc.

Signature of applicant.

Note: The form of application including the statement of facts and the grounds of application shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order of the collector of customs (one at least of which shall be a certified copy) of the /and a copy order of the board under sub-section (1) of section 129-d.

Form no. CA.-6
(see rule 8(1))

Form of application to the appellate tribunal under section 130(1) of the customs act, 1962

In the customs, excise and gold (control) appellate tribunal in the matter of appeal _____ (name of the appellant) reference application no. _____ of _____ 19 _____
(to be filled in by the office).

_____ appellant

vs

_____ respondent

1. State or union territory and the collectorate form which the application is filed _____
2. Number of the appeal which gives rise to the reference _____
3. Address to which notices may be sent to the applicant.
4. Address to which notices may be sent to the respondent.
5. The appeal noted above was decided by the _____ bench of the appellate tribunal on _____

6. The notice of the order under section 129b of the customs act,1962 was served on the applicant on_____

7. The facts which are admitted and/or found by the appellate tribunal and which are necessary for drawing up a statement of the case,are stted in the enclosure for ready reference.

8. The following question of law arise out of the order of the appellate tribunal.

- 1.
- 2.
- 3.

etc.

9. That the appliant,therefore,requires under sub- section (1)of section 130 of the customs act,1962 that a statement of the case be drawn up and the question of law referred in paragraph 8 above be referred to the hig court.

10. The documents or copies thereof as specified below(the translation in english of the documents, where necessary,is annexed)be forwarded to the high court with the statement of the case. signature of the authorised signature of representative if any.Application

Verification

I,_____the applicant to hereby declare that what is stated above is true to the best of my information and belief.

verified today,the _____day of _____19_____

signature of the authorised representative,if any

signature of the applicant,

Notes:

1. The application and the form of verification shall,if the application is made by any person,other than the Collector of customs,be signed by the applicant in accordane with the provisions of rule 3 of te customs (appeals)rules,1982.

2. The application shall be filed in triplicate.

3. The fee of Rs.200/- required to be paid under the provisions of the act shall be paid through a crossed bank draft drawn in favour

of the asstt.registrat of the bench of the tribunal on a branch of any Nationalised bank located at the place where the Bench is situated and the demand draft shall be attached to the form of application.

Form no.CA.-7
(see rule 8(2))

Form of memorandum of cross-objections to the appellate tribunal in the matter of reference to the high court under section 130(2) of the customs act,1962

In the customs,excise and gold (control) appellate tribunal cross reference application no. _____ of _____ 19 _____ (to be filled in by the office) in reference application no. _____ of _____ 19 _____
_____ applicant
vs.
_____ respondent

1. State/union territory and the Collectorate from which the memorandum of cross-objections is filed.
2. Date of receipt of notice of application filed with the appellate tribunal by the respondent.
3. Address to which notices may be sent to the respondent.
4. Address to which notices may be sent to the applicant.
5. The facts which are admitted and/or found by the appellate tribunal and which are necessary for drawing up a statement of the case,are stated in the enclosure for ready reference.
6. The following questions of law arise out of the order of the appellate tribunal:
 - (1)
 - (2)
 - (3)

etc.
7. The respondent,thereof,requires under sub-section(1) of section 130 of the customs act,1962 that a statement of the case be drawn up and the questions of law referred in paragraph 6 above be referred to the high court.
8. That the documents or copies thereof as specified below(the translation in English of the documents where necessary,is annexed)be forwarded to the High Court with the statement of the case.

Signature of the authorised

Signature

of the
representative,if any.
respondent.

Verification

I, _____, the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the _____ day of _____ 19_____
signature of te authorised signature of the
representative,if any respondent.
Notes

1. The memorandum of cross-objections and the form of verification shall if the memorandum is filed by any person, other than the collector of customs be signed in accordance with the provisions of rule 3 of the customs (appeals) rules, 1982.

2. The memorandum of cross-objections shall be filed in triplicate.

sd/-
(A.C.Buck)

Under secretary to the Government of India

f.no.492/3/82-cus.vi

I. Position earlier & under New Scheme

1. Prior to the date of setting up of the Tribunal, appeals against orders passed by officers in rank below that of a collector of customs or of excise lay to appellate collectors. appellate collectors would be redesignated as Collectors (appeals) who would hereafter hear such Appeals.

2. Against the orders of the appellate collectors, revision application could be filed to the central govt. after the tribunal is set-up, appeals against orders of the collector (appeals) would lie to the appellate tribunal.

3. Appeals against adjudication orders of the officers of the rank of Collector could under the law before amendment be filed with the Central Board of Excise & Customs in Customs & excise matters and the Gold Control Administrator in gold control matters. such appeals shall now lie to the Tribunal.

4. Against orders in appeal of the Central Board of excise and customs or the Gold control administrator, a revision application could be filed

to the Central government. After the tribunal is set up there would be no occasion to file a revision application against such orders in appeal since the Board and the administrator will cease to be appellate authorities however, those cases where revision applications are yet to be filed against such orders in appeals as on the date of setting-up of the tribunal, second appeals will lie to the tribunal. this would be a transitional measure.

5. Orders of the officers of the rank of collector or of the central board of excise and customs or the gold control administrator revising orders passed by officers subordinate to them under the law before amendment and the setting up of the tribunal, could be taken up in revision to the central government. after the tribunal is set up the central government will no longer be competent to hear revision applications except to the limited extent of hearing cases of small value where no question of rate of duty or valuation of goods for duty purposes is involved and where revision applications have already been filed. the tribunal will now hear appeals against such orders passed whether before or after the setting up of the tribunal.

6. The orders of the central government in revision were final and no further appeal was possible. further remedies against the orders passed by the tribunal have now been provided by application for reference to the supreme court or the high court, as the case may be or by appeal to the supreme court (in goods for duty purposes).

7. The Central Board of Excise and Customs/Gold control administrator or officers of the rank of collector could, on their own motion or otherwise, call for and examine the records of any orders passed by officers subordinate to them and annul or modify such orders if not satisfied with the correctness legality or propriety of such order. after the tribunal is set-up, such authorities can direct only in such cases, within two years of the date of the decision or order the officers subordinate to them to refer the matter to the appellate tribunal or in case the order sought to be annulled or modified is passed by any/officer lower in rank than a collector, to the collector (appeals)-however, revision proceedings commenced by and pending with the board/gold control administrator or a collector shall continue to be dealt with by such authorities under the provisions of law as it stood before the setting-up of the appellate tribunal.

8. The central board of excise and customs or the central government had no specific powers to amend their own orders passed in exercise of their appellate/revisionary jurisdiction. the appellate tribunal has been given powers to amend any order passed by it with a view to rectifying any mistake apparent on the face of the record at any time within four years from the date of the order and if the mistake is brought to its notice by a collector or other party to the appeal, the tribunal would make such amendment.

II-Significant changes

1. The appellate collector of customs & excise have been redesignated as collectors (appeals)

2. At present,appellate collectors are not expowered to go into any ground of appeal not specified in "grounds of appeal" filed by the appellant. the colletor (appeals)have been given the power to consider any fresh ground if satisfied that the omission of the ground was not wilful or unreasonable.

3. The central board of excise and customs and the gold control administrator have been relived of appellate powers and will no longer hear appeals.(the appeals will now lie to the tribunal).

4. The central government,which exercised powers to decide revision applications against appellate orders of the central board of excise and customs or appellate collectors shall no longer decide such cases,except in pending cases of small value (involving Rs.10,000/- or below) where no question of rate of duty or valuation of goods for duty purposes is involved. against such orders appeals,shall in future lie to the appellate tribunal.

5. The orders of the central government in revision used to be final and there was no provision for any further remedies. the orders of the appellate tribunal as far as facts are concerned,shall be final. further remedies are now provided against the orders of the appellate tribunal. a direct appeal to supreme court in matters involving rate of duty or valuation of goods for duty purposes has also been provided

6. Earlier,the department had no right of appeal/ revision aginst te orders of the appellate collector or the board or the gold control administrator. The department shall now have the right to appeal to the tribunal,both against orders passed by the appellate olectors under the law as it stood immediately before the setting up of the tribunal and also against the orders of the collector(appeals),as any other party.

7. Power has been given to the tribunal to amend its own orders to rectify mistakes,as explained in para-8 of I above.

8. Regulatory measures have been provided in regard to appearance through authorised representatives.

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Legal Section

Legal Section :- Working :- The Legal Section is the co-ordinating unit----- between the concerned group/section of the custom house and the law ministry/panel counsel of the government of india. appraisers and examiners are posted in the legal section for this task. The various interpretation of the rules,regulations, statute, and tariff give rise to litigation. the disputes gives rise to court cases in the form of writ petitions/suits,which in turn generates actions like filing affidavits, s.l.p., notice of motions etc. These actions can be generated either from the department or the litigants (the importer or the exporter) as the case may be.

The procedure to be followed in case of writ petition filed by the party is as under:-

As soon as the writ petition is recieved in the legal section, the legal section registers it and opens a file. After studying the petition, the file is sent to the group/section of the custom house, who are the main respondents in the petition for giving brief history, parawise comments and defence to be taken in the court at the time of admission. as soon as the file is received in the concerned group/section, it should be handled on top priority and the required information i.e. Brief history parawise comments and defence to be taken at the time of admission should be indicated and the file should be returned to the legal section within 24 hours. Where the file is not returned to the legal section and the case goes up on Board when the legal file is still in the concerned group/ section, on receipt of written intimation from the legal section that the case is on board for admission, the concerned Asstt. Collector will depute conversant Appraiser with the legal file and other documents considered necessary to go to the court with Appraiser/legal to brief the panel counsel. The legal file should be sent to the legal section after the concerned Appraiser comes back from the court. The Appraiser/ legal will record in the legal file the outcome of the hearing and interim order, if any, passed by the court. if available, uncertified copy of such order will be sent to the concerned section group for examining the interim order with a view to decide its implementation or to file appeal/SLP in the Supreme Court. The Asstt. Collector in-charge of the roup/section will ensure that the legal file is submitted to the Collector (judicial) for final orders through addl. collector/deputy collector incharge of the group/section within three days of its receipt in the Group/section. After the order is passed by the collecotr

(j), In case the order is to accept the court's order for implementation, the concerned section/group will make paralel file wherein they will keep a copy of the petition and photo copy of the note sheets containing legal section's note and collector (j)'s orders. thereafter, the action should be taken for implementation of the interim order of the court on receipt of the certified copy of the court's order from the petitioners. after impementation of the court's interim order a photo copy of the bill of entry, bond/bank

guarantee etc should be kept in the legal section's file. the concerned section/group should then give detailed parawise comments on the petition. the comments should be on each para of the petition. where any para does not need any comments, it should be so stated specifically. the concerned group appraiser shall contact the counsel and get the counter affidavit drafted, for opposing the petition at the time of final hearing.

It should be ensured that the legal file is returned to the legal section within one month of the date of the order of the implementation passed by the collector (judicial) in the legal file.

In cases, where the Collector (J) orders filing of appeal against the interim order of the high court before the division bench, where the order is passed by a single judge or filing of SLP in the Supreme court where the order is of a division bench of the high court, the concerned section/group should immediately open a paralel file in the section/group and keep photo copies of the documents such as copy of the writ petition and photo copies of the note sheets of the Legal section's file in the paralel file. They should then draft a U.O. reference giving grounds on which it is proposed to file an appeal against the interim order. This U.O. reference should be addressed to the Jt. Secretary and Legal Adviser, Law ministry, Aayakar Bhavan, annexe, New marine lines, Bombay 400 020 and should be typed in duplicate. The legal file with the U.O. reference should be returned to the legal section within three days of the order passed by the Collector (J) for filing of appeal. It will be the responsibility of the A.C. of the concerned Group/Section to ensure that the above time table is strictly followed as time for filing appeals is very short and each day is important.

In cases, where the final orders are passed by the hon'ble high court and the same are communicated to the concerned group/section by the legal section by noting in the legal section file, the concerned group/section will take similar action mutatis mutandis of putting up the file to the Collector (J) for final order through Add. Collector/ Deputy collector incharge of the Group/section concerned. this will be in cases where the final order of the court is in favour of the petitioners.

Where the final order of the court is in favour of the department, and the legal file is sent to the concerned group/section will immediately take recovery action. a copy of the demand notice issued to the petitioners/bank for recovery will be placed in the legal file and the legal file should be returned to the legal section within 10 days of its receipt in concerned group/section. the legal section will be monitoring recovery action of dues in such cases and therefore, as and when these dues are recovered, the concerned group/section will send a report in the matter, indicating the amount recovered and cash no. under which it is deposited, to the legal section for making entries in their file and other registers, so that, on completion of

recovery action, the legal file can be closed and sent to record.

In cases where the department wants to file writ petition

 Notice of motion,S.L.P.etc.

In such cases the concerned section will first write to the legal section giving the full facts of the case. the legal section will in turn refer the matter to the law ministry. if the law ministry considers the case fit, then they will allocate a panel counsel for the case. the legal section in turn will intimate the concerned officer about the appointment of the panel counsel. the appraiser of the concerned department will then contact the panel counsel and appraise him of the full facts of the case and give copies of all documents required to draft the writ petition/notice of motion/ affidavit/S.L.P. etc. as the case may be. After drafting, the concerned assistant collector of the department will go to the High Court to sign or affirm the documents as the case may be. the affirmation will be before the high court associate. Generally six copies of the docket (papers of the case) are required. out of the six copies two docket should be on green ledger paper while the remaining four copies should be on white paper. the two green dockets are for the judges. the entire six docket should be given to the law ministry for filing the case.

Once the papers are filed the legal section will keep a track of the case. as soon as the case is listed for hearing, A.O. or E.O. of the legal section will intimate, the concerned appraiser who will attend the case along with A.O. legal. The concerned A.O. and the A.O. legal will remain present, if necessary till the case is decided. the concerned A.O. will note the gist of the proceedings and report to the Assistant Collector in-charge of the section. similarly the A.O. legal will note down the gist of the proceedings in the specific legal register kept for that purpose. If an order is passed by the judge, A.O./E.O. legal will ask the law ministry in writing to apply for the certified/uncertified copy of the order. If the order is in favour of the department the certified/ uncertified copy will be obtained and sent to the concerned section for immediate action. However if the order is against the department, the the certified/uncertified copy will be obtained and sent to the concerned department, so that orders of collector may be obtained for filing an appeal. If the collector has ordered to file an appeal against the order, then the appraiser of the concerned department will make the grounds of appeal. This should be done within three weeks from the date of the order of the high court. the actual time period for filing an appeal against the order is ninty days from the date of the order of the high court or the date of issue of the certified copy of the order by the high court, which ever is later. However if the Law Ministry opines that the case is not fit for filing appeal, then the same should be put up to Collector for compliance of the order of the high court.

Meaning of writ: It is legal document which begins an action in the High Court. to give a Writ to someone or to file a writ petition is to ask that

person to defend himself or allow judgement to be taken against him. The writ is basically issued where the fundamental rights are infringed.

There are various types of writs like

Writ of Habeas Corpus to obtain the release of someone who has been unlawfully held in prison or police custody.

Writ of certiorari means an order to transfer The case to the High Court for investigation into the legality of the case.

Writ of Mandamus It means the ordering by the High Court to the lower legal body to carry out certain legal duty as directed.

Meaning of 1. Affirmation : It is a statement made on oath to tell the truth.

2. Affidavit : It is a written statement which is signed and sworn before a solicitor and which can be used as evidence in court hearing.

3. Status quo ante : The situation as it was before.

4. Anticipatory bail : It is a bail given before the person is arrested.

5. Audi alteram partem :It means hear the other side. It is a rule in natural justice that every one has the right to speak in his own defence and to have the case against him explained to him.

6. Awol: Absent without leave.

7. Bail: Releasing a person from custody after payment has been made to the court as guarantee that the person will attend to face trial.

8. Bench : A place where the judges or magistrate sits.

9. Bias : Leaning towards or favouring one party in a case.

10. Bond: A contract document promising to repay money in case of breach of contract.

11. Bounty : Government subsidy made to help an industry.

12. Brief : Details of a clients case prepared by the Advocate for arguing the case in court.

13. Burden of proof : The duty to prove that something which has been alleged is true.

14. Clean hands : The plaintiff cannot claim successfully if his motives or action is dishonest.

15. Coercion: Forcing someone by pressure.

16. Confiscate: To take away the private property into the possession of the state.

17. Contract : A legal agreement between two parties.

18. Corrigendum : Correction or words which have been corrected.

19. Cross-Examine : To question the witnesses called by the otherside in a case.

20. Caveat : To warn legally that you have interest in the case and no step can be taken without notice.

21. Deponent : A person who makes a statement under oath or by affidavit.

22. Docket : A list of contents of the documents.

23. Estoppel : A rule of evidence whereby someone is prevented from denying or asserting a fact in legal proceedings.

24. Et al : Means and others or and other things.

25. Et seq.: And the following.

26. Ex parte: Where only one side is represented. other side is absent.

27. Fiscal : Referring to government revenue or tax.

28. Hearsay evidence : The evidence by a witness who has heard it from another source, but did not witness the act himself (it is inadmissible in court).

29. Ibid or ibidem : Just the same or in the same place.

30. id or idem : The same thing or the same person.

31. In re : Concerning or in the case of.
32. In rem : Against a thing like action in rem i.e. action against a property or person.
33. Inter alia : Among other things.
34. Intra vires : Within the permitted powers.
35. Ipso facto : By this very fact or the fact itself shows.
36. Jus : Law or right.
37. Laches : Long delay or neglect in a legal right.
38. Lieu or in lieu of - instead of.
39. Locus standi : "place to stand" or right to be heard in court.
40. Mala in se : Wrong in themselves - Acts which are in themselves a crime.
41. Mens rea : Guilty mind - Mental state required to be guilty of committing a crime.
42. Modus operandi : Way of working, especially a particular way of committing a crime.
43. Notary public : A lawyer who has the authority to witness and draw up certain documents and so make them official.
44. Obiter dicta : Things which are said in passing. part of the judgement which is not essential to the decision
45. Onus : Responsibility to do something. duty to prove that what has been alleged is correct.
46. Pari passu : Equally or with no distinction between them.
47. Pendente lite : During the law suit.
48. Per quod : By which or whereby.
49. PER SE : On its own or alone.

50. Perjury : Offence of telling lies when you are under oath to tell the truth in court.

51. per pro : With the authority of or on behalf of.

52. Petition : Written application to the court.

53. Prima facie : On the face of it or as things seems first.

54. Pro tempore : Temporarily of for a time.

55. Proviso : Conditions in a contract or deed begining with "provided that..."

56. Quash : Annul or make something not exist.

57. Quid pro quo : One thing for another. Action done in for something done or promised.

58. Ratio legis : Reason of law - The principle behind law.

59. Ratio decidendi : Reason for deciding. Main part of a court judgement setting out the legal principles applicable to the case and forming the binding part of the judgement to which other courts must pay regard.

60. Rejoinder : Pleadings served in answer to the plaintiff's reply.

61. Res gestae : Things which have been done.

62. Res judicata : Matter on which judgement is given.

63. Rescind : To annul or cancel.

64. Sans recours : With no recourse. No responsibility of the person making the document.

65. Seriatim : One after the other in serial order.

66. Short title : Usually name by which an act of parliament is known.

67. Sic : If used after a word it denotes the way the word was actually written in the document in question.

68. Stare decisis : Stand by preceding decisions, principles the courts must abide by precedents set by judgements of high court.

69. Stay order : Temporary stopping of an order made by court.

70. Sub judice : Under the law, being considered by a court and so not decided. Hence others cannot consider or report or influence the matter.

71. Suppressio veri : Suppressing the truth, act of not mentioning some important fact.

72. Trial : A criminal or civil court case heard before a judge.

73. Ultra vires : Beyond power, exceeded the legal right.

74. Verbatim : In the exact words.

75. Waive : To give up the right.

76. Witness : A person who sees something happen or is present when something happens.

77. Writ : A legal document which begins an action in the high court.

Duties of the Appraiser in legal section:-

1. He shall attend the high court for co-ordinating between the officers of the concerned customs department and the officers of the law ministry/panel counsel.

2. He will attend to the cases when the same comes up for hearing along with the concerned officer of the department and will note the gist of the proceedings in the register kept for that purpose.

3. He will correspond with the law ministry to obtain the orders passed by the high court.

4. He will make noting in the legal file regarding the progress of the case and also see that intimation of the case is given to the concerned department.

Duties of the Examiner in legal section:-

1. Attend the high court and co-ordinate with the officials of the law ministry.
2. Will take the dockets to the Law Ministry, and will obtain information about the posting of the panel counsel, so that the officers of the concerned department can be intimated accordingly.
3. Assist the Appraiser while attending the High Court.
4. Will ensure that all the details of the cases are entered in the computer.
5. Will take the Assistant Collector of the concerned department to the high court at the time of affirming the affidavit or other such documents, in co-ordination with the staff of the law ministry.

Standing order

S.O.no. 6708 dated- 19th march 1979

Sub:- Detention of goods under court cases- the ministry of finance have directed that with a view to avoiding detention of goods under court cases, the courts should be moved in each case for permission to sell the goods pending courts decision (the sale proceeds to be deposited with the custom house/court till the courts decision) if the court does not grant such a permission it should be moved for requiring the contestants to deposit suitable amounts with the concerned deptt./with the court toward warehouse rents.

These instructions should be followed in each case in future as well as in the pending cases. file no. c003009 / 79 S.o. dated 14-2-1986

Sub:-Conduct of court cases -

In order to streamline the procedure regarding conduct of court cases by the legal section the following instructions are issued with immediate effect :- The primary responsibility for conducting court cases will post with the legal section except in cases pertaining to personnel matters which will be dealt with by the personnel and estt.department. So far as preventive cases are concerned these will also be dealt with by the preventive department whether of the custom house or of the preventive collectorate. The legal section will however function only as a co-ordinating agency and the concerned sections viz. appraising groups, the export department and others will

render all technical assistance required. considering the importance,SIIB and CIU. of the custom house may continue to handle cases emanating from these sections.

No.(1)- Admission cases :

For the purpose of attending to fresh writ petitions which come up for admission and interim order in the High Court of Bombay Two Appraisers will be earmarked from legal section for this purpose. Normally copies of the writ petitions are received the preceeding day. it will be the duty of these two Appraisers in the legal section to go through the petitions and in consultation with the concerned Appraising group/section they will identify the legal and factual issues. After identifying these issued in consultation with the group the matter will be discussed by these Appraisers with Asstt.collector of customs,legal/Deputy collector of customs,legal section or wherever necessary with the concerned Dr.collector the same day when the petitions are received or in the morning of the day when these petitions are coming for admission and interim relief. They will take instructions from the A.C.(legal)/D.C. (legal) or the concerned Dy.Collector regarding the modelities of opposing the admission of the position and also opposing the grant of interim relief. Based on there instructions they will brief the concerned Govt. counsel in the Court.

In the court before the case comes up for admission these Appraisers will brief the counsels and invariably instruct the counsels that in case the petition is admitted by the High Court or interim relief is ordered the counsel should invaribaly make all efforts to secure government revenue by way of Bond/Bank gurantee where levy of duty was in challegne or take ITC bond supported by bank gurantee wherever possible,where licence angle was involved. In cases where the copies of petitions are received late and there is not enough time to identify the issues and for briefing the counsels request should be made to the court to give time to the department to study the petition before it comes for admission.

These instructions should be given to the counsel in such cases,even though on a similar issue in terim orders had earlier been given by the High Court. This is necessary since in each case the government counsel should oppose admission and try to secure the Department's interest in the manner indicated above.

In case the high court gives interim relief instructions should be given to the counsel always to make a request that the operation of such an interim order should be stayed atleast for a period of two weeks to eable the department to file appeal, if considered necessary against the interim order.

At the end of each day, all cases where interim relief has been given and petitions have been admitted should be put up to A.C.(legal)/D.C.(legal) for taking a stock of the situation. The dealing Appraisers of the legal section who attend the court will briefly write the instructions which they gave to the counsel and also whether these points were argued by the counsel in the high court and all other developments in the case. They will then briefly indicate the interim order. Thereafter the question whether an appeal should be filed against such an interim order or not should be examined in consultation with A.C (legal)/D.C.(legal) on top priority basis.

If it is decided to file an appeal against the interim order, D.C.(legal) will obtain the orders of Principal Collector. In case it is decided to first implement the interim order and then only file appeal or application for variation, the interim order will be immediately implemented after taking Principal Collector's orders.

A. In the case of an interim order where the decision is taken to file appeal, action to file appeal will be initiated in the next 24 hours particularly in cases where the interim order operates immediately.

B. Filing of appeals will be co-ordinated by one Appraiser in the legal section who will be entrusted with all appeal matters and also those against the interim orders. He will ensure that after Principal Collector's orders for filing appeal against the interim order a memo of appeal is drafted by the concerned government counsel within 24 hours and filed in the court. In case it is considered necessary take advice of the advice section of the Ministry of Law before filing appeal, necessary action in this behalf will be taken immediately.

Cases where interim orders are not implemented immediately as it is decided to file appeal will have to be reviewed on daily basis and in case there are any delay in filing appeal or where the interim order is to be implemented within a particular time, the interim orders will be implemented straightaway after informing the D.C.(legal). This should be ensured in all circumstances lest any contempt petitions are filed for non implementation of the interim orders within the time allowed by Hon'ble High Court.

No.(2) Notice of motions, contempt petitions etc.

The procedure mentioned above regarding fresh petitions will apply mutatis mutandis to the conduct of these petitions also.

All important developments in the conduct of court cases during the week will be reported by the legal section Appraisers, A.C.(legal) and D.C.(legal) in a conference with collector at 3 p.m. on each Wednesday, or on Thursday if Wednesday is a holiday or the Principal Collector is out of station or otherwise busy. In important cases as per directions of Principal Collector

report may also be sent to the board.

No.(3) Cases which come for final hearing in the Bombay High court -

All cases which are posted for final hearing whether before the single judge or the division bench for final hearing will be consolidated and compiled in the legal section under the supervision of the Appraiser in charge of these matters in the legal section. The main duty of this Appraiser will be to co-ordinate such cases. He will also list out the important points of law which arise in those cases in consultation with the concerned group/section of the custom house. Whenever any case comes for final hearing in the Bombay High Court the matter should also be discussed with the Principal Collector and his directions taken regarding the conduct of the court case and appointment of the government counsel including senior government counsels or special fee counsels.

When the final decision of the High Court is received in such cases this will be examined by A.C./ (legal)/D.C.(legal) in consultation with the concerned Dy.collector if necessary. papers will then be put up to the Principal Collector for orders whether an appeal against this order should be filed in the High Court or whether a reference may be made to the Board for filing appeal / S.L.P.to the Supreme Court. wherever necessary for filing appeal the advice of the advice section of the branch secretariat of the Ministry of Law will be obtained on an urgent basis.

Whatever is the decision taken after a final order is received from the Bombay High Court the outcome thereof will be reported to the board.

No.(4) Cases in other courts in Bombay

As far as practicable the above procedure will apply to the conduct of court cases in other subordinate courts in Bombay.

No.(5) Conduct of cases pending in other High Courts and the Supreme Court-

This will be the responsibility of the fifth Appraising officer in the legal section. He will take stock of the cases pending in the different High Courts in the country from time to time and send letter/reminders to the concerned authorities regarding the conduct of these cases in the concerned High Court.And also regarding expeditious disposal of these cases by the concerned High Court.

No.(6) Preparation of parawise comments, filing affidavit etc.in the order high courts-

 The Appraiser dealing with the conduct of cases in other High Court and also the Appraiser dealing with other matters like co-ordinating cases which come for final hearing will together ensure that parawise comments in respect of the cases filed in various High Courts are prepared by the concerned group/sections in the customs house and forwarded to the concerned government counsel. He will also keep the list of such cases where such parawise comments are pending and bring this to the notice of A.C.(legal)/D.C.(legal) and Principal Collector from time to time.

Conduct of the cases in the Bombay High Court, where the matters are coming for final hearing will be the job of the appraiser who is assigned for the purpose of filing appeal etc.

No.(7) Cases in S.I.I.B. and C.I.U.

 The above procedure as far as practicable will apply to cases arising from siib and ciu and these cases will be conducted by those sections only but with the assistance of the appraisers in the legal section and also if need be concerned appraising group/sections. All concerned whether appraisers, or Asstt. collectors or Dy. collectors from whose charges the court cases emanate shall render all possible help to the Appraisers of the legal section. wherever required they will also accompany them to the central government counsels for the purpose of briefing and also for the purpose of filing affidavits wherever required.

No.(8) Other U.O. Reference to the Law Ministry.

 Wherever such references are made by the concerned Appraising groups/sections of the customs house these will be prepared by the concerned section only and forwarded to the law ministry through the legal section. the legal section will maintain a register for all such references and keep copies of the advice and the reference in a master folder.

[f.no. c003907/86]

Standing order no. 7044 date : 2.11.1993.

 Sub: filing of S.L.Ps in Supreme Court.

The Hon'ble Supreme Court of India has been highly circumspect in condoning delay in filing SLP's by the department more so where the delay has occurred on account of failure on the part of the department to act speedily in the matter. The Central Board of Excise & Customs has also taken a very serious view of the delays. It has been decided by the Board that in future no time barred appeals shall be filed in any forum unless

a) A decision has been taken by the full board in

particular cases, and

b) The government's law officer, at the level of Additional Solicitor General, concurs with the same.

It is therefore necessary that all decisions of the High Court where an Appeal to the Supreme Court is to be filed are scrutinised and reported to the board within three weeks of the passing of the order by the High Court.

2. In order to ensure that an appeal to the Hon'ble Supreme court does not become time barred, the following procedures is prescribed:

a) In officer present in the court at the time when an order/judgement is passed by the hon'ble court will on the same day or the next day report the order/judgement to the legal section and the group/section concerned in writing for immediate action.

b) The AC/Legal on the same day will write to the Law Ministry to obtain a certified copy of the order.

c) Asstt.collector/Legal will ensure that an uncertified copy of the order passed by the court is obtained within maximum one week from the date of passing of the order and made available to the Asstt. Collector concerned.

d) On receipt of the gist of the order/judgement from the officer who was present in the court the Asstt.Collector incharge of the group of section will process the same most urgently. Where the judgement is against the deptt. and edp is required to be filed, the concerned Asstt.collector will obtain the uncertified copy of the judgement from AC/legal within a week. If the copy of the judgement is not given by AC/legal within a week, he will bring this fact to the knowledge of the Collector. After getting the uncertified copy of the judgement, AC/group will prepare a note giving brief particulars the issue involved, the existing practice in the matter the repercussions of the judgement, brief chronological facts of the case, the revenue involved and submit the proposal through the Addl.Collector to the Collector for filing of SLP against the order. Asstt.Collector concerned will be responsible for submitting the proposal to the additional collector/collector within 5 (five) days of the receipt of uncertified copy by him from AC/legal.

3. After the Collector has approved the filing of SLP, the Legal section will (without waiting for the certified copy of the judgement) forward the proposal for filing of EDP to Member (L & J) under signature of Collector by Speed post, containing inter alia:

i) Brief particulars of issue involved, the existing practice in the matter and the repercussions of the judgement on revenue,

- ii) Brief chronological facts of the case,
- iii) Analysis of the judgement,
- iv) Certified copy of the judgement (if there is delay in obtaining the certified copy, a typed copy of the judgement obtained informally to be attached).

4. It will be the personal responsibility of AC/legal to ensure that the proposal for filing the SLP is submitted to the Collector within a maximum of 14 days. He will also ensure that the proposal to file EDP is sent to Member (L&J) within a maximum period of three weeks from the date of passing of the order by the court. Any difficulty faced by him will be reported to the Addl. Collector or Collector forthwith.

5. Any difficulty/procedural problems arising in the implementation of the above procedure should be brought to the notice of the concerned Addl. collector and the Collector immediately for consideration and issue of appropriate orders. The above procedure should be scrupulously followed, and if any SLP becomes time bared on account of negligence on the disciplinary proceedings initiated against the officer responsible for delay.

Attested sd/- (S.K.Bharadwaj)
 (G.N.Joshi) Collector of Customs - II, Bombay
 A/c, Legal section, Bombay.

S.O.no. 6868 dated-

It has been noticed that the handling of legal files in the groups leaves a considerable scope for improvement.

2. By and large it is seen that once the legal file is sent to the group, it remains there even after action such as implementation of the court orders is taken. This should be avoided. The file should be returned to the legal cell as soon as the action on that file is over.

3. It is also observed that the action for implementation of the court's orders is taken by Appraising group in the legal file itself, which is not correct. As a result of this practice no proper record is kept of the action taken after court's order. The following procedure should be adopted with immediate effect.

a) Each A.C. of the Appraising group will nominate one clerk who will be responsible for handling and custody of file relating to legal issues.

b) A register in the format annexed will immediately be opened in the groups. It will be the responsibility of this clerk to maintain this register which should be inspected by A.C. from time to time.

c) As soon as the legal file is received in the group for implementation of court's order, a parallel file will be opened by the group in which a copy of the court's order and relevant notes of legal section will be kept. The particulars of file /W.P. should be entered in the register. Cross reference of the legal as well as group files should be given on the cover of each file. Once the order is implemented the particulars of bond etc. Also be mentioned in this file and photo copy of the relevant bills of entry should be kept in it. After implementation of the court's order, the group should immediately prepare parawise comments and brief history of the case. The file should be returned to the legal section expeditiously. The A.C's should ensure that the parawise comments are complete and exhaustive.

4. No legal file should be unnecessarily kept in the groups and should be returned immediately after action is over to the legal cell. The A.C's of the Appraising group should take immediate stock of the legal files lying in their groups and return them immediately to legal section after taking necessary action such as preparing parawise comments.

5. The register shall be in the two parts. Part I should contain details of cases involving assessment disputes. Part II contain details of cases involving ITC disputes. Wherein case involves disputes of both ITC and assessment matters, it should figure in part I of the register. file no. c 0003907/86

S.O. no. 6969 dated 20-2-91

Sub: Procedure in respect of Court matter – Implementation some instances have come to notice, where some group/ sections in the custom house have implemented the interim orders of the high court without taking orders from the Collector (Judicial). All the groups/sections of the custom house are, therefore, directed to follow the following procedure in respect of the court cases. These instructions will be in addition to the instructions already existing on the issue.

As soon as the writ petition is received in the legal section, the legal section registers it and opens a file. After studying the petition, the file is sent to the group/section of the custom house, who are the main respondents in the petition for giving brief history, parawise comments and defence to be taken in the court at the time of admission. As soon as the file is received in the concerned Group/section, it should be handled on top priority

and the required information i.e. brief history parawise comments and defence to be taken at the time of admission should be indicated and the file should be returned to the legal section within 24 hours. Where the file is not returned to the legal section and the case comes up on board when the legal file is still in the concerned group/section, on receipt of written intimation from the legal section that the case is on Board for admission, the concerned Asstt. collector will depute conversant Appraiser with the legal file and other documents considered necessary to go to the court with Appraiser/legal to brief the panel counsel. The legal file should be sent to the legal section after the concerned Appraiser comes back from the court. the Appraiser/legal will record in the legal file the outcome of the hearing and interim order, if any, passed by the court. If available, uncertified copy of such order will be sent to the concerned section/group for examining the interim order with a view to decide its implementation or to file appeal/SLP in the Supreme court. The Asstt. collector in-charge of the group/section will ensure that the legal file is submitted to the Collector (judicial) for final orders through addl. Collector/Deputy collector incharge of the group/section within three days of its receipt in the group/section. After the order is passed by the Collector (J), in case the order is to accept the court's order for implementation, the concerned section/Group will make parallel file wherein they will keep a copy of the petition and photo copy of the note sheets containing legal section's note and Collector (J)'s orders. Thereafter, the action should be taken for implementation of the interim order of the court on receipt of the certified copy of the court's order from the petitioners. after implementation of the court's interim order a photo copy of the Bill of Entry bond/bank guarantee etc should be kept in the legal section's file. The concerned section/group should then give detailed parawise comments on the petition. The comments should be on each para of the petition. Where any para does not need any comments, it should be so stated specifically. the legal file should then be returned to the legal section for getting a counter affidavit drafted for opposing the petition at the time of final hearing. as far as possible, it should be ensured that the legal file is returned to the legal section within one month of the date of the order of the implementation passed by the Collector (Judicial) in the legal file.

In cases, where the Collector (J) orders filing of appeal against the interim order of the High Court before the division bench, where the order is passed by a Single Judge or filing of SLP in the Supreme Court where the order is of a division bench of the High Court, the concerned section/group should immediately open a parallel file in the section/group and keep photo copies of the documents such as copy of the writ petition and photo copies of the note sheets of the legal section's file in the parallel file. They should then draft a U.O. reference giving grounds on which it is proposed to file an appeal against the interim order. This U.O. reference should be addressed to the Jt. Secretary and Legal Adviser, Law Ministry, Aayakar bhavan, Annexe, New Marine Lines, Bombay 400 020 and should be typed in duplicate. The legal file with the U.O. reference should be returned to the legal section within three days of the

order passed by the Collector (J) for filing of appeal. It will be the responsibility of the ac of the concerned group/ section to ensure that the above time table is strictly followed as time for filing appeals is very short and each day is important.

In cases,where the final orders are passed by the Hon'ble High Court and the same are communicated to the concerned group/section by the legal section by noting in the legal section file,the concerned group/section will take similar action mutatis mutandis of putting up the file to the Collector (J) for final order through Addl.collector/Deputy collector incharge of the group/ section concerned. this will be in cases where the final order of the court is in favour of the petitioners.

Where the final order of the court is in favour of the department,and the legal file is sent to the concerned group/section will immediately take recovery action. A copy of the demand notice issued to the petitioners/bank for recovery will be placed in the legal file and the legal file should be returned to the legal section within 10 days of its receipt in concerned group/ section. the legal section will be monitoring recovery action of dues in such cases and,therefore,as and when these dues are recovered,the concerned group/section will send a report in the matter,indicating the amount recovered and cash no.under which it is deposited,to the legal section for making entries in their file and other registers,so that,on completion of recovery action,the legal file can be closed and sent to record.

Other instructions

Circular no.28 dated 18.8.84

It has been observed in legal section that the various departments,groups and section of the custom house often ask the advice on points of law or for implementation/interpretation of orders/judgements of various courts.

The legal section of this custom house manned by appraisers and an asstt.collector is not in position to give advice on legal matters on their own. they in turn have to seek advice from the advice section of ministry of law.

So with a view,to avoid transitional delays,all the asstt.collectors,heads of departments/sections and other concerned are hereby requested that, whenever any advice on any matter is sought,the same be sent to legal section in a self contained note giving the reasons in detail regarding the law points involved and clarification/advice sought so as to enable the legal section to obtain the requisite advice/clarification from the said advice section of the ministry of law. file no. c004541 / 84

Circular no 3 dated 21.5.87

In order to keep upto date records including amount of duty (revenue) involved in court cases in case following instructions are issued with immediate effect.

The court case file will be sent to concerned group after obtaining orders for implementation of the court's orders from collector. the group will implement the court's orders and return file after showing the revenue involved in each case alongwith possible with parawise comments with in 7 working days.

The clerk in legal section will insert the amount in register and forward the comments to law ministry for preparing draft affidavit. file no. c004485/ 87

Appeals to the board need for prompt intimation regarding court proceedings.

Instances have been noticed that the boards often not kept informed of court proceedings such as writ petitions or even prosecutions in cases which are the subject matter of appeals to the board. it has happened that a particular case was fixed for hearing and on the date of hearing the advocate of the appellants points out that a writ petition had been filed in respect of the very order which was under appeal, and that the matter was, therefore, sub-judice.

In order to avoid such a situation and to ensure that there would be no occasion for the board to pass an order which could be construed to be in contempt of court, it is desirable that whenever any court proceedings are instituted by as against the department, it should be ascertained by the department/unit dealing with the court case whether there is any appeal in respect of the same matters pending before the board. if so, a brief report regarding the court case should be immediately forwarded to the appeals unit of the board. The board (appeals unit) should thereafter be kept in touch with any important development in the court case, and a copy of the judgement finally delivered, should be forwarded to it. these reports will be in addition to any reports sent to the sections of the board concerned with court cases as such

[authority - ref.c.b. e.c. letter f.no.390/7/72-cus.
ii(a),dated 10-12-72]

Direction of court regarding disposal of readjudications, appeals/revision application steps to be taken by legal section.

In all cases where the court has given some directions regardig disposal of readjudications and appeals/revision applications within a certain specific period, prompt action must be taken by all the concerned staff of the custom house particularly those in the legal section, to bring this fact

to the notice of the adjudication and appellate authorities. Where the appeals and revision applications are with the board and the ministry respectively they should be informed immediately on receipt of court's orders so that the appeals/revision applications could be disposed of within the time limit fixed by the court.

[authority - s.o.genl.5 dated 22-6-70,c.h.file no. legal section 48/70 letter dated 28/29-4-70 from member (cus.) to collector of customs madras.]

Filling of affidavits / counter affidavits in court cases

The following procedure should be adopted when filling affidavits/counter affidavits in court cases in future:-

In routine matters when no important issues are involved and when there is no time,the affidavits/ counter affidavits should be filed after they are settled by the local government pleader.

In cases when heavy stakes are involved,important questions of law are raised and there is time,the affidavits/counter affidavits should always be referred to the board before they are filed in the courts.

[letter no. 2/69/55-cus.vi dated 2-8-57 from the Central board of revenue. new delhi r.3026/57] persons authorised to sign plaints, written statement in suit in any court of civil jurisdiction.

The Government of India,Ministry of Law,have in their notification s.r.o.no.351 dated 25-1-58, appointed (i) collectors of customs, additional collectors of customs,deputy collectors of customs, as persons by whom plaints and written statements in suits in any court of civil jurisdiction by or against the central government shall be signed, and (ii) those of the above mentioned officers who are acquainted with the facts of the case,as persons by whom such plaints and written statements shall be verified.

Administration - Defending of civil suits notices under section 80 of the civil procedure code-treatment of-the object of providing a notice of two months under Section 80 Cr.P.C. before suits are filed against the government, is to enable the department concerned to review the facts and if the notice giver's grievance is legitimate to settle the matter suitably without having recourse to court of law as soon as such notices are received in the office, prompt enquiries should be instituted and reports submitted o the board with the least possible delay so as to enable the government to decide not only whether the threaten-fed suits,if filed,should be defended, but also whether the party's grievance should be met without recourse to the courts.

[c.b.r. letter no. 66(77)-cus.i/cus iii/54 dt.22-6-54]

Action on suit notices under Sec.80 c.p.c. instructions regarding.

With a view to take prompt action in dealing with suit notice under section 80 c.p.c.the following instruction of the govt.of india, contained in ministry of law, office memorandum no.f.93(1)57 o&m dated 11-12-67 is reproduced below for the guidance of the concerned staff.

A party proposing to institute a suit against the central government is required,under section 80 of the code of civil procedure to give a notice of the proposed suit in writting to the central government. the notice is to be served.

(a) In the case of a suit relating to a railway, on the general managar of that railway; and

(b) In the case of any other suit,on a secretary to the government of india.

The object of the suit notice is to provide to the gocerment an opportunity to reconsider their position in regard to the calim made by the party and, if necessary,to make amends or settle the claim without litigation.

2. Exprience shows that the government are involved in avoidable or fruitless litigation due to failure to examine carefully the position of the government on service of suit notices. such litigation apart from entailing wasteful labour and expense,brings discredit to government.

3. The following instructions are accordingly issued for the guidance of the ministry of house affairs etc. in dealing with suit notice by them.

4. On receipt of a suit notice, the department concerned should, without delay, pass it on to the officer, not below the rank of an under secretary, dealing with the matter out of which of claim made in the notice arises. The officer should be personally responsible for examining the claim. If the claim involves reference to an attached or a subordinate office, a copy of the notice should be promptly sent to the office concerned for a detailed report. The final action on the notice should, however, be taken by the officer himself.

5. The officer should make a detailed examination of the claim made in the notice. the notice may be in respect of-

(i) A claim which has already been examined and has been

rejected;

- (ii) A claim which is still under examination or
- (iii) A claim which has not been examined at all.

6. In regard to a claim of the first category, it should be considered whether any new allegations, which have not been examined before, have been made in the notice. Such new allegations; if any, should be thoroughly examined and it should be considered whether the earlier decision of the government should be maintained or in any way altered. If the Ministry of Law was not consulted when the previous decision was taken, or if now allegations are made in the notice, the advice of the ministry of law should be invariably sought before final decision on the claim is taken.

7. In regard to a claim of the second category, the examination of the claim should be completed with the greatest promptitude and the Ministry of Law should be consulted in every case.

8. In regard to a claim of the third category, the claim should be fully examined and the action to be taken should be determined in consultation with the Ministry of Law.

9. In making a reference to the Ministry of Law, a self-contained note giving the entire history of the claim and parawise comments on the various allegations made in the notice should be prepared and all relevant documents and materials, duly flagged, should be made available to them

10. If it is finally decided to reject the claim a reply may not be advisable but it is possible that in certain cases a reply would be necessary. advice of the Ministry of Law should be sought before sending a reply. If it is considered that the claim is admitted partly, advice of the Ministry of law should be sought regarding the form of reply to be sent and regarding action to be taken for settlement of the part claim admitted. if, in any odd case, a decision on the claim could not be taken within two months of the receipt of the notice an interim reply as in Annexure I should be sent.

11. In all cases of doubt, the advice of the Ministry of Law should be sought before sending a reply to the notice.

12. The party giving the notice would be entitled to institute the suit in respect of which notice is given on the expiration of two months after service of the notice. It is imperative that the examination of the claim should be completed and a final decision taken well in advance of the expiration of the period of the notice. Every suit notice should, therefore, be treated as an 'immediate' reference and dealt with accordingly.

[f.no.4/11/69 cus.vi. c.b.of ex.&cus. dt.13-5-69]

From :
 To :
 Sub :
 Sir,

With reference to the notice of suit dated... ..
 given by you in respect of the above claim, I am directed to state that your
 claim is under consideration.

Court cases - Approval for appeal

In the matter of appeal against adverse judgements, the
 board desires that action may invariably be taken by the custom house as below :

Where a judgement is against the government, a copy
 should be forwarded to the board as soon as possible.

The custom house should examine urgently whether it is
 necessary to appeal against the judgement. Where possible, the advice of the
 government solicitor and / or the counsel who dealt with the case should be
 obtained and forwarded (if this required a little time, copy of the judgment may
 be forwarded straightway and this may follow).

The date by which an appeal has to be lodged should
 invariably be ascertained and communicated to the Board.

In all cases where the custom house is advised by its local
 legal advisers that an appeal to the supreme court is advisable, at least a
 formal application should be filed so that at least limitation is saved

[c.b.r.'s letter no. 4/54/60-cus.i,dated 14-11-1963]

Filing of appeals to the Supreme Court against the
 judgement of High Courts.

It has been intimated by the Board that in accordance with
 the Finance Minister's direction, in future his prior approval should be
 obtained in any case where it is proposed to file an appeal to the Supreme
 Court against a judgement of any High court. The present system of obtaining
 legal opinion by the custom house on the merits of the case and thereafter
 referring the matter to the Board for filing an appeal to the Supreme court
 sometimes leaves very short time for the board to accord its approval to the
 filing of the appeal because such references are made at the last moment. In
 view of the extreme importance attached by the Finance Minister to the question
 of issues being arbitrated in the Supreme Court after they have been determined
 by a High Court, all such cases where it is proposed to go to the Supreme Court

in appeal should be brought to the personal attention of the Collector and should be examined in the light of competent legal advice before the matter is referred to the Board. The reference to the board must also be made well in time to process the case fully for obtaining the prior approval of the Finance Minister.

Assistant collector, legal section shall ensure that the above procedure is strictly observed in all such cases. [d.o. dy.no. 6612-m(cus.9/78, dated 18-9-78 from member customs)]

Rule Nisi issued by Supreme Court in writ petitions under article 32-procedure to be followed

After the amendment of the supreme court rules, there is a preliminary hearing of writ petitions under article 32 of the constitution and if the court is satisfied, a rule nisi is issued on the respondents by the Supreme Court by which a returnable date is fixed and under the Supreme Court. rule 10, the respondents are to file their affidavit in opposition in the registry of the Supreme Court not later than four days before the returnable date. the revelant is quoted below for ready reference :-

"10. Unless the court otherwise orders. the rule nisi together with a copy of the petitions and of the affidavit in support thereof shall be served on the respondent not less than 21 days before the date fixed for the hearing of the rule. the rule shall be served on all persons directly affected and on such other persons as the court may direct.

Affidavits in opposition shall be filed in the registry not later than 4 days before the date appointed for the hearing and affidavits in reply shall be filed not later than 2 p.m. on the day preceding the day of hearing. copies of affidavits in opposition or reply shall beserved on the opposite party or parties, and the affidavits shall not be accepted in the registry unless they contain an endorsement of service signed by such party or parties. Every party to the proceeding shall supply to any other party on demand and on payment of the proper charge, copies of any affidavit filed by him."

The Supreme court has now-a-days become very strict in accepting affidavits beyond the date prescribed under the rules and even if there is a single day's delay, the court is very reluctant in condoning such delay. At times, the court has made adverse remarks and has even penalised the respondents with costs for filing such affidavits beyond the period prescribed under the rules.

Whenever any such rule nisi is issued against the government the department concerned should contact the law department or the learned advocate general and the affidavit prepared as expeditiously as possible and 15 cyclostyled copies thereof together with the original duly

signed and sworn be forwarded to the ministry of law, department of legal affairs so that the affidavits, if any, filed within the period prescribed under the rules. In preparing the cyclostyled copies, direction may also be given that it will have to be one on white paper with double-spacing giving sufficient margin on either side and the cyclostyling should be made only on one side of the paper. [ministry of law, (deptt of legal affairs) lr.no.f.no. 40(14)/60j, dated 6-7-1960; g.i. m.f.(d.r.) on dated f.no.2/41/60-cu-ord. (399) dated 22-7-1969]

Judgements in customs cases to be made available to trade/public on request against payment. It has been decided by the board that copies of important judgement pronounced by the courts of law in customs should be made available to the trade and the public on request against payment. The pricing of the judgement copies may be made on the same pattern as is being adopted in the cases of public notices, notifications etc. made available to the public by this office. [f.no.12/5/69-cus.iii c.b.e.c. dated 15-5-70]

Filing of additional affidavit by the union government

Where the union Government/Board is also made a party to the case and the Branch secretariat of the law ministry or the counsel advises that in addition to the affidavit filed by the Collector or any other local customs officer, another affidavit should be filed by the union government/board, the draft of such counter affidavit should invariably be sent to the board for approval. [cir. letter no. 3/70-cx.6 boards letter f.no.23/13/70 cx.6, dated 26-2-70]

(i) "While the Board will continue to give the necessary clearance to all such affidavits/counter affidavits, the primary responsibility for ensuring the correctness of the facts stated therein will be solely of the concerned collectorate. It should, therefore, be ensured that all the material facts incorporated in the affidavits/counter affidavits forwarded to the board are authentic." The Assistant Collector in charge of the department concerned will ensure the accuracy of the facts etc., in such cases by personal scrutiny.

[board's letter no. 18/13/68-ad.iiib, dated 8-7-1969]

Revision application-mis execution of power of attorney by persons other than advocates : clarification regarding :

A power of attorney, as defined in sec. 2(21) of the Indian Stamp Act, 1890, is liable to stamp duty under article 48 of the act. The definition of expression 'power of attorney' includes any instrument empowering and executing it but does not include any instrumental chargeable with a fee under the law relating to court fees for the time being in force. In other words, muktarnamas and vakalatnamas chargeable under article 10 of schedule ii of the court fees act, 1870 are excepted from the definition in the stamp act. The definition makes it clear that if it were not for this exclusion, a

vakalatnama being a power of attorney would require both court fees and stamp duty. It was to avoid that double duty that those words of exclusion were inserted in the Stamp act.

In departmental proceedings, authorities are exercising quasi-judicial function under the custom act, 1962 or the central excise and salt act, 1944 and these authorities are not civil courts. In the important case of Permanand V/s Sat Prasad, it was held that an instrument authorising the holder who was not a certificate mukhtar as pleader to Appear and do all acts necessary for execution of a decree on behalf of another required to be stamped as a power of attorney under the stamp act and not as a vekalatnama under the court fees act. According to this view, article 10 of Scheduel II of the court fees act is restricted to documents given to and presented by duly certified mukhtars and pleaders under the letal practitioners act.

As regards attestation of the power of attorney by a magistrate as notary public, it is pointed out that execution before such authorities will give rise to a presumption under Sec.85 of the Indian Evidence act as to its genuineness.

The instruction and clarification contained herein should be given effect to immediately and uniformly. [authority - s.o.(gnl.) no.15, dated 4-4-73 of Calcutta file cvii-34/73]

Preservation and handling of records relating to an assessment dispute pending before a court of law-instructions regarding.

In the matter of preservation and handling of records relating to a disputed case of assessment which goes before a court of law, the board desires that the following instructions should be followed :-

(i) As soon as any assessment dispute goes before court of law, all the relevant assessment documents including the demand notices, orders confirming assessments, challans for realization of dues and files containing correspondence pertaining thereto should be collected and sent to the unit handling the court case.

(ii) The documents mentioned at (1) above should not be destroyed even after the disposal of the court case and even if normal period of preservation thereof is over, without obtaining orders of the collector.

[file no. f.15/11/68-cxiv (pt.) C.B.E.C., New Delhi, dated 7-12-68]

D.o.f. no.390/a70/93 jc
Government of India
Ministry of finance
Department of revenue

Central Board of Excise and Customs
New Delhi, the 13th jan., 1983.

Government have been concerned about mounting arrears of litigation in the Supreme court. Supreme court of late, have tended to dismiss appeals 'in limini' without recording any reasons, they have also dismissed appeals on the ground that duty involved is not substantial. For instance, in the case of Collector of Central Excise, Meerut Vs. Saggu Body Builders, Civil Appeal no. 2531 (nm) of 1992, The Supreme court observe that "since the excise duty is not substantial and similar questions are biding decisions in other matters, we decline to interfere in the present case. civil appeal is accordingly dismissed" similarly in the case of Collector of Central Excise, Chandigarh Vs Manjit Industries, civil appeal no. 2674 (nm) of 1992, the Supreme Court dismissed the appeal stating that excise duty involved was not substantial.

2. Taking cue from this judgement the learned Attorney General conveyed that the Supreme Court had also observed that the government should not file cases/petitions where amounts involved are very small.

3. Considering the aforesaid background, the avalanche of litigation which has choked the judicial forum has to be contained. The sheer number of cases makes it difficult for the court to render justice in time.

4. The government, therefore, have decided that filling of appeal may be considered only where substantial questions of law are involved and there is no direct ruling or cases law of the supreme court on the issue.

5. Further, No appeal to the Supreme Court may be filed where the duty involved is Rs. 5 lakhs or less.

6. It may be mentioned that if there is substantial question of law and duty involved is more than Rs. 5 lakhs, appeal may be filed even if an order on an identical issue appeal was filed due to the duty involvement being less than Rs. 5 lakhs. This should be specifically noted in the concerned file while considering any individual case. Collectors should suitably instruct the internal audit/audit parties and supervisory officers that during their visits to factories/field offices they should periodically review whether the revenue effect of the earlier decision calls for a review.

7. The pending cases in the Supreme Court may be reviewed and less than all cases where the duty involved in Rs. 5 lakhs may be examined for withdrawal. A statement in the format enclosed may be forwarded to the board after completion of the review within two months.

Yours sincerely,

-sd/-

(K. Viswanathan)

To

Shri-----

Principal Collector,

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R e v i e w C e l l
-----Review cell:-

Review of adjudication orders passed by the adjudicating authorities at various levels of Assistant Collectors/ Deputy collectors/Additional collectors and Collectors is an important function with the Customs Department to check arbitrariness on the part of respective Adjudicating authorities. A party being aggrieved by the order of an adjudicating authority, can go in appeal to the appropriate forum on its own. Similarly the department can also go in appeal against the orders of various adjudicating authorities, if it is aggrieved. To ensure this, mechanism of review has been evolved in which orders of adjudicating authorities are reviewed by the higher authorities, to go into the legality and propriety of the said orders. Upon scrutiny of the orders passed by the adjudicating authorities, if the reviewing authority comes to the conclusion that a particular order passed by adjudicating officer is neither legal nor proper and is detrimental to the interest of the department, then he can direct the said adjudicating authority to file an appeal against its own order to the appropriate appellate authority. This action is called review action.

Scrutiny and review of adjudication orders passed by additional collector/dy.collector/assistant collector

Under Sec.129-D of the Customs Act 1962 The Collector of Customs may call for and examine records of any proceedings in which an adjudicating authority subordinate to him has passed any order or decision for satisfying himself as to the legality and propriety of such order and direct such authority to appeal to the Collector (appeals) for correct determination of the points arising out of the said order. Time limit for review under section 129 d(3) is one year from the date of decision or order of the adjudicating authority.

Scrutiny and review of adjudication orders passed by Collector

Section 129-D of the customs act,1962 provides the power of review to the board or collector of customs. As per provisions contained in sec.129 D (1) of the customs act, 1962, the Board can suo moto call for and examine records of any proceedings in which Collector of Customs as an adjudicating authority has passed any decision or order, for the purpose of satisfying itself to the legality and propriety of such an order . If the Board feels that the order passed by the Collector is neither proper nor legally maintainable, then the Board can direct the adjudicating authority to file an appeal,before appellate tribunal, setting out the points to be determined.

Such an order by the Board, should be passed within one year from the date of original order passed,which is sought to be reviewed. Within three months from the date of communication of such an order passed by Board,the adjudicating authority concerned should make an application to the appellate tribunal. such an appeal has to be preferred to appellate tribunal in form CA.-5.

Calculation of time limit for review

The time limit of one year for review of orders ,start from the day the order is passed in the file and not from the date of issue of order. To illustrate, assuming in one case the order was passed on 2.1.94, whereas the order was issued on 15.1.94 . In this case the order having being signed on 2.1.94 , the last date for review would be 1.1.95 . This issue was decided by Supreme Court in case of Collector of Central Excise Vs. M.M.Rubber co.[1991(55) elt 289 (sc)] it has been clearly laid down that the limitation of one year from the date of decision or order would run from the date of signing of the decision or order by the concerned adjudicating authority.

Board could direct filing of appeal only in matters of Quasi-judicial proceedings

Earlier the Board could question any decision or order of collector irrespective of whether it was an executive or a quasi-judicial decision or order ,whereas now it can direct filing of an application before the tribunal only in respect of such proceedings which were in the nature of quasijudicial proceedings. { collector of customs vs. metro exporters pvt. ltd. 1988 (37) elt 610 at p.629 (tribunal) }

Orders passed by Additional collectors /Deputy collectors/

Working of	Assistant collectors.
Review cell.	-----

1. All the groups /sections in the custom house shall forward a copy of order-in-original passed by Addl. collector/Deputy collector /Asstt.collector to the review cell . In addition a list of all the orders-in-original issued in a month will also be forwarded to the review cell , by 7th of the following month.

2. All orders received in the review cell shall be first entered in registers maintained separately ,for orders passed by Addl. collector/Dy.collector/Asstt. collector.

3. On receipt of the monthly statement , the concerned clerk in the review cell shall verify the total number of orders received in the review cell vis-a-vis total number of orders issued by the respective groups/sections if there is any discrepancy, the same shall be reported to the Assistant Collector incharge of the cell ,who will take up the matter with the concerned group/section.

4. These orders shall be put up to Appraiser in a file , which shall be given a file number from the review cell.

5. The Appraiser attending the review has to study order-in-original in detail , in respect to legalities and propriety of various factors taken into consideration at the time of adjudication.if necessary, the group file in which the order has been passed,is called for detailed study.the appraiser has to prepare a detailed note containing the brief facts of the case , arguments of party, stand taken by the department and action taken by the adjudicating authority and offer his comments on the above aspects.

6. Thereafter the said file containing order-in-original passed by Additional collector /Dy.collector/Asstt. collector ,brief facts of the case and comments thereon, shall be put up to Collector (II) for his scrutiny through Asstt. collector /Addl. collector incharge of review cell.

7. Whereupon scrutiny of the said file , Collector directs that no review is called for , the file is treated as closed , after making suitable endorsement in the said file, and concerned group file. entries to this effect are also made in the register of review cell referred to in para (1). after endorsement the group file shall be returned to the concerned appraising group/section.

8. Where Collector (II) is of opinion that orders passed by Addl. Collector/Dy.Collector/Asstt. Collector need to be reviewed ,file shall be referred back to the review cell, for drafting review order. the review order contains brief facts of the case ,points out legal discrepancies in order-in-original and gives direction to the concerned adjudicating authority to file appeal to Collector of customs (appeals) under Section 128 of Customs

act 1962, against his own order.

9. Upon receipt of review order, the concerned adjudicating authority shall prepare draft of appeal and submit the same to Collector (appeals) along with review order, C.A.-2 form and relevant enclosures.

Orders passed by Collector

Review of orders passed by Collector of Customs is done in the Principal Collector's Unit.

1. C.C. Unit Maintains a register indicating the receipt and scrutiny of orders passed by Collectors. Every order passed by the Collector should be forwarded to the P.C. unit, as and when issued.

2. C.C. unit maintains monitoring register for each collectorate separately

3. The concerned Collectors are also required to forward a monthly statement showing total number of orders in original passed by Collector and issued during a month. On receipt of monthly statement, the concerned preventive officer shall verify the total number of orders received in P.C. unit vis-a-vis total number of orders issued by the respective Collectors. If there is any discrepancy, the same shall be reported to Assistant Collector/P.C. unit who will take up the matter with the concerned Collectorate for getting the copies of missing orders-in-original.

4. C.C. unit will prepare monthly statement indicating the number of orders issued, number of orders received in P.C. unit, number of orders proposed for review, number of orders pending for review, separately indicating the pendency position with reference to expiry date. C.C. unit shall submit quarterly report to Principal collector for submission to the Ministry.

5. It shall be ensured that all review files are submitted to Principal Collector three months in advance before expiry date of review order.

6. On receipt of order in original passed by Collectors and upon its entry in the relevant register, a file will be opened in respect of each and every order and the said file shall be given a file number. Thereafter this file will be put up to Appraiser in P.C. Unit.

7. The function of Appraiser dealing with review of collectors order in P.C. unit will be same, as detailed in the preceding head, 'review of orders passed by Addl./ Dy./Asstt. collectors'. The file will be put up to Principal Collector through Asst. collector/Addl. collector P.C. unit.

8. In cases where the Principal Collector on scrutiny of file containing order-in-original, passed by collector decides that no review is necessary, all such files shall be retained in P.C. unit, with an endorsement to this effect. Similar remarks will also be made in the register. Group file called from the group will also be endorsed to this effect and it will be forwarded to the concerned group.

9. In cases where Principal Collector directs that the order passed by Collector (II) is required to be reviewed, the Appraiser dealing with review of Collector's order in P.C. unit shall draft review order. The draft review order along with case file, shall thereafter be forwarded to board for approval under section 129 D(i) of customs act 1962, through Principal Collector.

Proforma for forwarding such review file is as under

By Speed Post D.o.f.no. S/viii-15()CC/93

Chief collector of customs

Dated the

Sub : Review of order no..... dt..... passed by
Collector of Customs .in case of

My dear,

Please find enclosed the case records in respect of adjudication order no..... dated, passed by the collector of customs.

For the reasons given in the draft review order, the board may consider reviewing the order under section 129 d(i) of the customs act, 1962.

last date for review is

Yours sincerely,
Commissioner (review)
Central Board of Excise & Customs
North Bolck
New Delhi

Encl : as above.

10. If board is of opinion that appeal has to be filed against the order of collector ii, it will approve draft review order with modifications if necessary and pass a review order under section 129-D (i). case records alongwith review order shall be sent by board to collector (ii) for filing appeal in Tribunal. a copy of review order is also forwarded by Board to Principal Collector for information.

Under Standing orders

S.o.no. 7052 dated 17.2.94

Sub:- Assigning a running serial number to the orders passed by Adll.collr./Dy.collr./Asstt.collr

The Principal Collector has directed that as a separate folder in the P.C. Unit is to be maintained for orders-in- original passed by each Addl.collr./Dy.collr. the Addl.collrs./ Dy.collrs. should assign a running serial number to the orders-in-original passed by them. a copy of the order-in-original is also to be forwarded to the P.C.Unit.

It is also noticed that in some of the cases the orders-in-original passed by the Addl.collrs./Dy.collrs./ Asstt.collrs. are not received well in time in the review cell. As no running serial number is assigned it becomes difficult to find out whether all the orders have been received in the review cell. Therefore, the Addl.collr/Dy.collr./Asstt.collr. will assign a running serial number for the orders passed by them w.e.f. 01.01.94 for every calender year. they will also ensure that the Asstt.collrs. of the groups/sections under their charge also assign a running serial number for the order-in-original passed by the w.e.f. 01.01.94

The Addl.collr/Dy.collr. will every month submit a report to the review cell giving details of the number of orders passed by them and asstt.collrs. under their charge. The report should be received by the 5th of every month.

S.O. no. 7059 dated 6.4.94

Sub: Procedure for filing of Appeals before Appellate Tribunal or Collector (appeals), arising out of review proceedings. (for details see full text paras 8 & 9 of the s.o.)

Other instructions

Sub:- Revised instructions on scrutiny of orders-in-original, Appellate orders etc.- correspondence regarding.

...

In supersession of the instructions issued in the d.o. letter

of even number dated 9th august,1991,the following instructions are issued for strict compliance:-

(I) Custom houses and Collectorates of central excise shall assign running serial numbers for the calendar year to the orders passed by Collectors and a similar running serial number to all the orders passed by additional collectors and deputy collectors.

(ii) Copies of the orders-in-original passed by Additional collectors and Deputy collectors shall be endorsed to the concerned collector and also the Principal Collector.

(iii) Chief Collector shall maintain proper records in his office to watch that all the orders passed by collectors have been received and examined for purpose of review. Principal Collector may also undertake random scrutiny of the orders passed by Additional collectors and Deputy collectors. similarly,concerned collector shall maintain proper records for the orders passed by Additional Collectors and Deputy collectors and ensure that all such orders are taken up for scrutiny.

(iv) Where Principal Collector after having examined the order is of the opinion that the same calls for review,then a proposal to the board shall be sent at least three months before the expiry of time-limit,alongwith a copy of the draft order-in-review,case records and other relevant papers by name to Commissioner(R).

(v) Principal collector shall also send quarterly report by name to me,indicating the serial number and date of the orders scrtinised by him, the report shall also indicate in brief the performance of collectors,quality of orders passed, time taken generally to communicate the orders, after approval / decision and such other information as may be considered relevant and necessary.

(vi) Principal collector will also scrutinise the orders-in-appeal passed by collector (appeals) and decision of the regional bench of the tribunal. however,it is the primary responsibility of concerned collectors of central excise and collectorates and customs houses to ensure timely scrutiny of the orders-in-appeal passed by Collector (appeals) and decision of the regional benches of the tribunal and take action as deemed proper. the concerned collector shall maintain proper records to ensure timely action on all such orders/decisions. in case,there is any doubt or any clarification is required,before making any reference to the board,the concerned collector shall consult the principal collector.

(vii) Orders-in-appeal passed by collector (appeals) and the decision of the regional bench of the tribunal are not required to be sent to board,unless principal collector considers it necessary to bring he same to the

notice of board.

D.L.F.no. 389/934-39/91 jc- dated 11th august,1992

Sub : Submission of case records alongwith copy of orders.

The Board has directed that where the revenue involved is Rs.50 lakhs or more and the case has been dropped in full or in part,it should be ensured that the case records are sent alongwith the copy of the order-in-original passed by Adjudicating officers. D.o.no. 390/74/89 -au dated 16.10.1989

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A d j u d i c a t i

o n c e l l

Adjudication cell:- Working:-

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The process of adjudication is one of the methods with the customs department,for solving the disputes related to various aspects of exports and imports and imposition of penalties,fines etc..

Adjudication means taking a decision in a judicious manner. customs adjudication is thus considered quasi-judicial.it is equal i.e. almost judicial,since such dicision is given by a person who is not a judge but sits in judgement and is not bound by procedures of civil court or criminal courts. The system of adjudication is in-built in the customs act. disputes,which in the opinion of the department could lead to confiscation of goods,have to be adjudicated. In this system the department is supposed to issue showcause notice spelling out the reasons,why the goods attract the provision of confiscation. this showcause notice demands a written reply. the officer who finds the goods offending,is the appraiser or superintendent of customs and the Assistant collector when he agrees with the officer ,authorisies issue of a showcause notice, answerable to the proper officer i.e. Asstt. collector, Deputy Collector, Additional Collector or Collector of Customs , who have been given powers of adjudilcation depending upon value of offending goods.

The reply is considered by the adjudicating authority and the explanation is accepted or rejected by the adjudicating authority who sits on judgement. One of the legal requirements in the adjudication or for that matter any decision that is against the assessee is granting of personal hearing. the showcause notice, therefore , contains an option for a personal hearing. such a personal hearing can be heard only before the person who has to issue the order of adjudication.

After considering the reply,the rejoinder (report on

reply) by the Appraiser/Assistant collector and the points raised by the party at the personal hearing, the adjudicating officer gives his decision.

This decision has to be in writing. It is known as order-in-original. It has to be a speaking order giving the facts of the case, grounds of objections, points of reply and reasons for accepting/not-accepting the contentions of the party and findings of the adjudicating authority with his decision since all offending goods are liable for confiscation, the first decision is for confiscation of the goods. However, the Customs Act authorises the adjudicating authority to levy fine in lieu of confiscation, if deemed fit.

Besides confiscating the goods, the Customs Act also punishes persons who have been found to be basically aiding or abetting in the offence deliberately. On adjudication, such persons may be ordered to pay a penalty up to five times the duty or five times the value of the goods. Adjudication proceedings can also be initiated for non-compliance of any of the provisions of the Customs Act, or rules or regulations framed thereunder.

However, claiming assessment under particular classification and the objection under such a claim would not attract any penal provisions. A decision against the claim would be issued in writing and it is known as order (assessment). The theoretical penalty is the payment of duty at the rate adjudicated by the department, if there is no willful mis-declaration.

Even in certain cases of valuation, where the declared value is not accepted by the department and the same is not considered a deliberate attempt to defraud government of the revenue, an order (assessment) will be issued. Here too the theoretical penalty is duty payment on adjudged value, if there is no wilful mis-declaration.

All these decisions are appealable under Customs Act 1962. While taking up a case for adjudication it may be ensured

1. That all the original documents like panchnamas or recovery memos, statements of accused and witness etc., contraband goods and other incriminating documents, articles and things seized are lying intact and are available for adjudication.

2. That post seizure enquiries / investigations are complete in all respects and resume or a final statement report thereof is available in the file, showing evidence against each of the concerned persons and the offence alleged to have been committed by each of them.

3. That a showcause notice has been given within the time to all the "concerned persons". In complicated cases assistance of local branch or

department counsel may always be taken in vetting the showcause notice.

4. That a separate file each for adjudication and prosecution is opened, contained true copies of all the relevant documents etc. right from the beginning i.e., at the stage of seizure and investigation, so that both the proceedings could be started simultaneously. The original documents required for producing, in the court may invariably be kept in safe custody to avoid tempering or loss.

Central Adjudication dispo- Cell- reports to Working. -----	A central adjudication cell has been created, with a view to Assist collector/ additional collectors in quick sal of adjudication and also to ensure prompt The Board.
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The function of the central adjudication cell is to maintain the adjudication files when received from the various groups departments and process the same. for this purpose following procedure is followed.

1. Groups/Departments when they find prima facie contraventions of itc/etc provisions or violations of any other provisions of C.A.1962, should put up to the competent adjudicating officer i.e. Collector/Additional Collector for orders for initiating adjudication process.
2. Only if adjudicating authority is satisfied about the action to be initiated, the issue of show-cause notice or waiver of show-cause notice would be considered.
3. The show cause notice required will be issued by the concerned Group/Department. The charges framed should be clear and the reasons spelt out in the show-cause notice. All show-cause notices should be issued under the signature of the Asstt. Collectors.
4. Wherever waiver of show-cause notice has been made, a personal hearing is a must. the files should be submitted to the AO. incharge of the Central Adjudication cell.
5. Wherever show-cause notices have been issued, after issue of show-cause notice the files be transferred immediately to the central adjudication cell.
6. The Central Adjudication cell will also maintain the register. after making entry about the show-cause notice in the register, the files will

be sent back to concerned group/department . The files will be again submitted to central adjudication cell ,only after receiving the explanation of parties in reply to the show-cause notice the concerned group/department will furnish the comments on the reply of show-cause notice on noting side. At this stage files must be submitted to the adjudicating authority through A.C. with concrete proposals after analysing the parties explanation.

7. The groups/departments will continue to maintain their S/10-register for their record.

8. The A.O. incharge of central adjudication cell will in consultation with the adjudicating authority fix personal hearings. the notice of personal hearing will be issued by the A.O. central adjudication cell.

9. The Central adjudication cell will process the proceedings of the personal hearing,(wherever necessary). The investigating officer/officers concerned ,will be called to be present during the personal hearing.

10. After hearing is over the record of the personal hearing will be made by the concerned adjudicating authority with the help of their personal assistants. whenever necessary the A.O. central adjudication cell will assist him in the matter.

11. If a note side order is passed by the adjudicating authority , A.O. central adjudication cell will send the file to the concerned A.C. after noting the particulars in the S/10- register maintained by the central adjudication cell.

12. A.C. incharge of the group/department after implementing the orders should put up the file to Collector/Addl. collector through the central adjudication cell, for the draft order-in-original (draft speaking order). The order should be drafted by quasi judicial authority itself, including the portion relating to the narration of facts without the help of anyone else, for reason that the order may be quashed for non application of mind and the order being improper. 1994 (71) E.L.T.304 (tribunal) final order no.1/46/94 -b1 dated 17-1-94. passed in appeal no e/172/92-b1.

13. The A.O. central adjudication cell should ensure submission of the file for issue of the detailed order. (wherever necessary the concerned investigating officer would help in the finalisation of the draft speaking order).

14. A speaking order should be issued within one month from the date of note sheet order. A.O. central adjudication cell and A. C. incharge of the Group/Department will co- ordinate for this purpose.

15. The order-in-original should be issued from the central adjudication cell. a neat copy of the order in original alongwith the draft order in original should be retained in the file. thereafter the file will be sent to the concerned group/department.

16. The A.C.s. in charge of the group/departments to take follow-up action for realisation of fines and penalties.

17.A.C.s. should maintain quarterly review of their s/10-register/files for taking prompt action for disposal of goods wherever involved.

18. A.Cs.In charge of the groups /departments should take the orders of the adjudicating authority after issue of a speaking order regarding grant of rewards and disposal of goods.

Power source under
Customs act 1962

Chapter XIV of the customs act 1962, deals with confiscation of goods,conveyances and imposition of penalties.it contains following provisions -

Sec.111 - Confiscation of improperly imported goods etc..

Sec.112 - Penalty for improper importation of goods etc..

Sec.113 - Confiscation of goods attempted to be improperly exported etc..

Sec.114 - Penalty for attempt to export goods improperly.

sec.115 - Confiscation of conveyances .

sec.116 - Penalty for not accounting for goods.

sec.117 - Penalty for contravention etc. not expressly mentioned.

sec.118 - Confiscation of packages and their contents.

sec.119 - Confiscation of goods used for concealing smuggled goods.

sec.120 - Confiscation of smuggled goods notwithstanding any change in form.

sec.121 - Confiscation of sale proceeds of smuggled goods.

sec.122 - Adjudication of confiscations and penalties.

sec.123 - Burden of proof in certain cases.

sec.124 - Issue of showcause notice before confiscation of goods etc..

sec.125 - Option to pay fine in lieu of confiscation.

sec.126 - On confiscation property to vest in central government.

Sec.127 - Award of confiscation or penalty by customs officers not to interfere with other

punishments.

Under standing orders. - Only the Gist of S.Os. given. refer S.O.
for full ----- text.

S.o. 6498 dated 6-9-1973

Sub :Adjudication of under customs act - waiver of issue of
show cause memos - personal hearings - instructions reg. it has been noticed
that in some cases of adjudications,

The parties concerned waive issue of show cause memos. waiver of
show cause memos normally means that the party is aware of the breaches
involved.before waiving the show cause memo, it should be ensured that the
persons dispensing with the show cause memo are authorised representatives of
the firm/concern. in other words, he waiver of show cause memos should be from a
competent and authorised representative on behalf of the party. waiver merely
by the clerks of the clearing agents is not sufficient.

2. As regards grantintg of personal hearings, care should be taken
to see that parties or their authorised representatives appear for the personal
hearings. for instance, parteners of a firm/ directors /managers can appear for
personal hearing,but if an executive or some other person appears for personal
hearing on behalf of the party, a letter of authority from the firm/concern
should be asked for. the letter of authority to be produced in such cases should
briefly state particulars of the case and also contain signature of the person
appearing and connection of that person with the firm/concern. c.1397/69 (pt.)
S.o. no. 6644 dated 24-2-78

Sub : Adjudication of shortlanding cases.

It has come to notice that while issuing show cause memos to the
steamer agents full particulars of duty of each item where shortlanding has been
seen is not shown in the show cause memo itself and is left for intimation to
the steamer agents at the time of personal hearing. this creates lot of
unnecessary correspondence between manifest clearance department and steamer
agents . to avoid this infructious work ,it shall be ensured that at the time of
issue of show cause memo the duty foregone due to shortlanding of goods for a
particular item of the import general manifest is indicated in the show cause
memo itself. s/6-477/77m / c 00303/78 S. O. no. 6716 dated 4-7-79

Sub : Adjudication cases - Instructions in respect of

It has been observed that in the adjudication of cases, show cause

notices are not issued promptly to the concerned parties, thus delaying disposal.

The following procedure shall ,therefore be followed for issue of show cause notices and finalisation of adjudication of all cases - If show cause notice can not be issued within one month from the date of seizure or taking up the case for investigation the concerned officer shall report to the asstt. collector (particularly ac/airport ,baggage and siib) who should personally look into the matter and obtain collector's orders for extension of time.

All cases,more than one month old ,and where show cause notice have not been issued ,should be brought to the collector's notice and discussed.

Similarly ,all cases where replies to show cause notices are not received within one month as well as those which are not adjudicated within one month of receipt of reply ,should be discussed by the concerned asstt.collector with collector.

A statement of all such cases should be submitted to the collector in the profoma ,through the asstt.collector i/c correspondence department.such statement should reach correspondence department in duplicate by 10th of every month. f.no. s/14-312/79 c no.c 003016/79

Proforma

Opening receipt disposal closing breakup for over
balance balance one month cases
1-2 2-3 3-5 over
mon mon mon 5 mo
th th th nth

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- 1.Pending for investigation or scrutiny
 - 2.Reply to scn not received
 - 3.Not adjudicated after of reply to scn
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S.O.No. 6808 dated 3-6-84

Sub : Enhancement of powers of deputy collectors of customs

Deputy collectors to adjudicate cases without any value limit ,which have been excluded from the jurisdiction of customs ,excise and gold(control) appellate tribunal. these are

1. Baggage
2. Shortlanding

3. Drawback

(For full text see s.o.) S.O. 6847/17-7-1986

 Sub : Recovery of fine and penalty after the adjudication
 is over - procedure reg.
 (for full text see s.o. and its amendment)

S.O.No. 6901 dated 8-3-89

 Sub : Creation of centralised adjudication cell for collector/
 additional collector -reg.
 (for full text see s.o.)

Number. 6945 dt. 15.2.90

 Gist - All departments of custom house to endorse copies
 of show cause notice to dy.director enforcement directorate Bombay,to enable
 the enforcement directorate to examine the cases of import violations from
 foreign exchange angle. whenever importers waive showcause notice ,a copy of the
 order-in-original should be endorsed to the enforcement directorate,bombay.

number. 6948 dt. 14.5.90

 Gist - In all cases of Assessment, where Assistant
 Collectors disagree with the classification or valuation claimed by the
 importer or his clearing agent on the B/E , a speaking order shall be issued (
 after due notice to the importer by the issue of a show-cause notice and
 granting personal hearing or by obtaining an endorsement that such notice and
 personal hearing is waived), as soon as the assessment is completed or soon
 thereafter but before the B/E is finally released for payment of duty. once the
 duty is paid on the basis of an assessment, no claim for a speaking order should
 ordinarily be entertained.

Number 6977 dt. 6.6.91

Gist- Order-in-original must be issued ,where adjudication
 proceedings are held. no matter whether a lenient view has been taken or the
 concerned parties are not interested in obtaining the orders-in-original. issue
 of formal orders are necessary especially where proceedings are dropped, or
 lenient view is taken , since such orders may be scrutinised by the competent
 authorities for the purpose of reviewing them and thereafter for the purpose of
 deciding whether the department should file appeals against such orders or not.

S.O. no. 7004 dated 20-4-92

 Sub : Indication of specific cegat provisions i.e. sub-clause ,clause and sections (provisions) in the order-in-original where penalty is imposed - instruction reg.

(for full text see s.o.)
 number 7007 dt. 11.6.92

Gist : Powers of adjudication of confiscation and penalties

 given to various officers in customs department.

Asstt. collector of customs- under sec.122 of customs act 1962, asstt.collector can adjudicate all cases where value of goods liable for confiscation does not exceed Rs.50,000/-.

Deputy collector/ Can adjudicate all cases involving additional collector goods whose value does not exceed Rs. ten lakhs. Collector Without limit.

Appeal against the orders of assistant collector/deputy collector/additional collector lies with collector(appeals). in case of baggage,drawback and shortlanding cases ,addl. collector & deputy collector would have powers without any limit for adjudication. this is because section 129a of customs act precludes appeals in such cases from being heard by the appellate tribunal.

S.O. No. 7039 dated 23-4-93

 Sub : Adjudication order without quoting any authority or provision of law. -reg
 (for full text see s.o.)

S.O.no. 7052 dated 17-2-94

 Sub : Assigning a running serial number to the orders passed by addl. collector / deputy collector / asstt.collector.
 (for full text see s.o.)

S.o. 7057 dated 23.3.94

Sub: Time limit for issue of speaking orders-in-original in respect of adjudications.

[for full text refer s.o.]

Under Circulars/Departmental orders :

 Subject: Adjudication-passing of quasi judicial orders by
 asstt./dy./addl.collectors - reg.

On perusal of the orders passed by collector of customs (appeals), it was observed that a large number of cases have been remanded back for de novo adjudication on the ground of non observation of the principles of natural justice. In such cases the orders passed by original adjudicating authorities were not reasoned orders/speaking orders and in number of other cases orders had been passed without giving an opportunity to the concerned parties to defend their cases.

The Govt. of India, have time and again issued instructions impressing upon the adjudicating authorities, the necessity of following the principles of natural justice scrupulously and to guard against procedural defects in the adjudicational proceedings. No one should be condemned unheard and fair opportunity should be given to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view.

All the officers adjudicating cases should observe principles of natural justice in the adjudicational proceedings. (no.53 dated 31.12.93 of Bombay custom house).

Subject:- Acceptance of financial status for determining the personal penalty.

The adjudicating officers are advised not to accept the declaration of financial status of the offenders without due verification.
 (circular no.60/93. dated 07.10.93)
 s/26-102/93 appr.(g)
 Bombay custom house

Subject:- Proper filling of evidence on record during the adjudication proceedings - regarding.

All the adjudicating officers are advised that whenever any evidence is produced by the party at the time of personal hearing, it should be brought on record by taking over the documents from the party/advocate.
 (circular no.55/93) s/26-90/93 appr.(g) dated 13.9.1993
 Bombay custom house

It has been brought to my notice that while passing adjudication orders, there is a tendency on the part of some officers to quote certain departmental instructions, clarificatory letters etc., issued by the

ministry/board on specific references made by this custom house. but such references are not to be quoted in the formal adjudication orders,as it is expected that the adjudicating authority,who is a quasi-judicial functionary,is expected to decide the cases independently in accordance with the law laid down in this regard. they may,however,adopt the reasoning of the ministry/board incorporated in the letter,in the adjudication orders,quoting the ministry/board's reference as such in the adjudication order is improper and should be desisted. this is brought to your notice for your future guidance.
f.no.s/10-287/89 dbk - i dated 10.08.92

bombay custom house

Other instructions

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Subject:-Submission of case records alongwith copy of the orders.

The board has directed that where the revenue involved is Rs. 50 lakhs or more and the case has been dropped in full or in part,it should be ensured that the case records are sent alongwith the copy of the order-in-original passed by adjudicating officers.

d.o.no 390/74/89-au. dated 16.10.1989

Adjudication - office procedure

With a view to conforming to the principle of natural justice, the person concerned against whom a penal action is to be taken for violaltion of the provisions of any act , should know that there is a charge against him and should exactly know what the charge is and he should be given a fair opportunity of explaining his position before any adjudication is taken against him. Therefore, a show cause notice should invariably be issued in all such cases except where the person concerned against whom the show cause notice is to be issued , requests for waiver of the show cause notice endorsing in writing that he is aware of the contravention and offence and charges framed against him.

The draft show cause notice should be prepared and put up for a.c.'s approval . it should be ensured that each showcause notice is issued after the approval of the asstt.collector , under his signature and issued by registered post with acknowledgement due with a copy endorsed to clearing agent,if any. the copies of the showcause notice should also be endorsed to d.r.i. and directorate of enforcement as per existing instructions. Generally the period to be allowed to the person concerned for submitting reply to the show-cause notice should be one month from the receipt of the notice by him. this time limit should be clearly stated in the show-cause notice .if the person concerned on account of certain reasons ,is not able to submit his reply within

the time-limit and makes a request for extension of the period, the officer competent to adjudge the case may grant such extension as he deems fit, if he is satisfied that the reasons furnished by the person concerned are genuine.

It should generally be possible for the parties to adhere to the time limit and submit their written reply within the specified extended period. consequently, circumspection should be exercised that extension beyond the period of one month is not asked for or granted as a matter of routine or on flimsy grounds. extension should be granted only in those cases where on careful examination it is noticed that the case is of such a complex nature or failure to give the extension would cause irreparable loss to the party. even in such cases, the extension should be granted only once, unless there are further and extremely convincing circumstances warranting the second extension.

In cases where the person concerned refuses to receive the cover containing the showcause notice, the act of the department in sending the notice by registered post acknowledgement due, would be deemed to be a sufficient service of the said notice. it means that an opportunity to show cause has been given to him but he has, by his act of refusing the delivery to avail of it. in such, cases the cover returned with the endorsement "refused" should be preserved intact, unopened, in the relevant file so that it would serve as a piece of evidence that the person concerned failed to avail of the opportunity of defence offered to him. in case where the cover containing the show cause notice is returned by the postal authorities with an endorsement "not in town" an attempt should be made to serve the notice through some local staff if it can be conveniently done. the cover containing the endorsement "not in town" should also be preserved in the relevant file. in all other cases, i.e., where the notice comes back with any endorsement other than "refused" and personal service of the notice is not convenient, a copy may be posted on the 'notice board' of the office. there may be cases where the person concerned calls at the office and desires the notice to be delivered to him personally no objection of the adjudicating officer should be taken in delivering the notices personally provided an acknowledgement in writing is taken from the person concerned.

Entry of particulars of showcause notice in penalty register : the date of issue of showcause notice and other particulars should be entered in the penalty register by the penalty clerk.

After the receipt of reply to showcause notice, the same should be placed in relevant file and forwarded to the concerned officer. endorsement of previous offences :

Before the case is finally put up to adjudicating officer, the previous offences, if any, by the same party should be endorsed. entry of the penalty register with realisation particulars.

In each case after the adjudication is over an order-in-original should be issued to the importer/party ,after the o/o is made by the said adjudicating officer. it should be ensured that the charges as well as the argument of the party properly find place in the o/o.

After the order-in-original has been passed ,the file will go back to the section clerk, who will enter substance of order in the offence register against the entry already made at the time of issuing the show cause notice, indicating under the column ,summary of orders ,

- 1.The charges upheld
- 2.The scale of fine or penalty
- 3.Whether a nominal fine has been imposed

4.Whether the goods have been released with a warning the clerk will also endorse the penalty stamp on all copies of the bill of entry as under :

- 1.Confiscated absolutely
- 2.Fine for home consumption
- 3.Fine for reshipment
- 4.Goods allowed to be released on bond

5.Any other action taken or ordered to be taken the bill of entry will be dealt with in the ordinary course and returned for the payment of duty and fine by the party. the importer will take the bill of entry to the accounts department who will recover the fine or penalty and the duty in terms of the order endorsed on the bill of entry.

After recovery of fine and peanlty the cashier shall indicate the collection of fine and penalty separately on all the copies of bills of entry and forward the same to the group.the out of charge in respect of such bills of entries will be given by the concerned group. the group a.c. shall ensure all the details of recovery of fine and penalty are entered along with the relevant cash number in the penalty/ s-10 register maintained in the group.

The duplicate copy of the bill of entry will be returned to the the party for taking clearance of the goods.the original bill of entry will be sent to audit to be audited by internal audit as well as revenue audit before being sent to m.c.d. as soon as the bill of entry has been released to the party after the payment of duty for clearance of the goods,order-in- original would be issued .

If the Bill of Entry is not received within one week ,order-in-original would be issued as usual without waiting any further for the party to pay the duty and penalty or fine. If duty or fine is not paid by the party one

copy of the order will in such cases be endorsed to the port trust authority with the request that the goods should be taken charge of on behalf of the customs department and not to be sold by auction without prior intimation to the custom house .another copy will be endorsed to the Assistant Collector disposal .

The group shall prepare a statement showing the file number, description of the goods and the value in respect of which the party failed to exercise the option to redeem the goods within the time limit prescribed in the order or any other extension thereof and forward the statement to A.C. disposal for initiating disposal action along with a copy of the adjudication order indicating the fair value of the goods.

The following further steps will also be taken to ensure that the goods which have been confiscated or which are under the action for any contravention of law are not auctioned by the port trust authorities except under proper authority from the customs :

1.A copy of the showcause memo will be endorsed to the port trust with the request that the goods may be taken charge of and not allowed to be sold or otherwise disposed of without prior reference to the custom house if not cleared on payment of duty and any fine etc. that may be imposed.

2.The entries in the offence register will be scrutinised each month by the deputy office suptd., in respect of which fine or penalty imposed has not been paid and a list made out of those items in respect of which -

(i) any appeal or revision petition filed by the party has been rejected by the appellate authority or the Govt.of India.

(ii) in respect of which no intimation has been received from party/collector (appeals)/appellate tribunal or board regarding the filing of appeal or a revision petition against the orders-in-original passed by various adjudicating authorities within a period of 3 months from the date of the order. The list will then be forwarded to the port trust with a copy to the Assistant Collector disposal for arranging auction of the goods .

In case any appeal or revision petition received from appellate authority will be referred to the concerned clerk for entering the date of appeal in the offence register and similarly any orders received by the custom house from the respective appellate authority disposing of an appeal or revision petition will also be noted in the offence register.

When a fine or penalty is cancelled or refunded a note of such cancellation or refund should be made against the relative entry in the register and the register should be put up to the Assistant Collector for initiating

the note of cancellation or refund so that a reward may not be granted in error against the cancelled or refunded penalty.

To ensure that a second Bill of Entry is not noted for goods which are under penal action the import department will in all cases where a request is made for renoting a Bill of Entry, take an endorsement from the concerned group to the effect that no penal action is pending in respect of the bill of entry originally noted.

Burden of proof

Excepting the cases which are covered under Sec.123, wherein certain goods are notified by the Govt. in a gazette, the burden of proof that the goods imported or exported are prohibited is on the department. However in case of goods notified under Sec. 123, it is the person from whose possession such notified goods are found, or seized, who has to prove that they are not smuggled. the burden of proof is thus shifted from the department to such persons concerned.

In other words unless the burden of proof is shifted, the entire burden to prove the case against an accused person rests on the department.

In benami transactions such as those which generally occur in cases of trafficking of licence it has to be remembered that the ordinary presumption of law is that apparent state of affairs is real unless the contrary is proved and the burden of proving that transaction is sham or the vouchers etc. produced are bogus is on the department except in cases covered by section 123 customs act'62.

Principles of Natural Justice

It is well settled principle of indian administrative law that a quasi-judicial body should act according to the principles of natural justice in discharging its adjudicatory functions. The main points are -

(a) That the quasi-judicial body whose duty is to decide should act judicially i.e. with fairness in a just and equitable manner.

(b) That it must deal the the question referred to it without bias and it must give to each of the parties, the opportunity of adequately presenting the case.

(c) That the decision must be given with at sense of responsibility, whose duty is to meet out justice. generally speaking, natural justice implies fair hearing. the concept of fair hearing as it sometimes called the rule of audia teram-pattern has a number of components.

- (1) That the parties concerned should have adequate notice.
- (2) That they should be shown all the relevant and material evidence relied against them.
- (3) That they should be given reasonable opportunity of meeting the case against them to make representation if any.
- (4) That they should be given a personal hearing, if asked for.

Personal Hearing

It is requirement of natural justice that quasi-judicial bodies should not take a decision adverse to the party without giving to him an effective opportunity of meeting any relevant allegations against him, including reasonable opportunity of being heard.

Again it would be a violation of natural justice if the body refuses to hear a person who does not appear at the first hearing but appears subsequently during the course of hearing, or who does not appear in response to the first notice but appears when a second notice is given.

The quasi-judicial body has to decide the matter on the basis of material placed before it in course of the proceedings. it can not take extraneous matters into consideration nor can it base its decision on any material unless the person against whom it is sought to be utilised has been given an opportunity to meet these material or to explain them. the quasi-judicial body should not only disclose the relevant material which it desires to use, but it should also be given an opportunity of rebuttal against the material to the affected party.

Adjudicating Authority should be free from bias

If the adjudicating authority is influenced to improperly favour one party against the other, it is said to be biased. that bias disqualifies an individual from acting as an adjudicator.

Concept of Bias :

The principles of natural justice, to be meticulously observed in any judicial or quasijudicial proceedings comprise two essential concepts ;

they are :-

1. No one should be a judge in his own cause.
2. No man should be condemned unheard.

Bias is usually of three types -

- (i) pecuniary bias
- (ii) personal bias
- (iii) bias as to subject matter.

(a) A judge himself should not be a party or should not have some direct connection with the litigation so as to constitute legal interest. the interest to disqualify one from being a judge should be specific one in the cause before him and not one of general nature.

(b) A pecuniary interest in the cause however slight will disqualify even though it is not proved that the decision has in fact being affected by reason of such interest.

(c) A personal bias towards a party owing to relationship and the like or personal hostility as a result of happening before or during the trial disqualifies a person from acting as a judge in the particular case.

The causes that may lead to personal bias cannot be exhausted. broadly they may be (a) relationship (b) personal friendship (c) having acted as a witness against the party aggrieved in the same enquiry. The test always is and must be whether litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. it is in this sense that it is often said justice must not only be done but must appear to be done.

In adjudication in custom cases the question of bias is raised when the officer who associates himself in a case at the stage of search and seizure and subsequent enquiries, later on sits to adjudicate the case, such a procedure has been held by the courts to violate the principles of natural justice on ground of bias.

The question of bias should be raised at the time the issue is heard and party waives its right to raise the issue at all at the time of appeal or subsequent stage. when, more than one person in a particular offence is involved, orders are passed in respect of one person and hearing and consideration of the case against other is postponed, such procedure will introduce an element of bias in the subject matter (so far proceeding against

others are concerned) on the part of adjudicating officer for the reason that the procedure adopted goes against the principle of natural justice.

The Government of India desire to impress upon collectors again the necessity of following the dictates of natural justice scrupulously and to guard against procedural defects creeping into the adjudication proceedings. One of the principles of natural justice enunciated by the courts in more than one case is that no officer shall be prosecutor and a judge in the same case. It is therefore necessary that collectors should guard against a situation in which parties can justly complain that there was likelihood of bias on the part of the adjudicating officer. In the case of Nageshwar Rao versus the State of Andhra Pradesh (AIR 1955 SC 1876) the Supreme Court had occasion to consider the doctrine of bias and formulated the relevant principles in this regard as follows:-

"The principles governing the doctrine of bias vis-a-vis judicial tribunal are well settled and they are: (i) no man shall be a judge in his own cause, (ii) justice should not only be done but manifestly and undoubtedly seen to be done. The two maxims yield the result that if a member of a judicial body is 'subject' to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal" and that any direct pecuniary interest, however small, in the subject matter of enquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i.e. authorities who are empowered to discharge quasi-judicial functions.

In the custom houses, senior officers are very often required and that can not be altogether helped, to give general directions in the matter of investigation of cases which finally come to them for adjudication. In this connection the Government of India would particularly like to stress that the officer adjudicating a case should not have been very actively associated with the investigation of that case to the point of imbibing a bias or forming definite opinions about the merits of the case before hand. If any difficulties are experienced in following the above instructions in a particular case, it may be referred to board for further instructions.

[M.F.(D.R.)f.no.f/23/60-cus vi, dated 27.12.1962]

Senior Officer -Question of association with investigation

As far as possible the senior officers who were likely to be called upon to adjudicate cases, should not associate themselves too actively

at the stage of investigation. there was no harm in giving guidance in the matter of investigation as long as such guidance was confined to general directions and did not amount to active participation so as to imply any bias against the party whose case was to be adjudicated.

[Board's f.no. 6/1/62-cus. viii dated 8.1.1963]

Concept of Personal Hearing

The main ingredients of personal hearing may be summed up as under:-

- 1) Act in good faith.
- 2) Fairly listen to both sides.
- 3) Give fair opportunity to those who are parties in the controversy for correction or contradicting any relevant statement prejudicial to their view.

The detailed procedure to be followed in adjudication proceedings has been laid down in Sec.124 Customs act'62. there are no other provisions in the Customs act'62 to the effect that the procedure to be followed in adjudication should be similar to the one followed in regular courts of law, customs act provides for a minimum of hearing as opposed to maximum of hearing which refers to the procedure to be followed in courts of law. the various factors in conducting the proceedings under customs act providing for a minimum of bearing are stated below.

1. Evidence.

(a) An administrative tribunal is not fettered by rules of evidence and is free to act even on evidence which under the indian evidence act may be regarded as inadmissible

(b) The evidence relied upon should be completely disclosed to the party against whom action is proposed.

Whatever be the manner of securing the evidence all the materials taken into consideration to penalize should be made available to the party.

The principles of natural justice require that the party must know the allegations against him and the evidence on which they are based and an adequate opportunity should be given to him to meet those allegations. (Board's f.no.2/69/57-cus vi dated 5.11.1957)

(inst. no. 45/s.c.a./cus.vi/57)

It has been directed by the government of india that the practice of showing an importer either at time of personal hearing or otherwise the invoices or documents of another firm , being irregular , should be avoided. [g.i.m.f.(r.d.) order on revision application no. 931 of 1954, b.no.6(31)-cus-ii. ii/54]

Show Cause Notice

One of the fundamental principles of natural justice is that before adjudication starts,the adjudicatory authority should give to the affected party a notice of the case against him so that he may adequately defend himself.any proceeding taken without notice would be against the principles of natural justice , but the same may at the request of person concerned be oral. It therefore follows that the grounds given in the notice on which the action is proposed to be taken must be clear ,specific and unambiguous. a notice which is vague is not a proper notice and all subsequent proceedings would be vitiated.the notice must give a reasonable opportunity to comply with its requirements.

Framing of Charges - Procedure regarding

When an enquiry into an alleged offence punishable by a sentence is made, the accused should know that there is a charge against him and should exactly know what the charge is and he should be given a fair opportunity of explaining his position before any adjudication is made. This holds good of all such enquiries ,whether they are concluded departmently or under a special statute , or in a court of law,and whether conducted with the formalities of a settled procedure or not. (para 5,customs law judicial decisions 1937,compilation of ruling ,page 256)

A custom officer acting under section 182 of sea customs act (sec. 122 customs act 1962) should proceed according to general principles, which are not necessarily legal principles, and is not bound to adjudicate on confiscation and penalty as if the matter was proceeding in a court of law according to the provisions of the civil or criminal procedure code.

Administrative or executive officers have no power to administer on oath,and need not examine witness.they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view which has been recorded. that the judiciary

should presume to impose its own methods on administrative or executive officers is a usurpation. and adjudicating officer may pass orders on evidence taken down by a subordinate. (vide item (vi),(b),"customs law-judicial decions")

Functions of adjudication are quasijudicial in nature.

Principles of natural justice require that the person concerned must know the allegations against him and the evidence on which they are based and an adequate opportunity to meet those allegations should be given to him. The principles of natural justice which have got to be observed by all judicial and quasi-judicial bodies are that a party should not be condemned unheard, that he should know what the charge against him is, that he should be heard in his defence, that he should be given an opportunity to lead evidence, and he should also be given an opportunity to examine the materials which are before the adjudicating authority for his defence. in the year 1924, the chief justice of united kingdom laid down an oft-quoted dictum... "it is not merely of some importance but of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." it is,therefore,the duty of every adjudicating officer to ensure that justice is not only done but is seen to be done. it is to meet these principles of natural justice that the issue of a showcause notice to the person concerned is necessary before an order in original is passed. with a view to conforming to principles of natural justice narrated in the preceeding paragraph,it is necessary that the show-cause notice should give a clear description of the allegations and charges against the person concerned, it should also give particulars of the facts which furnish the reason to believe that seized goods are liable to confiscation. it is an important element of natural justice that the party affected must have an opportunity not only of stating his own case, but also of knowing the case which he has to meet.he must have reasonable and fair opportunity to controvert the evidence on which the proposed action rests a fair opportunity for correcting or contradicting any relevant statement prejudicial to his view. it may not be essential to disclose or quote or make available for inspection, any confidential report or opinion or disclose its source, but it is essential to disclose its substance atleast. an omission to do so would affect the validity of the order, because an adjudication is a quasi-judicial act. rules or sections of the relevant act or any notifications issued thereunder,alleged to have been contravened and the rules or sections of any act under which the punishment of penalty, fine or confiscation etc. is proposed to be imposed,should be clearly and specifically quoted in the showcause notice.punishment should not be imposed without asking the party to show cause against the proposed action. therefore punishment imposed under a rule or a section of the act not quoted in the show-cause notice would not be in order. it is, therefore, of utmost importance that appropriate and applicable rules or sections of the act contravened or under which action is proposed to be taken should be stated in the show-cause notice after careful consideration of the facts of the case. an opportunity of personal hearing must be offered in the showcause notice itself. (m.f.(r.d.)no. 100/18/55-fc dated 13.5.55)

Issue of show-cause notice to owners of conveyances used in transport of goods liable to confiscation

In dealing with a revision application the Govt. of India examined the question as to whether it was necessary for the adjudicating officers to issue show cause notice to owners of conveyances used in the removal of goods liable to confiscation under the customs act.

The facts of the particular case are as follows-

A lorry (public carrier) was engaged for transporting beedies which were attempted to be exported out of india from an unauthorised place. it was therefore confiscated under sec. 168 of the sea customs act with an option to clear the same on payment of fine in lieu of confiscation. the owner of the lorry contended that he was a mere carrier, that his driver did not share the intention of the hiredsmuggler and that the order of confiscation be set aside. he also contended that he was punished without giving him an opportunity of being heard in defence and without being served with a show cause memo. the question was whether there was any violation of the principles of natural justice. the point was referred to the law ministry who observed inter alia as follows :-

"The confiscation amounts to punishment and the punishment is really directed against the owner. it is, therefore, necessary that the owner should be given a show cause notice and he should thereby be given an opportunity to explain why the property should not be confiscated. rights of property should not be effected execept in compliance with the principles of natural justice." the government of india accordingly desire that a show cause memo, should be issued to the owner of the conveyance in such cases if the department is aware of such owner.

[m.f.(r.d) no.18/614/52/cus, ii dt. 20-2-1956.

Issue of separate showcause notices one relating to seized goods and other relating to offence cases booked for past clearances.

Ministry of law has clarified the following two issues :

(i) whether it would be permissible and appropriate under the law to issue show cause notice separately in respect of the goods that have been seized and in which case the show cause notice has to be issued within six months or the extended period and the other in relation to offence relating to earlier period detected as a follow up action of the seizure.

(ii) Whether investigation can be continued even after issue of the showcause notices to collect further evidence etc. regarding the issue at (i) above ,the law ministry has clarified that separate show-cause notice can be issued,one relating to seized goods and another for offence relating to the earlier period .as regards the issue at (ii) above ,there is no legal bar in continuing the investigation even after the showcause notice has been issued. however,if any evidence is collected which has to be relied upon in the adjudication proceedings, sufficient opportunity may have to be afforded to the person concerned to challenge the same.

If a clearing is there employed by an importer , the showcause memo should be delivered to him under receipt or sent by registered post,acknowledgement due. a copy of show-cause memo should also be forwarded to the importer. however where no clearing agent is employed by an importer, the showcause memo should be sent to the party himself by registered post, acknowledgement due.

`Show-Cause` Memo-Person to whom to be issued:

There was no obligation on the customs collector (officer of customs) under the law to give any notice to a person other than the owner (importer) referred to in section 29 of the sea customs act (section 46 customs act 62 in respect of an offence under section 167(8) (section 111d) in so far as it is proposed to confiscate the goods.

The position, however, is obviously different when one comes to a penalty that may be imposed on any person concerned in any such offence. it is a fundamental principle of natural justice that no person shall be punished without being heard, and therefore quite obviously no penalty can be imposed on any person without his being given a reasonable opportunity of being heard as to why the penalty should not be imposed upon him. therefore at any stage at which the customs collector (officer of customs) is of opinion that a person other than the owner (importer) referred to in section 29 of the sea customs act (section 46 customs act' 62) is concerned in an offence under section 167(8) [section 111(d) customs act'62] it is his duty to give notice to such person to show cause why a penalty should not be imposed upon him as a person concerned in the commission of the offence.

Turning next to section 167(37) (section 111(m) customs act'62) the offence consists, shortly stated of giving a wrong description of goods either in the bill of entry or in the shipping bill and the penalty for such affence is as in the case of section 167(8) (section 111(d), & section 112 customs act'62), confiscation as also a penalty which may be imposed on every person concerned in any such offence. in so far as the confiscation of goods is

concerned, since the essence of the offence is a wrong description of the goods and such description is given only by the owner who fills in the bill of entry or the shipping bill under section 29 (section 46 customs act'62) so far as the penalty of confiscation is concerned, notice need not be given to any one other than the owner (importer). but when it is sought to penalise any other person as a "person concerned" in any such offence, quite obviously he is entitled to a notice to show cause why a penalty should not be levied upon him" (tendolkar j. in chhogumal dodumal v. collector of customs and another - bombay high court.)

Show-Cause Notice - Avoidance of issue piecemeal,

examination of goods and other precautions to take:

Show cause notices should not be issued piecemeal for different offences relating to one bill of entry/consignment the bill of entry should be scrutinised thoroughly before a show cause notice is issued. any haste in the issue of show cause notice on the discovery of one offence may result in other offences escaping notice and might necessitate their being dealt with separately in unnecessarily delay.

It has, become necessary to impress upon the concerned officers the need for judicious use of their powers. Careful and thorough examination of goods and scrutiny of documents at the initial stages will eliminate issue of show-cause memos in haste and withdrawing them later. the inconvenience to the trade consequent upon initiation of avoidable proceedings can also be done away with.

(f.no.8/55/67-cus.iii dated 2.9.67)

It has been observed that show cause notices are issued and penal action taken without physical examination of the goods in dispute. in order to avoid a situation where after adjudication the goods are subsequently found to have been misdeclared, all consignments should invariably be examined before adjudication orders are passed. at the time the show cause notice is issued it must be clearly stated that the declaration of the contents is subject to verification by examination and that the verified declaration would be intimated before adjudication. in exceptional cases, where delay involved due to examination is considered to be unreasonable, such examination may be waived under collector's orders.

(collector's order, calcutta custom house)

"Offenders" or "Accused" - Avoid use of the words:

The trade and the assesseees are averse to their being termed as "offenders" or as "accused" in the department proceedings. while the act itself used the expressions "offence", "accused", "penalties", etc. and the fact that breach of law (which does not necessarily mean criminal law) justifies

legally the use of such terms. with a view to maintaining a happy relationship between the government and its assessees no mention of the words "offender" and "accused" should be made in the departmental proceedings. in the show cause notice as well as in the order of adjudication the person involved should be described as "person concerned" or he may be described by name. similiary in the appeal and revision petition stage he should be described as the appelland and petitioner respectively. (ministry of finance, adjudication manual, para 16, page 10)

The location of the goods as indicated in the examination report should always be mentioned in the copies of the show cause memo required to be forwarded. the supervisory heads will ensure that this is done.

Reply to show cause memo. ordinarily nor to ask within

 twentyfour hours - time to be allowed

An instance has come to the notice of the board wherein a person charged with an offence under the customs act was called upon to show cause within 24 hours. such action would be open to criticism as giving too little time to the accused for giving adequate reply and therefore held as virtually offending against natural justice. the board, therefore, considers that the offenders should be allowed a resonable time for replying to show cause notices. there is, of course, no objection to the accused furnishing his reply well before expiry of the time limit if he chooses of his own accord to do so.

Where the offender is due to leave the country very shortly and it anxious to have the matter setted straight away, he may offer an explanation in writing and ask for the show cause notice to be dispensed with, in which case the custom house can proceed to adjudicate without risk. in other cases, the steamer agents might guarantee to pay any penalty that may be imposed;here it would be possible to give a reasonable time for replying. where,however, the accused will be leaving shortly, and no guarantee is forthcoming from the steamer agents the custom house cannot be accused of failure to observe natural justice if it reduced the period allowed for replying to the show-cause notice;since otherwise, to allow a longer period when it is certain that the offender will be out of the country before the period has expored, would be to reduce the provisions of law to a nullity.
 (c.b.r.no.69(94)-cus.1/55 dated 12th may 1955 and c.b.r.no.69(94)/54-cus.i, dated 3rd jan 1956)

Signing of show cause memo:

So long as the officer to whom the cause is to be shown in indicated in the show cause notice itself, there is no objection to such a notice being issued by any other officer. even then it is always open to the officer, who has to finally take the decision to issue a fresh show cause notice if he feels that the previous one was inadequate or defective for some reason or on some point. where, however, cause has been shown to one officer as indicated in the show cause notice, but the final adjudication is to be done by another officer, it shall not be held to be in strict consonance with the principles of natural justice if the latter does not issue a notice himself. if the party concerned indicates in writing that he does not desire to show any further cause, the case shall be decided without a fresh show cause notice being issued. (c.b.r.letter f.no.100/1/62-1.c.i. dated 5.2.62)

Note: The show cause memo may be issued by the assistant collector,when the adjudication is to be done by the assistant collector himself. deputy collector/ collector of customs, if order to issue is obtained at the appropriate adjudicating level.

Show cause memo under section 123 custom act'62

In respect of goods covered by section 123 of the customs act the burden of proof can be transferred to the person concerned only if the goods have been seized "in the reasonable belief" that they are smuggled goods. of course, in any such case the adjudicating officer, after hearing the arguments and examining the evidence put forward by the person concerned, may ultimately come to a conclusion that the seized goods are not smuggled goods. but before deciding whether section 123 should be invoked in a particular case he must satisfy himself that the goods were seized in the reasonable belief that they were smuggled goods. further,it is advisable that this decision is taken at the initial stage of adjudication i.e. at the time of issue of show cause notice, because it would be illogical to do so after the person concerned has put forward all his arguments/evidence. in taking such a decision at the time of issue of show cause notice the adjudicating officer is neither "prejudging the issue" nor forming a "bias". he is simply satisfying himself that the essential condition for invoking section 123 of the customs act is fulfilled.

Therefore, in the cases covered by section 123 of the customs act the show cause notice should indicate that the adjudicating officer has satisfied himself that the goods were seized in the reasonable belief that they were smuggled goods and consequently, such show cause notices should be issued by the adjudicating officer himself. (m.f(d.r.&i.) f.no.22/1/66-lc.ii,dated 23.9.1966).

Show-cause memo. to sent by registered / a.d post :

 Show-cause notices should be sent by registered post, acknowledgement due. in cases where the person concerned refuses the cover containing the show-cause notice, the act of the department in sending the notice by registered post acknowledgement due, would be deemed to be a sufficient service of the said notice. it means that an opportunity to show cause has been given to him but he has, by his act of refusing the delivery, failed to avail of it. in such cases the cover returned with the endorsement "refused" should be preserved intact, unopened, in the relevant file so that it would serve as a piece of evidence that the person concerned failed to avail of the opportunity of defence offered to him. in case where the cover containing the show-cause notice is returned by the postal authorities with an endorsement "not in town" an attempt should be made to serve the notice through some local staff if it can be conveniently done. the cover containing the endorsement "not in town" should also be preserved in the relevant file. in all other cases, i.e. where the notice comes back with any endorsement other than "refused" and personal service of the notice is not convenient, a copy may be posted on the 'notice board' of the office. there may be cases where the person concerned calls at the office and desires the notice to be delivered to him personally; no objection should be taken to delivering the notices personally provided an acknowledgement in writing is taken from the person concerned.

Failure to reply to Show-cause memo:

Where a notice has been duly served and the accused person fails to reply, it is not incumbent on the department to serve him with a further notice.

However, if the amount involved is high, or if the notice was issued to a clearing agent and it is possible that the owner has not been properly informed or in other similar cases, it would be appropriate to issue a reminder.

False information in reply to show-cause memo.:

A show-cause notice was served by the collector of customs, Calcutta, on a local firm involved in an offence of illegal importation, the firm supplied certain information in regard to the seized goods, which, on enquiry, was found to be false. a question arose whether such a false statement made in answer to a notice to show-cause attracted the provisions of section 167(72) of the sea customs act (section 132 customs act '62).

The board is advised that a prosecution in such a case under section 167(72) (section 132 customs act '62) would not be successful. the first para of the aforesaid clause clearly does not apply. The conclusion

therefore is that section 167(72) (section 132 customs act'62) will not apply at all in such cases. however, if forged documents are produced, the act might in certain circumstances constitute an offence under section 164 of the indian penal code. (c.b.r.no.69/23/54-cus3i dated 26.9.1955)

Revised show-cause memo. to issue when ground of

confiscation appears different:

A few cases have also come to notice where the grounds on which the goods were finally confiscated, were slightly different from those on the basis of which the show cause notices were issued. in such cases, it is always desirable to issue revised show cause notices before issue of the order-in-original.

Show-cause memo when not desired:

Where the party affected declared in writing that he is aware of the contravention and offers an explanation and prays for orders being passed thereon, this requirement of issuing a s.c.n., is fulfilled and it is not necessary to issue a formal 'show cause notice'. in such case, it will not lie in the mouth of the party to turn round and impugn the order for want of an opportunity to meet the allegation and defend himself. but it must be borne in mind that the action must be taken on the ground which the party admits to know. if the ground of the action or any of the allegations on which it is founded are different from those admitted to be within the knowledge of the party affected, it would be open to him to plead surprise and want of notice and opportunity to defend. unless therefore the facts admitted are to form exclusively the basis of the proposed action, a 'show cause notice' must invariably be issued.

It is noticed that in certain cases where the party desires that he does not want a show cause notice or personal hearing, there is no record that the party has been informed of the offence and the intention to impose penalties. at a later date, at the appeal state, the party contends that there was failure of natural justice and he had no opportunity to make a representation against the proposed fine. the officers concerned will in future see to it that whenever the party gives in writing that he does not want a show cause notice or hearing, that, he has been orally informed of the offence so that in addition to his stating that he does not want a show cause notice or hearing he will add that he is aware of the details of the offence.

Documents supplying of-where show-cause memo
issued-question of court fee

A question arose as to whether the customs authorities are bound to comply with party's request for supplying free of charge copies of all documents referred to in the show-cause notice.

Ministry of law who were consulted in the matter have advised that the customs authorities would have to supply to the party copies of documents referred to in the show-cause notice without charging the party for these copies, no matter what those documents are. as regards other documents the party would have to pay for the copies of documents which he WANTS TO RELY UPON IN PUTTING YP HIS DEFENCE.

Disclosure of Information by customs authorities.

The Board had occasion to examine the legality of disclosure of information learnt by the customs authorities in their official capacity to another department for their use of investigation. in this connection, the cope and the application of section 136(3) of customs act, 1962 which imposes bar on the disclosure of information (in respect of goods) learnt by the customs officers was also examined in consultation with ministry of law, ministry of law have advised as follows:

(i) Section 136(3) of customs act, 1962 applies only to disclosure of particulars learnt by an office of customs in respect of any goods; it does not apply to disclosure of particulars other than those in respect of goods.

(ii) In the absence of a provision to prescribe the powers and duties of officers of customs, like the provision an section 9(a) of the sea customs act 1978, a rule, on the lines of notification no. 78 of 20.11.1951 cannot be made under the customs act, 1962. in the light of the law ministry's advice stated above, information not in respect of any goods may be furnished suo motu (or on request) by the customs authorities. however, information in respect of any goods may be furnished only if the department requiring the same made a requisition in due legal form, under the provisions of some law requiring the customs officer to disclose the particulars required by him.

{board's f.no. 1/3/64-cus.vi, dated 1.7.1964}

the information required by the state governments may be broadly classified into two categories:

(i) If such information could be made available to the state governments without undertaking any extra work there is no objection to

the supply of such information to those authorities and a formal order authorising the collectors to supply such information is not considered necessary.

(ii) if the supply of such information would involve the custom houses or the collectorates in an appreciable amount of ministerial work, they should be asked to obtain the information from the director general of commercial intelligence and statistics. if the information be of such nature that the d.g.c.i &s. cannot furnish the same, the board's prior approval should be obtained in each case.

As regards supply of information not fallig in the category (i) & (ii) above, it is considered that no general order authrising collectors to disclose such information be issued. the practice of making prior reference to the board for approval should continue. [board's f.no. 25/6/621.c.i., dated 4.1.1963]

A question recently arose whether in terms of section 197 (79) (section 136 customs act, 1962) the customs house could claim privilege for customs documents such as bill of entry shipping bills, etc. from being required to be produced before the police on requisition under the criminal procedure code or before courts of law.

The board has been advised that police officers as well as civil and criminal courts and certain other tribunals or bodies invested with the powers of a court have the authority to require any person to produce any documents in his possession or power and unless such documents are of a privileged class, the order for production must be obeyed on pain of penalties provided by the law. a customs officer could not decline to produce documents called for by the police or courts or tribunal on the ground that he would thereby expose himself to a penalty under section 167 (79) of the sea customs act (section 136 customs act, 1969).

In fact, though it may be no part of duty of an officer of customs as such officer to disclose any particulars learned by him in his official capacity in respect of any goods, section-167 (79) (section 136 customs act,1962) is not really attracted when an officer of customs is lawfully compelled by any authority to part with any documents containing such particulars. this court or other authority derives the knowledge not from any disclosure made by the officer of customs but by exercising its powers of obtaining such information under and in accordance with the law. a customs officer cannot therefore, excuse himself on the strength of the provisions of section 167 (79) of the sea cusoms act (section-136 customs act, 1962) from producing documents required by a court or a police officer.

[board's f. no. 48(18)-cus. i/54, dated 1.10.1955]

Affidavit-in reply- Ccase to avoid discrepency

A case has recently come to the notice of the government where a writ petition filed in a high court, on the grounds that the adjudicating officer has biased against the petitioner and there were significant discrepancies between the order-in-original and the affidavit-in-reply filed by the respondents, had to be conceded in consultation with the department's legal advisers on account of the apparent weaknesses in the case. in order to prevent the recurrence of such cases, it is imperative that utmost care is exercised not only in the adjudication of the cases by the officers concerned but also in the matter of scrutiny of affidavits-in-reply to writs filed in the high courts in such cases. in this connection, the government also wish to stress that necessary precaution should be taken to ensure that there is no slip-up on the part of the department in the preparation of the affidavits and in the conduct of such cases in the courts.

[m.f. (d.r.) f.no. 2/31/56-cus. vi dated 28.5.1963]

Adjudicating officers should act on evidence and not

on mere suspicion:

It has been held by the courts that when a finding is based on mere suspicion or conjecture without factual basis it is not a finding at all and a decision based on such finding is perverse and bad in law. The adjudicating officer must act honestly on the material, however inadequate, before him and not vindictively, capriciously or arbitrarily. the adjudicating authority is not bound to rely on all the evidence produced before him by the party. he may disbelieve the oral testimoney of the witness and may reject documents which he believes to be false and unreliable. it is necessary for the adjudicating authority however to disclose the reasons because of which he is accepting or rejecting the evidence submitted.

Cross Examination:

While it is incumbent on the part of the department to make available all materials relied upon in adjudication proceedings it need not volunteer to produce witness for cross examination unless department itself chooses to do so. however if the person charged with an offence demands or desires to cross examine a witness or a person whose statement has been recorded and used in the proceeding, to test the truth of the contents of evidence adduced against him, the department is bound to produce the person concerned for cross examination.

Presence of counsel & cross examination during

Hearing - orders regarding:

The Board has decided that in fairness to the party against whom adjudication proceedings are instituted and in consonance with the principles of natural justice the alleged offender should be allowed to put up his case fairly freely and fully and if he so desires, with the help of a counsel. care should, however, be taken to see that the adjudication proceedings do not take the form of a judicial trial and cross examination should not, therefore, be permitted.

(c.b.r. no.100/80/54-1.c. dated 6th september, 1955)

Cross-Examination of witnesses in departmental

Adjudications - Question regarding:

On the subject of cross-examination of witness, having regard to the various recent pronouncements by the supreme court and by some of the high courts that in quasi judicial proceedings where the evidence of any person is relied upon the party concerned must be given an opportunity to test such evidence either by cross- examination or otherwise, the board considers that as adjudications of customs cases are of a quasi-judicial nature, denial of an opportunity of cross-examining the departments' witnesses by the party concerned may amount to violation of the principles of natural justice. the adjudicating authorities should not, therefore, reject requests for cross-examination if witnesses as a matter of course, but consider the same on their merits.

Adjudicating authorities should obviously exercise caution against permitting cross-examination indiscriminately, where, for instance, there is a question of calling informers for cross-examination or of producing businessmen to substantiate the information gathered from them in the course of confidential market enquiries whereby public interest is likely to suffer, the request for cross-examination need not be conceded by adjudicating authorities. some of the other circumstances under which the adjudicating authorities may turn down requests for cross- examination of witnesses may by way of illustration be given as under:-

a) When production of the witnesses would entail expense or effort not commensurate with the value of the witnesses are likely to give, having regard to the facts and circumstances of the case;

b) When the witnesses are close relatives or dependents of

the party concerned whom he can produce himself;

c) When the witnesses had already been examined by the party concerned during the course of any enquiry or it is not possible to produce those witnesses before the adjudicating authorities at the time of personal hearing, etc. in any case the department is not bound to offer for cross-examination any witnesses whose statements have not been relied on in the show cause notice.

For purpose of administrative record, it will, however, be necessary to record briefly in writing on the file the reasons for refusal of the request to permit cross-examination of the witnesses. It will be the responsibility of the department to produce its witnesses whose cross-examination is permitted by the adjudicating authorities. The expenses if any, for the production of such witnesses will have to be borne by the department itself.

(m.f.(d.r.) f.no.4/61/61-cus.vi dated 23.12.61)

Copies of records of cross examination - Request for How to deal

 Officers, dealing with requests for copies of cross-examination and re-examination, should be guided by the law ministry's note dated 29.3.63 reproduced below.

There is, of course, no legal objection to the grant of copies of depositions of witnesses in the departmental enquiries. But it must be pointed out that the principles of natural justice do not require this if the party is actually present and has been hearing the oral evidence, because it is for him to take note of the points emerging from the oral evidence and to make use of it for cross-examination etc. No doubt in proceedings before courts parties are granted certified copies of depositions of witnesses subject to certain conditions. But the enquiry by an administrative tribunal is not exactly a judicial trial and all the rules of judicial trial are not automatically applicable to a quasi judicial adjudication by an administrative tribunal.

There may, of course, be cases where it might be necessary owing to the complexity of the case or otherwise to furnish the party with copies of depositions. In this case there might be justification for grant of copies of depositions. But it cannot be a rule that copies should invariably be granted. In other words the question of granting copies should be decided with reference to the facts of each case and no hard and fast rule should be adopted.

[c.b.r. f. 4/99/62-cus.vi dated 18-4-63]

Cross examination of technical experts like deputy Chief chemists when to allow

Recently a case has come to the notice of the board wherein the party's request for cross examination the deputy chief chemist, bombay in connection with an adjudication was turned down by the assistant collector concerned and the case was adjudicated by him. consequently the party went in an appeal to the collector, who dismissed the same. being aggrieved, the party filed a writ petition in the high court of gujarat challenging the validity of the orders. the high court has since allowed the petition. The main point on which the judgment in favour of the petitioner is based is that the denial right of the party to cross examine the deputy chief chemist on whose opinion the adjudication orders were based tantamounts to violation of principles of natural justice.

The Board have considered the implications of judgement. the right of the party to cross examine witnesses, on whom the adjudicating authority relies for proving the offence, cannot be denied. but at the same time it is appreciated that permitting such cross examination will entail considerable expenditure by way of t.a. etc. the board have, therefore, decided that for the present only such technical opinion should be referred to in the adjudication orders and appeal cases as has to be solely relied upon, and, in such cases facilities for cross examination of the technical experts should also be given.

Certified copies of the bills of entry with departmental notings -
reliance in cross examination. question of refusal to answer

As all such bills of entry are taken about by clearing agents, they can keep a copy and rely on them in cross-examining the customs officers. when any officer of customs is put a question in cross-examination with reference to such notings, he can claim privilege and decline to answer the question on the ground that it relates to a communication made in official confidence to the customs collector which cannot be disclosed without his previous permission. if such a question is put to a customs collector, he can claim privilege under section 124 of the indian evidence act.

The Board also desires that all but routine noting should be made on separate not sheets and not the reverse of the bills of entry

(c.b.r.no.66(56)-cus.iii/54 dated the 21st july 1955)

Delegation of Quasi Judicial Functions:

So far as proceedings under the customs act'62 are concerned, the authority imposing the punishment must hear. It would militate against the principles of natural justice for one officer to hear and another to decide the issue.

Reasoned order:

An authority vested with quasi judicial powers must give reasons for his order, even though no such obligation has been specifically laid down in statute, conferring such powers, particularly when there is a provision for appeal against the order.

Issue of speaking orders by the adjudicating authorities

Attention is invited to custom house standing order no. 4/78 dated 19-1-78 which emphasises the need for issuing `speaking orders` by adjudicating authorities. a question whether adjudicating or appellate authorities , should invariably pass `speaking orders` in all cases has been examined by the board.

2. Whenever an officer is exercising a jurisdiction vested in him by law, and his decision affects the rights of a citizen the need for setting out the reasons for such a decision is evident. reasons clearly stated would :-

- (i) Ensure proper application of mind by the officer ,
- (ii) Go to satisfy the party that his case has received due consideration , and
- (iii) In case the matter is taken before a higher authority in appeal etc. , enable that authority to understand the reasons for the decision and determine whether ,they are well founded.

3. (a) In accordance with the above principles it is necessary first that adjudicating and appellate officers , while deciding a case , should record either on the file of the case, or in the order passed ,clear reasons for their findings, irrespective of the fact whether the case is decided favourably or unfavourably to the party. They should also see that whenever a decision is given which is adverse to the party, the order issued is a "speaking" one and detailed reasons are spelt out therein for arriving at the decision.

(b) Where proceedings are initiated and dropped, it is not necessary to go into great detail in the order issued. this would minimise the risk of decisions being quoted out of context. in such cases , however the case file and (in case of appeal) the endorsement to the concerned officer or to the lower formation should indicate adequately the reasons for the order.

(c) Further, whenever a case involving a matter of classification or valuation is decided ,irrespective of the fact whether it is favourable or adverse to the party , a reasoned finding should be given in the order.

4. It has also been observed that there is some confusion regarding the correct connotation of the words "admitted" and "allowed" and the former word is used in some appellate orders where the latter is the correct term. In fact, in central excise law, an appellate authority has no powers to admit an appeal, and when relief is given the proper word to use is "allowed".

[board's letter f.no. 208/9 (m) /76-cx.6 dated 28-10-77
circular no 20/77 -cx.6]

Speaking Orders

It has come to the notice of the board that adjudicating officers while giving their decisions when functioning in a quasijudicial capacity are not giving, in the order, the grounds on which they have come to the said decision. Even in the past, instructions have been issued by the board that adjudicating officers should issue `speaking orders` so that the person against whom the orders have been passed is in a position to understand the basis of the decision arrived at by the adjudicating officer and make an appeal accordingly.

Special attention of all concerned is invited to the observations in para 6 of the judgement delivered by the supreme court in the case of the Siemens Engineering and Manufacturing Co. of India Ltd & others (a.i.r. 1976 s.c 1785), extracts of which are reproduced below. All the officers concerned are once again instructed that while exercising their authority in a quasi-judicial capacity, they must issue, when deciding cases against the parties, "speaking orders".

"Before we part with this appeal, we must express our regret at the manner in which the assistant collector, the collector and the government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the assistant collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the collector and the government of India. Indeed this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this court ending with *N.M. Desai v. Testeels Ltd.*, C.A. no. 245 of 1970 decided on 17.12.75 (sc), but unfortunately, assistant collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the collector should have made in elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the collector could have been a little more

explicit and articulate so as to lend assurance that the case of the appellants had been of law. but the order of the collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. if courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. the rule requiring reasons to be given in support of an order is like the principle of *audi alteram partem* a basic principle of natural justice which must inform every quasi-judicial process and the rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. the government of india also failed to give any reasons in support of its order rejecting the revision application. but we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the collector. the reason give by the collector was, as already pointed out hardly satisfactory and it would therefore, have been better if the government of india had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. i hope and trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the customs authorities and the validity of the adjudication made by the customs authorities can court. in fact, it would be desirable that in cases arising under customs and excise laws an independent quasi-judicial tribunal like the income-tax appellate tribunal or the foreign exchange regulation appellate board, is set up which would finally dispose of appeals and revision applications under those laws instead of leaving the determination of such appeals and revision application to the government of india an independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

[authority.-central board of excise & customs letter's
f.no.223/55-m/77 cx6, dated 3.10.77 and 28.11.77

Fair Hearing:

Fair hearing denotes that the accused party gets all reasonable opportunity to know the case against it, has all facilities of inspecting the evidence to be used in the proceedings and to present its arguments before the adjudicating authority.

Who should hear:

 It is not necessary that the officer who issues show cause notice should also hear. in other words it is not necessary for the adjudicating officer himself to issue the show cause notice.

Where a hearing had been given by one officer and the formal order of adjudication was passed by his successor without hearing the parties, it did not conform to the principles of natural justice and was therefore, bad in law. the ministry of law, who were consulted in the matter, have advised that it is now settled law that an order of confiscation or penalty under the customs act is not a mere administrative or executive act but is really a quasi-judicial act and that, therefore, an application for a writ of certiorari lies in respect of such an order. the board desire that whenever a personal hearing has been asked for, the adjudicating officer himself hear the party before giving the decision in the case. where the outgoing officer had given a personal hearing but had been unable to issue the final order, the successor in office must offer a personal hearing again before the formal order is actually issued. It is, however, open to the party concerned not to have a further hearing after it has been offered to him. in case the offer is not availed of by the party the fact of the offer and its not being availed of should be put in writing in the appropriate case records.

When an adjudicating officer is likely to be transferred or promoted, it should be ensured that in all cases where a hearing has been given on request, but formal orders have not been issued, the drafting of these orders is done on a top priority basis so that formal orders in all such cases are issued by the outgoing officer before relinquishing charge. if despite this precaution, odd cases remain undisposed of, the successor in office should offer a fresh hearing to the party as mentioned above before issuing the formal orders. a special mention of such cases should be made in the handing-over notes of the outgoing officer so that they do not escape the notice of the successor.

There may be cases where after the personal hearing is over and the case is otherwise ripe for adjudication, the officer issuing the show cause notice and hearing the party may feel that the case merits penalty in excess of his own powers and decide to forward the case papers to his superior. in such cases a personal hearing should be granted afresh by the later.

(board's f.no.100/1/62 l.c.i. dated 5.2.62)

Personal hearing by government of india at revision state
 whether obligatory:

 A question arose whether on consideration of natural justice, it is obligatory on the part of the government of india to grant a personal hearing at the revision stage when such hearing has not been given by the collector at the appeal stage even though asked for and when the party

concerned asks for such hearing at the revision stage.

In the light of the various legal pronouncements on the subject the principle that the party should be heard before an order to his prejudice is passed, does not mean that he should be heard in person in every case. In view of this, the normal practice prevailing at the revision stage viz., not to grant personal hearing, is in order. However, the position would be different where the collector disposes of an appeal without giving opportunity to the aggrieved party to represent his case in person although the party had prayed for such an opportunity. The law ministry have advised that in such cases it would be obligatory on the part of the government of India to grant a personal hearing at the revision stage, when a request to that effect is made by the party.

To obviate the need for the government of India having to grant a personal hearing at the revision stage, the collectors should not refuse a hearing if one is asked for at the appeal stage, as otherwise, the government of India will have to hear the petitioner at the revision stage. The hearing would not of course be necessary if even before the hearing stage it has been decided to grant completely the reliefs claimed by the appellant. (M.F.(D.R.)F.No.1/31/59-Cus. dt.20.9.1959) (Inst.No. 14/SC Act./Cus.VI/59).

Technical advisers - Presence of during personal hearing:

The aggrieved party may bring with him his technical advisers (chemist) to a discussion with or to a hearing given by the Asstt. Collector/Collector. Custom house chemist can also be present at such discussions or hearings if the Asstt. Collector/Collector considers his presence necessary. It will be necessary to ensure that the personal hearing does not degenerate into a battle of arguments between the custom house chemist and the party's chemist. In the light of the discussions at such a meeting and having regard to the advice which the custom house chemist may give after hearing the opposite number, the Asstt. Collector/Collector will exercise his own judgement bearing in mind all other relevant factors.

Right to be represented by a counsel

It is a matter which the adjudicating authorities should themselves decide in their discretion whether having regard to the facts and complexity of any case under consideration assistance of legal practitioners should be regarded as a part of reasonable opportunity or not. This principle should be applied to a case as a whole and a decision should be taken on the facts and circumstances of each case as to whether a legal practitioner should or should not be allowed to assist the party in the adjudication proceedings. But such a decision should be with respect to the case as whole and not merely for the purpose of cross examination.

In view of the above, adjudicating authorities should ensure that legal practitioners are not allowed to appear before them except with their specific permission.

The adjudicating authorities should however be liberal in permitting the appearance of legal practitioners in complicated and in cases involving heavy stakes. Like personal hearing, cross-examination need not, however be granted, unless specifically asked for.

(board's letter no m.f.(d.r.)f.no.4/61/61-cus.vi dt.23.12.61)

Consultation by the adjudicating authority

The adjudicating officer should make up his mind of his own accord after weighing the material placed before him. He should not seek the help of others in coming to a conclusion or base his orders on instructions received from superior authority. *lakhania ltd. v. a.n.sattanathan and others.*

"If the prosecution was going to meet the arguments of the petitioner's counsel, it should have been done in his presence so that he might have an opportunity of replying to it or of addressing the adjudicating officer upon it. It seems that the view that was prevalent was that it would be sufficient, to hear the petitioner or his lawyer and then there could be conferences upon it between several officers and the matter be disposed of upon the consensus of opinion. while this might have been passed over if it was a purely administrative affair, it must be condemned since it has been held that the functions were quasi judicial".

(extracts from principles of natural justice issued by the board).

In spite of so many adjudication orders having been thrown out by courts of law on grounds of failure of natural justice it is noticed that action is still some times taken in this regard in all ill-considered manner. it is the duty of every officer to see that citizens are not deprived of their property on mere suspicion. the necessity of ensuring that justice is not only done but is seen to be done in such cases is thereof impressed upon all concerned.

(m.f.(d.r.)f.no.11/168/61-l.c.ii dated 2nd december, 1961).

Persons concerned whether abettor or actual perpetrators

& question of mens rea:

- 1) Person liable for penal action under the customs act 62
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The Board desires that whenever the circumstances of a case justify the imposition of personal penalty, the finding to the effect that the accused is the person concerned in the act of smuggling of goods, should invariably be recorded in the adjudication order. The board however feels that when no such finding is forthcoming it would be advisable not to impose personal penalty and be content with action against the goods only. Personal penalty should not be imposed without giving express finding as stipulated in the board's letter f.no.94/102/60-cus.ii dt 21.8.61.

Board's letter f.no. 94/102/60-cus.ii dt.21-8-61

 "Person concerned" -Section 167(8) of s.c.a., -Scope of-Recording of finding-

The question regarding the exact import of the term "person concerned" occurring in section 167(8) of sea customs act, and the circumstances under which personal penalty can be imposed under the said section have figured before the various high courts of the country in several cases. In the light of their observations the ministry of law have also examined the question in detail. A copy of that ministry's note is appended below. The board desires that whenever the circumstances of a case justify the imposition of personal penalty, the finding to the effect that the accused is the 'person concerned' in the act of smuggling of the goods, should invariably be re-recorded in the adjudication order; the board, however, feels that when no such finding is forthcoming it would be advisable not to impose personal penalty should not be imposed without giving express findings as stipulated below :-

(i)

The expression "any person concerned in the offence of smuggling occurring in section 167(8) of the sea customs act has been recently the subject matter of many rulings and it would be difficult to take an exception to the construction placed upon these words by the court. The government's case was based upon the following observation by the supreme court in the case of sevpujan rai vs. collector of customs (a.i.r. 1958 supreme court 848) : "there is an appreciable difference between the expression "any person concerned in any such offence" occurring in the 3rd column of section 167(8) of the sea customs act and the expression 'whoever contravenes any of the provisions of this act, occurring in section 28 of the foreign exchange regulation act. (a person may be concerned in the importation of smuggled gold, without being a smuggler himself or without himself contravening any of the provisions of the foreign exchange act, in this sense, the scope of section 167(8). sea customs act, is different from that of section 28 of the foreign exchange regulation act". Even this passage as is explained in the rulings which I will presently refer to, does not mean that mere possession of smuggled goods with the knowledge that they are smuggled is sufficient to hold such person as a person concerned in the offence of smuggling. The Bombay high court in the ruling of pukraj jain vs. d.r. kohli (i.l.r.1959, Bombay 1770) held that the mere finding that the goods found in a person's possession were smuggled goods is not sufficient to impose a penalty under section 167(8). The same high court in the later ruling of gopal mayaji

parab vs. t.c.seth (a.i.r. 1960) bombay 478) has held as follows :-

"The provisions of section 167 is a provision in respect of a charge of criminal nature and must be construed strictly.....a purchaser who arranges to have the goods imported into india contrary to the restrictions and prohibition may be a person who is concerned in the offence as mentioned in section 167(8). that, however is not a person who is dealing with the goods subsequent to. the arrival thereof without his being concerned in illegal importation thereof into india. it appears to me that the words `person concerned relate to all those who may have an interest already accrued in the illegal importation prior to the period of the time of such importation that they (petitioners) have been helping shanker lall in destroying the evidence of gold of foreign origin smuggled into india does not in any manner make them persons concerned in the offence as mentioned section 167(8)".

The supreme court case of sevpujan rai was referred to and held not to support the government's contention. the calcutta high court in the ruling of seetharam vs. additional collector (a.i.r. 1960 calcutta 676) has held as follow :-

"to be concerned in `in section 167(8) column 3, means to take part in or to be related to. any body therefore who takes part in importing into or exporting from, india any goods which are subject to any prohibition or restriction is to import or export would be committing an offence under this section. but the offence is completed as soon as the importing or takes place. any body who takes part in any of the processes leading to the import into, or export from, india would be concerned in the offence of importing or exporting.....no doubt he was concerned in the disposal of the gold that was contraband but that would not make him liable for any penalty under section 167(8)." the supreme court case of sevpujan rai was referred to, explained and held not to support the government's point of view. the madras high court in the ruling of devichand jestimall. vs. collector (a.i.r.1960 madras 281 has also held as follows :-

"to bring the petitioners within the terms of item 8, it is necessary to establish that they actually imported the gold or were concerned in the import of gold. it must be shown that they had arranged for the import of the gold or abetted the import of gold or received it immediately after the import, the receipt being the final stage in the process of importation. in other words they must have either actually committed the offence of importation or have been accessories to it either before the fact or after the fact. to be in possession or to buy gold once the process of importation is unlawful, is completed independently of the series of acts connected with such importation will not fall within the terms of items 8 of the schedule. mere possession of gold which has been unlawfully imported into india cannot be dealt with under item 8 of the schedule of section 167". it was held in this case that even if a person purchases gold with the full knowledge that the gold has been smuggled into the country, that by itself does not constitute him a person concerned in the antecedents of completed act of smuggling. in view of the above position, no

exception can be taken to the judgement. beyond holding that the gold was smuggled gold and that shri shiv narain failed to establish his purchase as alleged thereof, the order does not contain any fact or reason to show that shri shiv narain was in any way concerned with the act of smugglings before it was completed. the court has also held that the collector did not apply his mind to the question whether shri shiv narain can be said to be concerned with the act of smuggling and did not record any express finding to that effect. it is true that beyond saying that all the charges were held proved, the collector did not record an express finding that shiv narain was concerned in the offence of smuggling. much less did he give any reasons for such a finding. it may be urged that if we read the collector's order in the context of the 'show cause' notice, it would be deemed to imply the finding that shiv narain was concerned in the offence of smuggling. attention may be invited to the rulings of s. balvir singh vs. collector (a.i.r. 1960 punjab 488) and pukraj jain's case where the courts declined read to any such implied finding. in the circumstances it would be difficult to challenge the court's decision on this point also.

(ii)

Copy of board's letter no. v 45/2/54-cus-i,dated 26th july 1955.

(iii) as regards the third question, namely whether abettors and actual perpetrators are persons concerned within the meaning of section 167(8), the word "concerned" implies only an association of the individual with the commission of the offence. it is evidently of wider import than 'abet'. the person who commits the offence of importation directly in all its stages is no doubt associated with it and is a person concerned in the offence of illegal importation. a person who has added such an importation or instigated it or entered into a conspiracy for the purpose as an abettor is equally a person concerned. what is to be emphasised is not the inclusion of actual offenders and abettors as to which there could not be any doubt but the further inclusion of a certain class of persons who are not associated to the same degree and extent as an abettor or principal offender. a person who has the knowledge of the smuggling and has done or undertaken to do some further act which encourages or facilitates the commission of the offence of illegal import is also a person concerned. thus a person who knowing that goods have been or are about to be imported illegally assists in their disposal or secretly passed them or arranges for their immediate sale is also a person concerned although he may not have been instrumental in the initiation of the import or in the physical act of importation. it is always difficult to categorise or attempt an exhaustive definition of a term of such wide and deliberate loose meaning as this but where a person buys some goods which is attempted to import illegally and while they still are in the ship would clearly be a person concerned within the meaning of section 167(8). in the case however, of a purchaser of goods in the ordinary course in the internal market who has not knowledge of their importation and who was in no way connected with the import, such a conclusion would not be in accord with the law. in the case of such a person the import had come to an end and the offence completed and accomplished entirely without his

assistance. the goods having entered the stream of commerce reached him in due course and he could not in these circumstances be subjected to a personal penalty for an offence under section 167(8) without adducing some further proof of active association with the wrongful introduction of the goods into the stream of commerce.

board's f.no. 94/102/60-cus.ii dated 21st august, 1961.

Whether abettors & actual perpetrators are persons concerned:

Whether abettors and actual perpetrators are persons concerned within the meaning of section 167(8) sea customs act (sec.112 customs act'62) the word `concerned' implies only an association of the individual with the commission of the offence. it is evidently of wider import than `abet'. The person who commits the offence of importation directly in all its stages is no doubt associated with it and is a person concerned in the offence of illegal importation. a person who has aided such an importation or instigated it or entered into a conspiracy for the purpose as an abettor is equally a person concerned. what is to be emphasized is not the inclusion of actual offenders and abattors as to which there could not be any doubt but the further inclusion of a certain class of persons who are not associated to the same degree and extent as all abettor or principal offender. A person who has the knowledge of the smuggling and has done or undertaken to do some further act which encourages or facilitates the commission of the offence of illegal import is also a person concerned. thus a person who knowing that goods have been or are about to be imported illegally assists in their disposal or secretly passed them or arranges for their immediate sale is also a person concerned although he may not have been instrumental in the initiation of the import or in the physical act of importation. it is always difficult to categories or attempt an exhaustive definition of such wide and deliberate loose meaning as this but where a person buys some goods which is it attempted to import illegally and while they still are in the ship would clearly be a person concerned within the meaning of section 167(8), (sec.112 customs act'62). in case however,of a purchaser of goods in the ordinary course in the internal market who has not knowledge of their importation and who was in no way connected with the import,such a conclusion would not be in accord with the law. in the case of such a person,the import had come to an end and the offence completed and accomplished antirely without his assistance. the goods having entered the stream of commerce reached him in due course and he could not in these circumstances be subjected to a personal penalty for an offence under section 167(8) sea customs act (sec.112 of the customs act) without adducing some further proof of active association with the wrongful introduction of the goods into the stream of commerce.

(board's f.no.94/102/60-cus.ii dataed 21st august,1961)

Mens Rea:

The board would like to emphasise that the question of mens rea should never be lost sight of in deciding the question of imposition of personal penalties under sec.167(8) of the sea customs act (sec.112 of the customs act,1962).

board's f.no.8/72/61-cus.vii dated 12.1.1961)

Margin of profit - Market enquiries

In terms of Sec. 125 of customs act 1962, the adjudicating officer may impose a redemption fine on the offending goods not exceeding the market price of the goods confiscated less the duty chargeable thereon. it is therefore understood that while fixing fine in lieu of confiscation the adjudicating officers are guided by the margin of profit on the goods indicated by the assessing officer. it is therefore , necessary that the assessing officer should ascertain the market value of the offending goods and keep a record thereof in the file for assistance of the adjudicating officer and future reference.no detailed enquiries may be necessary where the fine to be imposed is 100% of the value , as the market value is normally more than the cif value of the goods plus duty. ministry's letter f.no. 5/35/64-cus.vi dated 15.3.65 .

Norms for Imposition of Fines -

The adjudicating officer has to decide whether there is any justification for imposing a higher or lower fine depending upon the circumstances of each case. quite clearly the fine in case of deliberate offences should be higher and in cases where there are mitigating circumstances,they should be lower.but,in the ordinary run of cases some sort of a norm is a good guide for the adjudicating officers.moreover, it ensures uniformity of approach thus avoiding discrimination.

Evasion of duty

In contraventions leading to evasion of duty the norm of fine for ordinary contraventions may be double the duty sought to be evaded.

Foreign exchange evasion i.e.over-invoicing of imports &

under-invoicing of exports:

The norm of fine in the case of ordinary contraventions may be the amount of over-invoicing or under-invoicing,as the case may be.

Smuggling:

Here, either the goods may be confiscated outright or the

fine may be equal to the amount that will be realised to government,if the goods were to be confiscated and disposed off by the department/i.e.it may be the market price less import duty if any(to be realised from the importer in addition to the fine in lieu of confiscation) less the bidder's discount.

It need hardly be stressed that the maximum fine in lieu of confiscation in any case howsoever bad,should not be more than the fine indicated under the heading "smuggling". if a fine higher than this is imposed,the importer is not likely to redeem the goods and the department will be saddled with the responsibility of storage and disposal of the goods. it is up to the adjudicating officer not to give a fine in lieu of confiscation if he so chooses,but if he does not consider absolute confiscation necessary,fine in lieu of confiscation should be realistic. member(cus.)letter d.o.dy.no.1390-m(cus)/69 dt 10.7.1969

The punishments which are inflicted in smuggling cases have to be such as to provide the necessary deterrent not only to the smugglers who were caught,nut also to others. broadly speaking,where the smugglers are in a position to pay personal penaltics,the adjudicating officers should impose effective personal penalties so as to provide the necessary deterrent. in cases where reports indicate that personal penalty is not likely to be realised,we should report to prosecution wherever the value of goods involved would warrant prosecution or where,even though the value is small the person has been caught more than one. based on board's order in file cvii-25/70, correspondence circular 1/70

Norms for consideration of adjudicating officers in -----

Case of ITC.contraventions: -----

It is felt that the norms for imposition of fines in itc contraventions of ordinary type should be as indicated below. the norms are not intended to limit the discretion of the adjudicating officer.

Exercise of discretion: -----

All adjudicating officers of wahtever rank will have the discretion to impose fines higher than the norm where the offence is deliberate,or fines lower than the norm where there are instigating circumstances,but whenever the adjudicating officer finds that the ends of justice will be served by departig from the norm,he must record the reasons why he has done so. this is necessary to ensure that there is no discrimination except on valid grounds and also for the reason that should the orders of the adjudicating officer be questioned by any authority,there should be

contemporaneous record to indicate why be departed from the norm.

Previous offences:

The present scale by which the fines are enhanced on the basis of number of previous contraventions without considering the nature and degree of previous contraventions, would no longer be the guide as it leads to high fines being imposed which have to be reduced considerably during the course of appeals. what is really important to determine is whether the present contravention has been deliberately committed. for this purpose a mechanical counting of the earlier contraventions will not be fair. the earlier adjudicating orders as modified by the appellate or revisionary orders will have to be scrutinised carefully if the past conduct of the part is to be brought into picture. obviously this would be impracticable to do in all routine contraventions. it is felt that the types of cases in which the earlier record may be usefully scrutinised would be -

1) Where the margin of profit in the present contravention is high;
or

2) Where the present contravention appears to be deliberate.
further, there will be no scale for enhancement of fine.

The adjudicating officer will have to go by the gravity of the offence and impose appropriate higher fines.

Norms for ordinary import trade contraventions:

In fixing the norms for ordinary contraventions we have to make a distinction between basic articles in respect of which the import trade control policy is not as strict as in respect of other articles. in the case of basic articles the norms of fines will be 25% if the importation of the articles is banned and 50% if the importation of the article is banned to that category of licensees to which the importer belongs. in the case of other articles the fine will be as hitherto, i.e., 50% for non-banned and 100% for banned to that category of licensees to which the importer belongs. further, in all cases whether relating to basic articles or others, the fine will not be less than the margin of profit. in the case of basic articles many a time it may not be practicable to find the margin of profit, but in the case of other articles, it should invariably be ascertained even if a little extra effort is needed.

List of basic articles:

The basic articles will be-

1) non-interchangeable parts of machinery and equipment (except cinema equipment) designed for use in projects, mining,

factories, agriculture, laboratories, training institutes and hospitals. for this purpose 'equipment' will include instruments, apparatus and appliances and specialised vehicles like dumpors, forklift trucks:

2) (a) unfinished forms, castings and forgings of non-interchangeable parts specified under (i) above, and

(b) specialised alloys for the manufacture of non-interchangeable parts specified under (i) above.

3) specialised raw materials and intermediates for use in mining and in the manufacture of metals and alloys, leather, rubber, mineral oils, drugs and medicines, fertilisers, insecticides, fungicides and bactericides. (d.o.f.no.8/62-cus.vii c.b.ex. & cus dated 12.3.70) the following guidelines as subsequently clarified by m (cus.) are reproduced for the information and guidance of all concerned. The fine has to be equal to the norm or the margin of profit whichever is higher. It is true that, in some cases, the norm will be more than the margin of profit, but if a person has contravened the i.t.c. restriction and there are no extenuating circumstances, there is no reason why only the margin of profit need to be taken away. If, of course, there are extenuating circumstances, the adjudicating officer will be at liberty to ignore the norm or, for that matter, the margin of profit.

[d.o.f.no. 8/62/68-cus. vii ,dated 12-3-70]

Avoidance of unduly harsh view in stray & negligible contraventions when regular importers are concerned:

 In departmental adjudication an unduly harsh view need not be taken by the adjudicating officers in respect of stray and negligible contraventions on the part of established houses of importers. As an example a reputed firm of standing having imports to the extent of lakhs of rupees may import in a stray consignment one or two items of insignificant value, by comparison with the total value of the entire consignment, which might contravene the provisions of import trade control regulations. If in such cases the importers are forced to undergo the full rigours of the law, there may be just criticism of such action. It is therefore necessary that adjudicating officers take an overall view of the situation and judge the nature of the offence. In such cases a finding should first be recorded as to the extent to which the offence is technical as distinct from being deliberate. If in such cases it is considered necessary to fix a high fine because of the high margin of profit prevailing, it will be advantageous if a reference to this aspect is made in the order itself, so that while dealing with the order at the stage of appeal or revision the appropriate authorities can take this aspect into account.

(board's letter 6/1/62-cus viii dated 8.1.1963)

Avoidance of piecemeal adjudication:

 The board has had under consideration the question of the legality of the practice of passing two separate orders in one and the same case under the customs act viz., an order of confiscation of goods and another order imposing a personal penalty with reference to the same goods. the ministry of law have advised that the maximum punishment desired to be inflicted in a particular case, should be awarded at the same time, under the same order, before the authority to do so is exhausted. as the calcutta high court in its judgement in the case of henry funchs vz. the additional collector of customs, calcutta (no.95 of 1960) had criticised the practice of piecemeal adjudication, the board considers that the correct course to be followed would be to avoid piecemeal adjudication as far as possible. in the case of perishable goods where it is considered necessary to take action immediately in regard to the goods, though it is not possible immediately to decide the case against the persons concerned, such piecemeal adjudication may, however, have to be resorted to.

In exceptional cases (other than those of perishable goods) where it is considered necessary or desirable to resort to piecemeal adjudication, the matter should be referred to the board for being examined in consultation with the law ministry; alternatively, when time is short, the local branch of law ministry should be consulted before passing such an order so as to ensure that the legal position is safeguarded to the extent possible.

(board's f.no.1/14/58-cus. vi dated 30.3.1963)

While normally attempts should be made to finalise the action both in respect of the goods and the persons concerned at one and same time in the following types of case, the question of passing separate orders should be considered by adjudicating authority:-

(a) Where the goods are perishable and it is considered that the finalisation of the proceedings against the person concerned may be delayed.

(b) In case where there is no doubt regarding liability to confiscation of the goods in question and it is anticipated that adjudication proceedings against the persons concerned may be delayed.

It is necessary to make a reference to the board where separate orders are proposed to be passed in the above circumstances.

(f.no.1/18/68-cus.vi, ministry of finance (deptt. of revenue & insurance) dated 25.7.68)

While examining a revision application, it has come to the notice of the government that two separate adjudication proceedings were started with regard to passenger's baggage merely because different portions of the baggage were stored in the custody of different warehouse officers. this is not proper and may lead to avoidable confusion and misunderstanding and even incorrect decisions based on incomplete facts, particularly as such an import is

really one single transaction. in such cases,therefore,the rule should be to have a single adjudication proceeding only.

There may,however,be cases where the adjudicating officer may feel that separate adjudications may have to be made in respect of the different items of the baggage etc. such a situation may arise where the passenger himself requests for separate adjudication in respect of his baggage items or adjudication in respect of all the items may take unduly long period or the adjudicating officer himself may find that in regard to some of the items the case is not ripe for adjudication for various reasons,etc. in such cases of an exceptional nature,the adjudicating officer may carry out separate adjudications after recording the reasons therefor.

(m.f.(d.r.)f.no.5/20/65-cus.vi dated 22.4.1965)

Postponment of action under sec.112 ,114 or 135 of the customs act, 1962

Instances have come to notice where ,in view of occasional difficulty of serving the show cause notice within the time limit prescribed in the law, the field formations have been separating the action for confiscation of goods from that for personal penalty and prosecution. it has also been observed that ,in many of such cases the later action either goes by default or gets unintentionally delayed. the board, therefore desires that an indiscriminate resort to postponment of action under section 112, 114 or 135 of the customs act, 1962 should be avoided. the above instructions should be kept in view in all relevant cases with immediate effect. [f. no. 394/10/75-cus iii dated 20-2-73 c.b.ex & cus.]

Piecemeal adjudication-one by the lower officer and another by the higher officer

It has come to notice of the board that in a case of smuggling involving two persons-one being the owner of the article and the other the person found carrying it two separate orders were passed, one by assistant collector and the other by the additional collector. the reason presumably was to impose a penalty higher than what the assistant collector could impose. the difficulty arising out of this situation could be avoided if the case was treated as one and adjudicated only by the additional collector even though the value of the goods confiscated was well within the assistant collector's powers of adjudication. the board desire that where the facts of the cases are common and the offence can be covered by one adjudication order, the case should be adjudicated by one officer.

(f. no. 1/16/69-cus. vi, dated 4-10-69 c.b.ex & cus.)

Adjudication not barred when goods out of customs control:

In clarification of the powers of the officers of customs in adjudication of bonds and gaurantees executed pending production of licence,the ministry of law government of India have issued the following instructions for guidance,that the customs officers are not precluded from adjudicating cases and imposing penalties under section-167(8) of the sea customs act (sec.111 & 112 customs act,1962) after removal of the goods out of customs charge. no reference need be made in such orders to the terms of the bond where clearance of the goods is allowed against a bond pending production of a valid import trade control licence.

Jurisdiction of the civil court is barred in a case where the appeal against the order lies to the chief customs officer (now appellate collector),chief customs authority (central board of excise and customs)or the government of India.

The adjudicating officer is not percluded from taking action under section-193,sea customs act (section-142(1) customs act,1962 in a case where an appeal is pending against an order imposing a penalty.

Legal -Miscellaneous -- Passing of adjudication order on holidays.

A question has arisen whether a quasi-judicial order such as adjudication order , order-in-appeal etc. passed by the competent authority on a holiday is valid or not. the board has in consultation with the ministry of law decided that while orders on the notes portion of the case file can be passed by the competent officer in such proceeding on holidays,when final orders are drafted on the basis of the orders passed on the note side of the file for issue and put up to the competent officer for signature , such orders should neither bear the date of holiday nor signed by the officer on holiday. [f.no. 40/30/69-cxi,c.b.ex.& cus.,dated 12-9.69 misc.54/69-cxi/- cvii-136/69]

Legal-Miscellaneous - Passing of adjudication orders on holidays - Crew mangers and passengers

It has been further decided by the board in consultation with the ministry of law that there is no objection to the passing of orders of adjudication on holidays by customs officers in cases involving passengers and crew at the the passengers of members of the crew to avoid delay in clearance . board's earlier instructions contained in f.no. 40/30/69 cxi dated 12-6-69 is modified to the above extent.

[f.no. 1/2/70-cus.vi dated 27-2-70, circular letter no.11 cbec new delhi.]

Second order a nullity in case of adjudication on same

transaction:

 Where a matter has already been adjudicated by the competent authority, and another order of adjudication is passed relating to the same transaction subsequently, the second order is a nullity. The authority who undertakes the enquiry resulting in the second adjudication acts without jurisdiction. The second order being a nullity, it should be taken as not to exist at all. When the fact of such an order having been passed is brought to light, the records should be corrected, the order deleted from the record and the party affected informed accordingly.

(board's letter f.no.18/18/65-cxiv dated 29.4.1965)

Office note not to recommend final decision or penalty:

It is well settled that a collector when adjudicating a confiscation acts in a quasi-judicial capacity and that he should after due enquiry take an unbiased decision in each case applying his own mind to the materials disclosed in inquiry, independently. From this point of view, any positive suggestion in regard to the penalty etc. whether in an office note or elsewhere is liable to be regarded as an interference with the collector's functions and may at times even be regarded as vitiating the decision. At the same time it must be noticed that merely because a suggestion is made in the office note it does not follow that the collector did not apply his mind to the case for he is not bound to adopt that suggestion. The office note does have a part to play. It all, therefore, depends on the language used in the note as well as in the order of the collector. So long as the office note does not go to the extent of recommending the final decision or the actual penalty and so long as the collector indicates that the decision was his own, there should be no objection. If, on the other hand, the collector merely signs an office note containing various suggestions, objections are bound to be raised on the ground that the collector did not exercise his statutory functions in the manner required by law.

(board of excise & customs f.no.1/13/63-cus.vi dated 23.1.1964)

Ascertainment of market value:

In the course of examining some revision petitions it has been observed by the government of India that in some cases, fines in lieu of confiscation are fixed at exorbitant level. It has further been observed that in the absence of any mention in the case file of the market price of the imported goods on which fine in lieu of confiscation has been imposed, it is not possible to verify whether the provisions of sec-125 of the customs act, 1962 have been complied with.

It is understood that while fixing fines in lieu of confiscation, adjudicating officers in custom houses are guided by the margin of

profit on the goods and in import trade control adjudication cases the appraiser indicates the margin of profit after making market enquiries, for the information of the adjudicating officer. it is further understood that in baggage cases also, the custom houses periodically ascertain the market value of the goods commonly brought by passengers particularly those carrying very high margin of profit, so that they could be taken into account while adjudicating the case.

The Government of India accordingly desire that while imposing fines in lieu of confiscation, the provisions of section-125 ibid should be borne in mind and the market value of each individual item of the offending goods should be ascertained before deciding a case and the ascertained market value should be kept on record, for the assistance of the adjudicating officer and also for reference and scrutiny at the appeal/revision petition stage. no detailed enquiries of course may be necessary where the fine to be imposed is 100% of the value or less as market value is normally bound to be more than the c.i.f. value of the goods plus duty. (m.f.(d.r.)f.no. 5/35/64-cus.vi dated 16.3.1965)

Adjudication of cases when referred to law courts:

The Board has been advised by the ministry of law that the departmental adjudication can proceed when the magistrate has not taken cognizance of the offence, but has enlarged him on bail pending investigation of the offence.

(board's no. 100/16/58-l.c.i. dated 30.4.1958)

Identical issues arise in proceeding for imposition of penalty under section-112(b) of the customs act, 1962 and in a trial for an offence punishable under section-135(b) of the same act. if any person acquired 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, he may be proceeded against under section-112(b) and also under section-135(b). on the same set of facts a penalty may be imposed on the offender under section-112(b). similar issues arise in the trial of offences for contravention of r.13-b of the defence of india rules and s.8 of the foreign exchange regulation act. the customs officers will have to enquire into these issues, though the same issues will later be tried by the criminal court. the sea customs act contemplates parallel proceedings of this kind. section 127 expressly provides that the award of a penalty under section-112 is not a bar to the infliction of punishment under section-135. the offender may be punished under section-135 without prejudice to any other action that may be taken under the act. the customs officers are empowered to confiscate smuggled goods and to levy penalties on persons concerned with the smuggling. they may initiate proceedings for confiscation of the goods and for imposition of the penalty though the trial of those persons in a criminal court

for connected offences is imminent. The initiation and continuance of those proceedings in good faith cannot amount to contempt of the criminal court. to constitute contempt of court, there must be involved some "act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority" or something "calculated to obstruct or interfere with due course of justice or the lawful process of the courts". the customs officers did nothing of this kind. they are acting bonafide and discharging their statutory duties under Section-111 and 112. the power of adjudicating penalty and confiscation under these sections is vested in them alone. the criminal court cannot make this adjudication. the issue of the showcause notice and proceedings thereunder are authorised by the act and are not calculated to obstruct the course of justice in any court. we see no justification for holding that the proceedings amount to contempt of court.

The customs officers have a discretion to stay the proceedings under sections-111 and 112 during the pendency of the trial in the criminal court.

The appellant then claims that the proceedings under sections-111 and 112 are in violation of art.20(3) of the constitution. he says that unless the proceedings are stayed he will be compelled to enter the witness box to rebut the evidence of John D'Sa and will be forced in cross-examination to give answers incriminating himself. article-20(3) affirms that "no person accused of any offence shall be compelled to be a witness against himself. the first information report has been lodged and a formal accusation has been made in it against the appellant charging him with offences in connection with the smuggling of gold. the appellant is, therefore, a person accused of an offence.

But it is not possible at this stage to say that he is compelled to be a witness against himself. there is no compulsion on him to enter the witness-box. he may, if he chooses, not appear as a witness in the proceedings under section-111 and 112. the necessity to enter the witness-box for substantiating his defence is not such a compulsion as would attract the protection of article-20(3). even in a criminal trial any person accused of an offence is a competent witness for the defence under section-342-a of the criminal procedure code and may give evidence on oath in disproof of the charges set against him. it may be very necessary for the accused person to enter the witness-box for substantiating his defence. but this is no reason for saying that the criminal trial compels him to be a witness against himself and is a violation of article-20(3). compulsion in the context of article-20(3) must proceed from another person or authority. the appellant is not compelled to be a witness if he voluntarily gives evidence in his defence. Different considerations may arise if he is summoned by the customs authorities under section-108 to give evidence in the proceedings under sections-111 and 112. but he has not yet been summoned to give evidence in those proceedings. We express no opinion on the question whether in the event of his being summoned he can claim the protection under article-20(3) and whether in the event of his being then compelled to give

incriminating answers he can invoke the protection of the proviso to section-132 of the indian evidence act against the use of those answers in the criminal proceedings. (judgement of the supreme court of india, civil appeal no. 1597 of 1967 dated 8.3.1968, board's f.no.3/1/67-cus.iii dated 27.3.1968)

In the above para,the main point for decision before the supreme court was whether initiation of departmental proceedings under section-112 of the customs act,1962 when institution of criminal proceedings is imminent,under section- 135 of the customs act,1962, amount to contempt of court. As will be observed from the judgment. the supreme court has held that the customs officers may initiate proceedings for confiscation of goods and for imposition of penalty though the trial of the persons concerned in a criminal court for connected offences is imminent,and that the initiation and continuance of these proceedings in good faith cannot amount to contempt of the criminal court. so long as the cstoms officers act in a bonafide manner they are deemed to have been discharging their statutory as provided under sections 111 & 112 of the customs act. it has been further clarified in the judgement that where the customs officers deem fit they can exercise their discretion in staying the proceedings under sections-111 & 112 of the customs act,1962 during the pendency of the trial in the criminal court.

It would be observed from the judgement that the supreme court has expressed no opinion on the question whether, in the event of a person being summoned under section-108 of the customs act,to give evidence in the proceedings under sections- 111 and 112,customs act, he can claim protection under article- 20(3) of the constitution and whether,in the event of his being then compelled to give incriminatory answers,he can invoke the protection of the proviso to section-132 of the evidence act against the use of these answers in the criminal proceedings.

The Ministry of Law,who were consulted in the matter have stated that the supreme court in earlier judgements had held that the proceedings taken for imposition of penalty prescribed by customs act,1962 are not prosecutions within the meaning of the article-20(3) of the constitution and therefore a person who is summoned under section-108 of the customs act, 1962 to give evidence in proceedings under sections 111 & 112 ibid cannot claim any protection under article-20(3) of the constitution.

It would also be observed that in this case the department's counsel had undertaken not to use in any criminal proceedings the statement,if any,that might be made by the appellatant during the course of the adjudication proceedings. if necessary,such undertaking could be considered in cases of disputes so that adjudication proceedings are not unnecessarily held up.

(c.b.e. & c.f. no. 3/1/67-cus.iii dated 13.6.1968)

State governments are liable for action:

 1. The Ministry of Law have expressed the opinion that in view of the provisions of articles 256 and 257(1) of the constitution, a state government could not with impunity act in contravention of central laws.

2. For goods imported by the state governments (which are ordinarily cleared under guarantee to produce an import licence afterwards) the goods are not available for confiscation, only course open to the customs authorities would, be to impose a direct personal penalty but the board considers that it would be inappropriate to levy a personal penalty on the government department concerned . it has therefore been decided that where a state government contravenes the import trade control regulations repeatedly, the facility of clearance under bond should be withdrawn and the relative import licence should be asked for at the time of import. if no licence is produced, then action should be taken against the goods.

[c.b.r. no. 70/166/52-cus.i dt. 29.3.1954 -para 21 under section 167(8) at page 226 of compilation ruling under the sea cus. act]

VIP Members of Parliament/Ministers,Diplomatic & Consular

 officers-proceeding after board's approval:

An instance has come to the notice of the government of india in which an order of adjudication under the sea customs act was passed by the customs authority against a foreign trade representative in india. although none of these foreign representatives are immune from the prohibitions and restrictions imposed under the various laws of the country, the government of india desire that all such cases in which these representatives are involved should invariably be referred to this ministry before making final adjudications against them the ordinary way or otherwise.

(m.f.(d.r.) f.no. 1/67/56-cus.iv dated 13.3.1956)

All concerned are informed that it has been decided by the central board of excise & customs that before imposing any penalty or fine on any member of parliament or any minister of a state government for infringement of any laws,board's prior concurrence should be obtained. such a reference should be made on an immediate basis and the telex facilities should be used for the purpose,wherever availabl.

The goods involved will remain under detention pending receipt of instructions from the Board.

Re-adjudication when trial denovo ordered question of

enhancement of fine or penalty:

The ministry of law who were consulted in the matter have given their advice as follows:-

Section-167(8) of the sea customs act (sec 112 customs act, 1962) provides the penalties which could be inflicted for the offences enlisted therein. neither this section nor any of the provisions in the act provides any guiding principles as to when any of the penalties prescribed therein could be levied. in the circumstances the officers making the adjudication has full discretion to inflict the penalty or penalties provided therein, which in his view may be just and adequate to meet the situation existing in a particular cases.

The fact that the adjudicating officer did not levy any personal penalty on the previous occasion would not debar him from doing so, once the said proceeding is quashed by the appellate authority and he proceeds ahead to make a fresh adjudication. this however, does not mean that personal penalty could be levied against a person who may not be concerned with any of the offences described therein. this essential condition should be satisfied before the punishment of personal penalty could be inflicted.

(board's no. 1/4/58-cus.vi dated 25.2.1958 (inst.no 9/58-cus vi)

Re-adjudication of cases in which orders are set aside for failure to comply with the principles of natural justice - reg.

It has been decided by the board in consultation with the ministry of law that cases in which appellate or revisionary orders are set aside for non-compliance of the principles of natural justice , should invariably be taken up for re-adjudication unless there are instructions to the contrary . it is not necessary that such orders should themselves contain a direction of remand and re-adjudication.

[f.no. 40/30/67-cxi. c.b.e.c. dated 6-6-69]

Drugs Act & Rules - Procedure of adjudication of offences

thereunder:

The board has ruled that drugs contravening sections- to 10 of the drugs act become liable for action under section 167(8), s.c.act., (sec. 111(d) & section-112 customs act) the imposition of personal penalty should not take the place of confiscating the goods in the course. in terms of the guarantee provided for under rule-40 of the drugs rules, 1955, the consignment is released to the importers before it is ascertained whether the drugs are of a standard quality or not or have been mislabelled,

etc. by virtue of the guarantee, the importer binds himself not to dispose of the consignment without obtaining the written permission of the customs collector. As such, at the time of adjudication, the goods should be available for confiscation even though they may be in possession of the importer. It is, of course, quite open to the customs collector (officer of customs) to impose a personal penalty in addition to the confiscation of the goods but where confiscation of goods is possible, the personal penalty should not take place.

There may, of course, be cases where even though the importer has given guarantee undertaking not to dispose of the goods, such goods are sold or allowed or pass into consumption in contravention of the guarantee. It is, therefore, necessary to ensure before adjudicating the case that the goods are actually available for confiscation, for, in the absence of the goods, an order of confiscation, under section-167(8) sea customs act (sec.111 & 112 customs act, 1962) which relies merely on the guarantee might be infructuous. In cases, therefore, where action under section-167(8), sea customs act (sec.111 & 112 customs act, 1962), is contemplated, it would be advisable to seize the goods before-hand and thus ensure that they are available before proceeding to adjudicate. The board accordingly prescribes the following procedure for the guidance of the customs houses:-

(i) where, after test, it is found necessary to confiscate the drugs absolutely because they are sub-standard and as such not fit to be allowed for home consumption, etc., the drugs should be seized from the importers premises and brought to the custom house. where, however, it is not proposed to confiscate the goods absolutely, the drugs need not be brought to the custom house but sealed and left at the importers premises. On compliance with the terms of the adjudication order, the drugs should be released to the importer. if, however, the terms of the adjudication order are not complied with, e.g., if the fine in lieu of confiscation, if any, is not paid. the drugs should then be brought to the custom house.

(ii) An order of confiscation should be passed with or without fine in lieu of confiscation. where the imported drugs brought for ready use are of sub-standard quality, no option should, however, be given for their clearance for home consumption, but the importer can be permitted to re-export the goods within the period specified. the local assistant drugs controller should of course be consulted in accordance with the current practice of the custom house.

(iii) In addition, personal penalty may be imposed if the offence is deliberate and the circumstances of the case warrant that action.

(iv) Where the goods are not available for confiscation having been disposed of in violation of the guarantee, deterrent penalties should be imposed for the offence of unauthorized importation and also for the breach of the conditions of the guarantee.

As the penalties are not imposed by the drugs controller but the custom house, forms which have been approved by the ministry of health and ministry of law, may be used.

(c.b.r. letter no. 70/261/53-cus.i/iii/vi dated 21.8.1956 and 13.11.1956).

Adjudication of offences under drugs act and rules form of letter of guarantee **L e t t e r o f u n d e r t a k i n g** (vide proviso to rule 40 of the drugs rules ,1946)

Bill of entry no.
 Steamer
 Description
 Marks & no.
 Packing and quantity.
 Country of origin.
 Value.

In consideration of the customs collector or any officer on his behalf having permitted to clear the above goods, notwithstanding his decision to detain the same goods under the abovementioned rule 40 of the drugs rules, 1945 on having reason to doubt whether the above-mentioned goods comply with the provisions of chapter iii of the drugs act. 1940 and the rules thereunder, i/we hereby undertake.

(1) That I/ We shall not dispose of the said goods without the consent of the customs collector or any officer on his behalf in writing;

(2) That I/ We shall return the said goods in whole or in part as the customs collector or any officer on his behalf may direct within 10 days of the receipt of a notice from the customs collector or any officer on his behalf to return the goods;

(3) That I/We shall reship or surrender the said goods within two months of the receipt of an order to that effect from the customs collector or any officer on his behalf; and

(4) That I/ We shall forthwith pay such fine and /or penalty may be liable for such punishment as the customs collector or any officer on his behalf or magistrate may impose under section 11 of the drugs act. 1940 as read with relevant provision of the customs act. 1962 and under section 13 of the drugs act. 1940. the undertaking referred to shown given in view of rule 40 of the drugs rules, 1945.

Witness

Signature.

Form

General letter of undertaking for release of drugs and medicines imported in contravention of the provision of the drugs act.1940. and rules thereunder:

Bill of entry no.
Steamer.
Description.
Marks & no.
Packing and quantity.
Country of origin.
Value.

In consideration of the customs collector or any officer on his behalf permitting us to clear the above goods although the same have contravened the following provisions of the drugs act,1940 and rules there under namely:-

- (1).....
(2).....
(3).....

I/we hereby undertake

- (1) that i/we shall (1).....
(2).....
(3).....

Within a month thereof or such extended period as the customs collector or any officer on his behalf may allow.

(2) That I/We shall not dispose of the said goods without the previous consent of the customs collector or any officer on his behalf in writing; and

(3) That I/ We shall pay such fine and/or penalty and be liable for such punishment as the customs collector or any officer on his behalf or magistrate may impose for the contravention of provisions of the drugs act, 1940 and rules thereunder either in the event of or notwithstanding my/our complying with conditions (1) and (2) above.

The undertaking referred to above is given in view of rule 40 of the drugs rules. 1945.

witness

Signature.

Order to communicate on Bills of Entry when filed-For

Expeditious clearance:

Decision in adjudication cases are conveyed to the party by suitable endorsements on the relevant documents such as bills of entry or shipping bills,so that the clearance of goods may be allowed on payment of the penalty/fine without waiting for the issue of formal order.

The process of adjudication at all stages such as personal hearing,reference to trade control authorities,ascertaining pervious offences of the party and determination of their nature etc.,should be expeditiously dealt with,and the adjudication after the receipt of importer's explanation in replay to the show cause memo,should be completed with the least possible dealy.

(g.o.i.m.f.f.no. 25/5/59-cus.icrc) dated 10.9.59 with reference to f.no.18/3/59-cus.(crc) no. c.9/125/59-co.)

When goods are confiscated and allowed to be redeemed on payment of a fine or penalty,the order of confiscation and the redemption fine imposed,whether for home consumption or for reshipment to the country of consignment,should be endorsed on the oringinal and duplicate bills of entry simultaneously with the assessment of the bill of entry and handed over to the clearing agents for payment of the fine or penalty and duty.

If the bill of entry had been assessed already and duty adjusted,the triplicate copy of the bill of entry may be obtained from the importers,the original copy of the bill of entry obtained from the audit or statistical departments and necessary endorsements of the confiscation order and redemption fine or penalty,made on them for the payment thereof. in case the triplicate bill of entry is not available with the importers or thrir agents,a miscellaneous bill may be prepared by the department concerned for payment of the fine or penalty so that its counterfoil will serve the purpose of receipt to the importers for payment.

Adjudication order - Order-in-original.form of order in original:

Original decisions under the customs act which are subject to appeal,as also decisions in appeal,should as far as possible,be communicated to the person concerned by formal copies of the orders recorded in the proceedings and not by letter. the copies of the orders should be issued on the prescribed forms.

(Board's instruction no.4 of 25 r.dis. 13046)

[for details of proforma refer s.o.no. 6820 dated 2-4-85]

Consideration in regard to order in original-defects to avoid

The board desires to reiterate that orders in original should be self-contained and unambiguous. the orders should quote the sections violated,descuss in brief the contentions put forward in defence,and indicate clearly the grounds on which penal action has been taken.

(c.b.r. no. 66(8)-cus.i/54 3.6.1955)

Upon a perusal of the report,the relevant documentary evidence available and the explanations submitted,the asstt. collector should proceed to pass a written order in the case. the order should be self-contained and,in the form in which it is communicated to the party,it should ordinarily contain a brief statement of the facts of the case and of the explanation submitted,an examination of the evidence pros and cons and the finding and the penalty imposed.

In many instances the presentation of facts,the arguments advanced by the party,the arguments in rebuttal and the conclusions reached in adjudication orders in the custom houses are not often cogent and lack clarity. in some cases material facts or arguments advanced are omitted or even if they are mentioned,their critical appreciation with reference to the conclusions reached is not evident from the orders themselves. at times,there is a tendency to over look in the adjudication orders,the party's point of view and to marshall facts and arguments in favour of revenue only. such orders suffer from an infirmity in as much as they are not in conformity with the canons of natural justice. these defects should be avoided in departmental adjudication cases. other defects to be avoided are mentioned in the following sub-paras.

The main defect from which most of the orders suffer from is that,they are not `speaking orders'. it is one of the important ingredients of the principles of natural justice that the authorities vested with quasi judicial powers must pass `reasoned orders',even though no such obligation may have been laid down in the statute. this is particularly so when there is provision for appeal against the order. The general pattern followed in drafting adjudication orders has been to,first set out the facts of the case as enumerated in the show cause notice,then state the various arguments put forward by the parties and then to dispose of the matter in one sentence by adding something on these lines.viz. "I have carefully considered the arguments put forward. i am not convinced of the ground adduced by the party. the evidence produced is not satisfactory." orders of this type will not help the parties in understanding why the particular pleas put forward by them have been dismissed as unconvincing or unsatisfactory and what exactly they should do to convince the appellate or revisionary authorities. even at the appeal stage,it becomes difficult for the appellate authority to know the grounds on which the claims made by the parties were rejected. the importance of passing a self-contained

order which not only sets out the facts of the case, the arguments put forward by the party as also the detailed grounds on which each point made by the party is accepted or rejected cannot be overemphasised. every adjudicating officer should recount in their orders all the essential arguments put forward by the parties, deal with each of them on merits and come to a reasoned conclusion on every single point. though, no doubt, this will result in the orders being elaborate and consequently take more time of adjudicating officers, it is necessary that in the interests of justice, this is invariably done.

Some adjudication orders lack proper analysis of the evidence submitted by the parties. an attempt should be made to consider carefully every piece of evidence submitted by the party and sufficient grounds should be adduced in the order for rejecting or accepting the same. the present tendency is to dismiss the evidence submitted, by a sweeping statement that "the evidence has been carefully considered but has not been found to be acceptable."

Another defect is that in many adjudication orders it is not clearly brought out in what manner and to what extent the provisions of the law have been contravened, it is desirable that the provisions of the particular sections that are alleged to have been infringed be set out clearly and that the same be brought out unambiguously in the orders issued. the contents of the provisions which had been violated and the manner in which they were violated should be brought out clearly and in a reasoned manner. this defect is particularly noticed in cases dealing with the violation of foreign exchange regulations act. whenever there is a mis-statement or mis-declaration of the full export value in the shipping bills, the adjudication orders invariably state that there has been an infringement of section 12(1) of f.e.r.a. most of the adjudication orders never explain how mis-statement or misdeclaration amounts to a violation of section 12(1) f.e.r.a. under section-12(1) of f.e.r.a. what is required of the exporters is a declaration of the full export value. a false statement in g.r. form would be an offence under section-22 of the f.e.r.a. and will not attract the penal provisions of the customs act, 1962, under section-23a of the f.e.r.a. when the full export value is not stated in the g.r.i. form, the charge, therefore, should be that a declaration as required under section-12(1) has not been made. the charge should not be that there has been a misdeclaration and consequently there has been a violation of section-12(1) of f.e.r.a. similarly while dealing with the offence under section-8 of the f.e.r.a. the particular notifications which are alleged to have been infringed should be quoted and the manner in which the notification has been infringed should be suitably brought out. the present tendency is merely to refer to the notification issued under section-8(1) or (2) and to state that there has been a violation of the notifications without clearly bringing out how exactly there has been a violation.

In a few cases dealing with under-valuation, the adjudicating

officer, instead of coming to a definite conclusion as to the correct value, merely state that the value of the goods could under no circumstances be less than a particular amount and since the declared value is less than that, an offence of under-valuation is established. Such orders are vague and are likely to be questioned in courts of law. It is always desirable to come to a definite conclusion regarding the value of the goods in cases of under-valuation.

When imposing personal penalty under Section-112 or 114 of the customs act, 1962, it is always desirable to bring out how the person concerned has committed an act of omission or commission or abetted such an act or how exactly section-112(b) of the customs act, 1962 is attracted before a penalty is imposed.

Orders passed and communicated to the parties concerned the reasons for penal action should be clearly stated so that they may know exactly why the penal action has been taken.

(c.b.r. no. 17(965)-cus. ii/51 dated 19.8.1952)

The board had occasion to deal with an appeal where the value declared by the importers was not found to be correct by the customs authorities and action was taken by them under section-167(8) (sec.111(d) and 167(37) (sec.111(m) customs act, 1962) sea customs act. It was noticed that in the operative part of the order the collector confiscated the consignment under section-167(37) sea customs act (sec.111(m) customs act, 1962) giving an option to clear the goods on payment of a fine in lieu of confiscation. The collector further imposed a personal penalty under the same section and in the end of the order, he again confiscated a part of the consignment under section-167(8) sea customs act (sec.111(d) customs act, 1962) and imposed a fine in lieu of confiscation. The order could give rise to an impression that goods were confiscated twice over.

Ministry of law who were consulted in the matter have advised as follows:-

"An offence under section-167(8) (sec. 111(d) customs act, 1962) of the sea customs act is distinct from an offence under section-167(37) (sec.111(m) customs act, 1962) of the same act and the one is not part of the other. On the analogy of criminal law separate punishments can be imposed for each of these contraventions.

But the real difficulty is in giving effect to the order passed by the collector. In the first part of the order he has ordered confiscation of the whole consignment with an option to the importer to pay a fine of Rs.6,600/- in lieu of confiscation. Let us assume that the option is not exercised. In that case the entire goods will vest in government. The second part of the order

confiscates the goods worth Rs.4,387/- with an option to redeem those goods by paying Rs.4,400/- as fine. assuming that the importer wants to exercise the option given in this part he will pay rs.4,400/- and get back the goods worth rs.4,387/-.but those goods stands confiscated to governments by the operation of the first part of the order and will not therefore be returned. the second part of the order is,therefore,incapable of being given effect to..... there is thus an anomaly. it is,therefore,possible to contend that the order discloses an error on the face of it." upon careful consideration of all the facts of the case the board came to the conclusion that the valuation of the goods in question as ascertained by the custom house was in order and the appeal was accordingly rejected. the board has,However, observed that while drafting orders,such an anomaly in the language of the order which may give rise to unnecessary controversy over its legality should be avoided in dealing with cases where misdeclaration in value as well as contravention of import trade control regulation are noticed.

(board's f.no. 1/15/63-cus.vi dated 14.11.1963)

Orders of higher authorities not to quote:

The number and date of circular orders of the board or of the ministry of finance(department of revenue) other than those which are published such as notifications,etc.,should be cited in the circular instructions which are issued to the trade by the collector or the officers subordinate to him. there has also been an unwholesome practice in certain collectorates to quote number and date of the board's letter in certain correspondence with the trade. the central board of revenue in addition to being an exective authority is also an appellate authority. on many occasions the collectors ask for certain clarifications from the board either on point of law or interpretation of rules. sometimes references are also made whether in particular circumstances of a case refund of duty may or may not be granted to a party. the central board of revenue decides these matters and issues directions in its capacity as an executie authority. the collectors and the officers subordinate to them. while rejecting the claims of refund or other requests of the trade,quote the number and date of the letter of the central board of revenue. The communications that are issued by the officers to the trade have been found to be somewhat on the following lines:-

The central board of revenue has been pleased ot direct that or has been pleased to reject the claim of refund of..... etc.,etc.

All orders in such matters even if they are issued after taking advice from the central board of revenue should be issued in the name of the collectors or his subordinate officers as the case may be and the letter number and date of the board's office should not be quoted therein unless a specific permission for doing so in any particular case is obtained from the board. since

any order or decision taken by a officer of customs is appealable under section-128 customs act,1962, and as the central board of revenue is also an appellate authority under that act,quoting of board's lettr number and date in any orders issued by the collectors or their subordinates and communicated to the trade may create legal complications in the matter of jurisdiction if the party concerned files an appeal against such orders. (para 39, adjudication manual)

The board have,however,had an occasion to notice that specific reference is made by the collectors and officers subordinate to them some time in the quasijudicial orders passed by them,to the general instructions/rulings issued by the board. while the quasijudicial authorities are free to adopt the reasoning contained in any ruling or instruction of the board or the government of india,they should not under any circumstances quoto any ruling in any order passed by them as it tends to vitiate the independence of their judgement based on the submission made in quasi-judicial proceeding. As already emphasised in para above such references to orders/ ruling issued by the board/government of india,in the orders passed by the collectors and officers subordinate to them should always be avoided.

(f.no. 23/6/64-cx.i. dated 9.1.1969)

Orders to be signed in full

All adjudication ,appeal and revision orders passed on the note portion of the relevant file should be signed in full by the adjudicating authority. similarly the draft order prepared on that basis should also be signed in full by that authority. it is however not necessary that the copies of the order which are forwarded to the party and to the officers concerned should also be signed by the adjudicating authority himself. there is no objection to these copies being authenticated by some gazetted officer duly authorised by the adjudicating authority to so authenticate them.

[board's f.no. 30/124/57 (genl.658) dated 14.10.57]

Signing of order-in-original-question regarding whether

Successor in office can sign:

The order on the note portion of the file and the draft order prepared on that basis should be signed in full by the adjudicating authority.

A case has come to the notice of the board where an order of a quasi-judicial nature,which should have issued under the signature of the collector of customs (since the authority to issue such order vested in him alone), was issued over the signature of the asstt.collector's with the approval of the collector.

The ministry of law have advised that the above practice is not legally correct. the board accordingly desires,that in future,in the case of all such adjudication orders of the quasi-judicial nature,the above instructions should be followed.

(board's no.1/39/58-cus.vi dated 24.11.58 inst.no.35/58-cus.vi)

customs act, 1962-section 128-warning issued in simple cases-orders issued under the signature of the officers who pass the

Orders-Instruction regarding

The board has observed that the cases where orders of a quasi-judicial nature were issued under the signatures of officers other than the adjudicating officer, came to the notice of the board. the board has also observed that since this procedure is not legally correct, it is desired that, in future, all adjudication orders of quasi-judicial nature should be issued under the signature of adjudicating officers. the board has however no objection regarding the copies of the orders being communicated by the subordinate officers, who should ensure that the copies of the order clearly show the name of the officer who passed the order.

The instructions cited above should be strictly followed with immediate effect. (govt. of india ministry of finance (deptt. of revenue & insurance) letter f.no. 491/10/72-cus.vi, dated 17.7.72)

The intention is that henceforth the order on the note portion of the file and the draft prepared on that basis should be signed in full by the adjudicating authority. it is, however, not necessary that copies of the order which are forwarded to the party and to the officers concerned should also be signed by the adjudicating authority himself.

(board's f.no. 30/124/57-genl.(658),dated 14.10.57)

Adjudication orders passed by an officer and communicated by his successor-instruction regarding

In the matter of communicating adjudication orders the observation of the ministry of law in reproduced below for information and guidance. observation of the ministry of law:

In those cases wherein, the gist of the orders of adjudication was verbally communicated to the concerned parties representatives at the end of the hearing, by the adjudicating authority, and also by endorsement in the relative bills of entry bearing the endorsement pertain to the fine/penalty imposed by the adjudicating officer, there seems to be no legal objection to the successor in office communicating such order formally to the parties.

[c.r.e. & c. letter f.no. 450/74/3-cus.iv dated 17.4.74]

Fixation of time-limit for issue of order-in- original-orders
regarding

Board has observed that there has been avoidable delay in
issuing orders-in-original after the case is adjudicated by the adjudicating
authority.

Board has also emphasized the importance of prompt issue of
orders-in-original. the aggrieved party can resort to appellate remedies only
after receipt of the order-in-original. board has further observed that once a
case has been adjudicated, there is no justification for delaying the issue of
order-in-original as all the relevant facts and circumstances leading to the
adjudication are available on record.

Accordingly the board has directed that it is to be ensured that
under no circumstances delay takes place in issuing order-in-original.

The above instruction of the board must be adhered to very
strictly.

[letter no. (illegible) dated 20.7.1974 from shri h.
narayan rao. c.b.e.&c. new delhi, issued from file no. xvii-69/74(cal)]

Reshipment/ Re-export - Option given in adjudication order

In cases where goods are ordered to be confiscated or allowed
clearance on payment of fine, the importer may be given an option of
re-exporting the goods within a reasonable time subject to the following
provisions -

(a) In cases where the goods have not been paid for the re-shipment
of the goods should be freely allowed on payment of penalties ranging from 5% to
25% depending upon the seriousness of offence.

(b) In cases where the goods have been paid for , the importer
should be given the option of re-exporting the same so that the foreign exchange
on the transaction may be recovered . but such re-shipment should be allowed on
payment of penalties mentioned in (a) above.

(c) The time limit for re-export is generally 3 months . this time
limit may in deserving cases be extended up to six months in aggregate.

(g.l.i. no. 23/58 dated 10-4-58)

The collector may in his discretion extend the period of
re-export beyond the time limit of six months on cause being shown by the
importer.

Re-shipment and adjudication order

The law ministry had advised that the term "adjudication order" may be modified to incorporate the following words so as to allow extension of period - " or if is found impossible to reship the goods within three months, such extended period as the undersigned may allow."

(board's letter no. 70(228)-cus.1/52 dt. 5-6-53)

Reshipment and Adjudication order

The law ministry had advised that the term "adjudication order" may be modified to incorporate the followin words so as to allow extension of period- "or if it is found impossible to reship the goods within three months, such extended period as the undersigned may allow."

(board's letter no. 70(228)-cus. i/52 dt.5.6.53).

Circumstances under which re-shipment is allowed

As per instructions of the chief controller of imports & exports reshipment should be allowed only where by clearance of banned goods for home consumption (even on payment of fine/penalty), the policy of the government is likely to be defeated by disorganizing local industry and trade. in other cases and specially where there has been a delibrate infringement of itc regulations, deterrent penalty not in any case less than the profit margins should be imposed and clearance allowed for home consumption only rather than allow the offender to escape the consequences of their action by payment of nominal penalties and additional freight. while passing an order for re-shipment in lieu of confiscation it has to be verified that payment for the goods has not been made to the suppliers abroad or if made there is evidence to show that foreign exchange is being received back on re-shipment.

(board's letter no. 70/71/cus. i/54 dated 9.4.54).

Endorsement of a Bill of Entry for Te-Shipment

Where the goods covered by a bill of entry are found to have been imported unauthorisedly but allowed to be re-exported with or without fine/penalty, the bill of entry should be classified and assessed to duty but actually the duty will not be collected. all copies of the bill of entry will be impressed with the following stamp: Imported without licence allowed to be re-shipped without payment of duty and on payment of re-shipment fine vide orders in file no..... In addition, the bill of entry should be endoresed with the words "no foreign exchange permitted to be remitted to suppliers."

Re-shipment and missing contents

In cases where the goods which have been confiscated but allowed to be re-shipped on payment of fine, are found missing at the time of re-shipment the following questions are involved:-

- (i) Refund of duty on missing goods;
- (ii) Refund of the proportionate to the value of the missing goods;
- (iii) Penal action in respect of such missing contents. the board in consultation with the ministry of law observed as follows:-

The effect of the owner exercising the option of re-shipment or clearance for home consumption is that there is no vesting of the goods in government at any time. As such the responsibility for duty and penalty. etc. which developed upon the importer on filling the bill of entry continues to rest with him even after the order of confiscation and an option to re-ship the goods. accordingly, the import duty on the missing goods is leviable and should be recovered from the importer before allowing re-shipment. the liability for duty on the missing goods will, however, not arise in case of legal shortages.

As regards the question of penal action in respect of the missing goods the ministry of law had advised that it would not be possible to take action against the importer under section 112 of the customs act '62 as the goods normally lie in the port trust custody and the importer cannot be termed to be concerned in the removal of the goods as required in that section unless that is clear, hence, no penal action can ordinarily be taken against the importer in respect of the missing goods.

In order to check attempts to pass the goods or part thereof for home consumption illicitly and this to evade the fine imposed on the offending goods, the board desires that the possibility of physically verifying the goods before adjudication in such cases may be examined, so that if on verification the goods fall short of the declared quantity the adjudicating officer may suitably include in the re-shipment fine, so much of the fine on the missing goods as would have been imposed had these been allowed clearance for home consumption.

Failure to re-ship the goods and refund of re-shipment fine

Where the goods are ordered to be confiscated under section 111(d) of the customs act but an option is given to the party to re-ship

the goods on payment of fine and the party fails to re-ship the goods within the time limit of the adjudication order, the re-shipment fine is refundable because the payment of fine is a condition attaching to the re-shipment of the goods, the board also agreed on general grounds of equity that the duty should be refunded in full both where such re-shipment is effected and where it is not. accordingly, both the fine and duty paid in the case under reference should be refunded.

(board's letter f.no. 39/90/54-cus.iv dated 12.10.55)

Condition-Imposition of-in adjudication order to
avoid:

Reference supreme court judgement in civil appeal no.256 of 1954 in the case of shewpujan rai indrasan rai ltd.

The court has held that the collector was wrong in having imposed two conditions, the first relating to the payment of duty and the second relating to the production of permit from the reserve bank of india, before the confiscated gold could be allowed to be released on payment of the fine fixed in lieu of confiscation. accordingly, while passing orders under the sea customs act, such conditions should not be imposed.

Further, in reaching the conclusion that the collector of customs had no jurisdiction to impose the condition that the customs duty should be paid, the supreme court has taken into account the fact that in this case there was no finding by what means the gold was smuggled whether by sea or by land. their lordships of the supreme court have not differed in principle from the judgment of the bombay high court in the case of keki horamsji elavia vs. the union of india (civil application no.1296 of 1953). therefore, in those cases, where we know that goods have been smuggled without payment of duty across a soecific point of the indian border (e.g. where goods are imported at a port and are held up on account of contravention of import trade control regulations at the time of clearing) we will still be able to collect duty in addition to the fine in lieu of confiscation. in those cases however, where we do not know the goods in question have been imported, the quantum of fine should be fixed taking into account the fact that duty cannot be recovered in addition to the fine.

(board's no. 1/30/58-cus.vi dated the 3rd july, 1958)

The Import of Indian currency notes brought by a passenger in excess of the permissible limit is normally liable to absolute confiscation. a case has recently come to the notice of the government of india on the revision application whether considering the petty amount involved, the custom house had taken lenient view and granted an option to clear the currency involved on payment of a small fine in lieu of confiscation and subject to production of a 'no objection certificate' from the reserve bank of india. the government of

india allowed the revision application and ordered the release of the currency without insisting upon the production of a no objection certificate from the reserve bank of india.

The Government of India consider that strictly speaking in the case proceeded against under the sea customs act (customs act 1962) read with foreign exchange regulation act where an order is passed by a competent officer to release the goods on fine in lieu of confiscation, the question of producing a further permit from the reserve bank of India regularising importation should not arise. production of a reserve bank of india permits or 'no objection certificates' should not be asked for in such cases in future. the department of economics affairs, who were consulted in the matter, have also agreed to this course.

(board's f.no.15/33/62-cus.vi dated 29.8.1962)
(instruction no.16/62-cus.vi)

Section 12 and section 17(2) customs act, 1962 applicable
to goods confiscated

The fine under section-183, sea customs act, (section-125 customs act, 1962) is imposed in lieu of confiscation i.e. when the goods are redeemed on payment of fine and cleared for home consumption. sections-20 and 87 sea customs act (section-12 & 17 customs act, 1962 respectively) will operate.

(proceedings of central board of revenue on calcutta, custom house test audit report, 1924 para 66 and c.b.r. letter d. dis.no. 1175-cus.1/36 dated the 11th september, 1936-clman, kar, 1st edition, pa. 34.)

When an order of confiscation is made under section-82 (section-122 customs act) and 183 (section-123 customs act) of the sea customs act and the owner fails to redeem the goods, such goods vest absolutely in government. the money realized by the sale of such goods, therefore, belongs likewise to government. government cannot recover money from itself, and cannot therefore recover the amount of the customs duty out of the sale proceeds belonging to itself. when however the goods are redeemed, the duty is recoverable at the rate at which it was leviable under the law as it stood on the date on which assessment was made under section-87 of the sea customs act [section-17(2) customs act 1962].

If, before the adjudication of confiscation, the procedure specified in section-86 of the sea customs act (section-46 customs act, 1962) had been complied with and the assessment of duty had been made at the rate for the time being in force, then the duty is recoverable accordingly. if on the other hand, no assessment had been made under section-87 [section- 17(2) customs act, 1962] before the goods are confiscated then the proceedings for assessment will have to be taken after the goods are redeemed and the duty must be assessed

at the rate in force on the date of presentation of the bill of entry or the final entry of the vessel, as the case may be.

[c.b.r. letter no. c. no. 108(20)-cus.i/49, dated 20.6.90]

The rate of duty in such cases would be the same as was in force at the time the assessment was made under section-87, sea customs act [section-17(2) customs act, 1962] that is the one determined in accordance with the provisions of section-37, sea customs act (section-15, customs act 1962), whether or not the goods had been assessed before their confiscation, the rate of duty applicable will be that in force on the date of delivery of bill of entry, or otherwise as envisaged in sec.15 of c.a. '62.

[c.b.r. letter no. c.108(20) -cus i/49 dated 20.5.1950

c.b.r. letter no. 24(13)-cus. 11/55,dated 28.9.55]

Where goods absolutely confiscated - citing of proper

authority need of:

It is not enough to cite section 167(8) of the sea customs act(section 111d customs act,1962) or any other section of the act where the officers of customs competent to adjudge offences order absolute confiscation of the goods. where, therefore,absolute confiscation of the goods is ordered the relevant act authorising such absolute confiscation must be cited in the adjudication orders,e.g. section 3(2) of the import & export (control) act. unless the orders of adjudication are precise and correctly worded,they are open to challenge. all officers competent to adjudge offences therefore,should carefully note that the provisions of law under which confiscation etc.is ordered must be clearly and unambiguously stated in such orders.

(adjudication manual,para 70,page 42)

Confiscation of goods

(a) When goods no longer in existence

The question of passing the adjudication orders confiscating goods when they are no longer in existence does not arise, because the owner of the goods may have to be given an option to pay redemption fine in lieu of confiscation under section-183 of the sea customs act (section-125 customs act, 1962) which is not possible in such a case.

[c.b.r. no. 52(3)-cus. i/50, dated 2.9.1950]

When confiscation order becomes effective

The mere passing of an order of confiscation does not automatically vest the property in govt. the order must be executed and given effect to in the manner prescribed in paragraph-2 of section-184 of the sea customs act (section 126 customs act, 1962) by actually taking or holding possession which can be done either by actual seizure or by serving order on the person in possession or in any other manner. but unless this is done and the order is given operative force it is inchoate or imperfect.

This is the principle laid down by privy council in muthiah chetty versus pereaniappa chetty (55 indian appeals 256). it was a case under code of civil procedure wherein the order of attachment was passed by the court but was not actually executed in the manner prescribed by the rules. the privy Council observed:

"these instances go to show that under the code of civil procedure in india, the most anxious provisions are enacted in order to prevent the mere order of the court from effecting attachment plainly indicating that the attachment itself is something separate from the mere order and in something which is to be done and effected before attachment can be declared to have been accomplished."

Adverting to the argument that a property was in law attached whenever an order of attachment was made, the privy council observed:

"the result, if this were so, would be that a person holding an order could dispense with attachment altogether, as an operation or a factthe order is one thing, the attachment is another. no property can be declared to be attached unless first the order of attachment has been issued and secondly in execution of that order other things prescribed by the rules in the code have been done". The same principle would apply to the order of confiscation under section 182 (section-122 customs act,1962), unless that order is actually put in operation and given effect to by taking or holding possession of the property in government.

In the present case if the property had been with the Customs authorities then no further action to give effect to the order of confiscation would have been necessary. but the possession was with bombay port trust which is an independent corporate body. The confiscation, therefore, is not complete until the order was issued and served on the port trust so as to constitute them bailee, holding the property on behalf of government. if, therefore, the port trust disposed of the property before the order of confiscation was communicated to them, the port trust is not responsible. the sale proceeds of the property should not be accepted as that would amount to ratification of the auction sale and unnecessarily involve the government for damages claimed by the party.

It will further be observed that in this case the notice has been

given to the party & the party has already paid the penalty in exercise of the option given to him by the order of confiscation. the de jure order of confiscation, therefore, comes to an end and government is not now interested in the property or the sale-proceeds.

[c.b.r. no. 66(74)-52-cus.i. dated 7.5.1953]

Payment of fine in lieu-question of possession of goods

When confiscation is adjudged under section-182 of sea customs act (section-122 customs act) the thing confiscated forthwith vests in government in accordance with the first para of section-184 (section-126 customs act, 1962). such vesting takes place irrespective of whether or not the thing confiscated is, at the time of adjudging confiscation; in the possession of the officer adjudging confiscation; if it is not in his possession, he is entitled under para-2 of section-184 (section-126 customs act, 1962) to enforced against any one, including a bonafide purchaser of the thing for value, whether from the importer or in an auction sale held by the port trust.

It is against the background of this legal position that the question has to be considered whether fine paid by the owner of goods in lieu of confiscation in accordance with the order issued under section-183 (sec.125, customs act '62) should be refunded if possession of the confiscated goods has not been taken. when an option to pay fine in lieu of confiscation is given to the owner of the goods under the section, it would be for such owner to decide whether he should or should not exercise the option. if he pays fine, the confiscation stands cancelled and the confiscated thing is divested from government. The adjudging officer will not then take any action under para-2 of section-184 (section-126 customs act, 1962) to obtain possession of the confiscated goods. if he fails to pay the fine, the confiscation continues and the adjudging officer would take steps under para-2 of section-184 (section-126 customs act,1962) to obtain possession of the goods confiscated.

Payments of fine in lieu of confiscated merely entitles the owner of the goods to secure a cancellation; it does not further entitle him to obtain possession of the confiscated goods from the adjudging officer if such officer is not in possession thereof.

(board's 91/60/55-lci dt. 4.2.1957).

Redemption fine-period of redemption and penalty orders

Regarding:

All orders of confiscation under the sea customs act (customs act,1962) or the land customs act(to which section 183 applies) should fix a

fine under section 183, sea customs act (section 125 customs act 1962). an exception should be made in respect of prohibited goods, when by handing over the goods to the owner on any terms whatever, the customs officer would clearly be frustrating the object of the restriction, and in some cases, abetting an offence under some other law as for example, where the goods are counterfeit coin, obscene or seditious articles, goods the entry of which is not permissible under such acts, as the destructive insects and pests act, or the live stock importation act, or (in the case of an unlicensed owner) arms, opium, morphia or cocaine; this exception is not intended to imply that the collector is not at liberty in his discretion to fix a fine for such goods with the condition that the goods be re-shipped under customs supervision.

(board's instruction no. 5 of 1925 and c.no.385-cus. war/44 dated 22.11.1944)

(I) Under section 183 of the sea customs act (section 125 customs act, 1962) the owner of confiscated goods must be given an option to pay a fine in lieu of confiscation. The period within which the fine, when fixed, should be paid is, however, not laid down. nor is it obligatory on the appellant to pay the redemption fine under section 189 (section 129 customs act, 1962) pending the appeal (vide board's instruction (customs), no.2 of 1935)

(ii) The Board considers, however, that a time limit of four months (now three months) for the payment of the fine should be specified in the order confiscating the goods. on the expiry of this period necessary action should be taken to dispose of the goods without further reference to the owner provided an appeal against the order has not been lodged.

(iii) When an appeal against the order of confiscation has been preferred, the goods should not be sold until the appeal has been finally decided. if the order of confiscation is upheld on appeal the goods may be sold after a final notice to the owner.

(iv) In forwarding papers called for by the government of india in connection with the disposal of a revision application it should be stated if the confiscated goods, if any, have been disposed of. if they are not disposed of further action should be suspended pending the disposal of the revision application.

(v) The redemption period of 4 months specified in an order (original) is automatically extended if the party in the meantime submits an appeal or revision application to the central board of revenue or to the government of india.

(g.o.i., m.f.(r.d.) no.70/144-cus.ii 40 dated 7.1.50)

(vi) The Board has decided that in cases where the goods have not been cleared within the time-limit of four months prescribed in the order

confiscation the goods and the goods have not been already disposed of by auction or otherwise, they may be allowed to be cleared, if applied for by the party on payment of the fine or penalty and other charges even if the application is received after the expiry of the period stated in the order. a quarterly report giving particulars of such cases should be furnished to the board for information.

(c.b.r. letter no.53(137)-cus.11/49 dated 16th february 1950)

(vii) under the board's instructions (customs) no.5 of 1936 dated 17.12.36, a time limit of 4 months has to be given for payment of fine ordered under section 183 sea customs act in lieu of confiscation (section 125 customs act, 1962). The board have, however, said that these instructions do not apply to perishable goods and that such goods can be sold after a reasonable notice to the owner to enable him to deposit the fine and obtain delivery.

A question arose for the board's consideration whether a period of 30 days could be considered reasonable for the redemption of perishable goods particularly when a provision in the owner applied for extension before the expiry of the period with goods and sufficient reason for such extension and further whether after the expiry of the period of 30 days it was permissible for the department to dispose of the goods in case the party neither redeemed them nor asked for any extension of the period. It was urged that if the goods are sold after the period of 30 days, the party does not get full opportunity of the statutory time-limit of 3 months provided under section 188 of the customs act (section 128 customs act, 1962) because even after the appeal is admitted the goods being already disposed of by auction cannot be returned to the party and only the sale proceeds thereof can be refunded.

The Board in consultation with the ministry of law have decided that if the adjudicating authority passes an order redemption to 30 days in the first instance and also intimates, the party in the order itself that extension of time would be granted on good and sufficient ground in cases the applications are filled by the party within 30 days, there is no justification for the party to sleep over his rights and then come forward with his complaint subsequently. The party has only himself to blame if on account of his own fault, the course of action intimated to him is followed in respect of his goods. Such an order, the board have ruled, would be perfectly in accord with the principles of justice, equity and good conscience. It would, however, be proper for the customs authority to issue to the owner a fresh notice just after the period of 30 days specifying the date fixed for sale, as by the issue of such a notice, it would be made clear to the owner that the custom house is anxious to protect the interests of the owner.

[c.b.r. lr.no.2/6/55 l.c. dated 29.2.56]

The instruction to allow four months for the payment of the redemption fine need not be followed in special cases in which this course may

be expensive or inconvenient, as for instance if the goods concerned are hazardous goods.

In strict law, confiscated goods may be disposed of by government, in anyway, at any time, after they have become government property under section 184 sea customs act (section 126 of the customs act). the question is one of practical expediency and adjudicating officer should in such cases fix such period as, in all circumstances of the case, seems the reasonable minimum.

[c.b.r. r.dis.180-cus.ii/29 of 29.8.29]

Note:- the period of four months for payment of redemption fine was provided on the analogy of the then section 188 sea customs act since repealed. in consideration of administrative convenience and period provided under section 128 customs act, 1962, the period of three months for payment of redemption fine is provided generally in the order in original.

(viii) Board's instruction cited in board's instruction no.5 of 25.11.25 in sub para 35(8) (a)-regarding redemption fine & penalty above does not imply that "prohibited" goods must in no circumstances be allowed entry. it implies that when passing it would clearly frustrate the prohibition or abet an offence, the offending goods must not be passed. in some cases (e.g. ordinary merchandise marks act cases) we have for years past allowed offending goods, if difficult to mark to pass under a penalty without marking. they are nevertheless still "prohibited". in fact it is all a matter of policy. a breach of any such prohibition is punishable under section 167, clause 8 of the sea customs act (section 111d customs act 1962 and section 112) which only says that such goods shall be liable to confiscation and any person concerned to a penalty.

[collector's remark, bombay dated 13th june, 1928 in c.e.no. 23/7-a of 1928]

[section 125 customs act authorises absolute confiscation in case of "prohibited" goods at the discretion of the adjudicating officer]

Penalty & fine retention of - Question of when ordered readjudication de novo:-

A question was placed before the Government of India as to how the amounts recovered as fines and penalties in pursuance of the original orders should be disposed of when the orders are quashed, annulled or set aside by the appellate authorities pending re-adjudication de novo in the types of cases mentioned below:-

i) The subject were allowed to be cleared on payment of a fine in lieu of confiscation.

ii) Only a personal penalty was imposed and paid and the goods were not available for confiscation e.g. enforcement of import trade control bond.

iii) The subject goods were confiscated and cleared on a fine in lieu of confiscation and in addition a penalty had also been imposed and recovered from the person concerned in the offence in respect of the goods.

The Government of India in consultation with the Ministry of law decided that the procedure laid down below seriatim should be observed in respect of the three types of cases referred to above.

i) The amount of fine should be returned in case the party restores the goods which were redeemed by payment of fine and not otherwise.

ii) In this case if the original order imposing a personal penalty is set aside, it follows that the party concerned is entitled to the refund of the amount of penalty paid by him. It would be difficult to resist such a claim on any principles of law. The result of the order passed in appeal is that it rubs out, as it were, from the record the original order imposing a personal penalty. The amount of penalty paid by the party, therefore, would be money received on behalf of the party and lying in trust with the government for the party, and, hence, it would be obligatory to return the money as soon as the demand is made.

iii) This has two aspects. It deals with the case of a party whose goods were ordered to be confiscated and on whom also a personal penalty is imposed. If the order as a whole is set aside, then the party would be entitled to the refund of the fine paid by him in lieu of confiscation on his returning the goods. But he would be entitled unconditionally to refund of the amount paid by him on account of the personal penalty imposed. In case, however, the confiscation is ordered against one party and personal penalty is imposed on another then, while the party on whom the personal penalty is imposed would be entitled to unconditional refund, the party against whom the order of confiscation was passed would be entitled to refund of the fine only on his surrendering the goods which were redeemed by him.

The solutions suggested above are not expressly provided for by the sea customs act and are based on principles of justice and equity.

[Ministry of finance (r.d.) letter no. 45(8)-cus.i/53 19.1.54]

In an appeal before the board, it was observed that the collector had vacated the order passed by The Assistant collector on the ground that the principles of natural justice had not been observed while allowing the appeal, the collector had stated in the order that it was without prejudice to readjudication on merits of the case. It, therefore, implied that if the assistant collector, so thought fit, he may start de novo proceedings. A question arose whether the amount collected from the party under the adjudication order which was set aside was liable to be refunded or not.

The Law Ministry who were consulted in the matter have advised that whether or not the words, "without prejudice to, readjudication of the merits of the case" have been used in the collector's order, the result would be that once the order of the collector has been passed setting aside the order of the assistant collector then from that moment there is no adjudication order imposing any penalty on the party concerned till fresh adjudication proceedings have been initiated and order passed by the competent authority. In the circumstances the amounts already paid by the party in accordance with the order of the assistant collector cannot be retained by the authorities concerned in the absence of fresh adjudication order levying or imposing any such penalty. If, therefore, follows that the amounts already collected would have to be refunded to the party concerned.

However, if the case is readjudicated before the amount refundable is paid to the party concerned, and every effort should be made to readjudicate quickly, there should be no objection to the fine, penalty and/or duty finally adjudged in the readjudication proceedings being adjusted against the amount refundable.

[f.no. 39/3/68-cx.i. dated 11.11.1968]

Imposition of personal penalties by adjudication
officers-instruction no. 5 of 1970

Cases of imposition of excessive penalties under the Customs act, 1962 have come to board's notice vide letter f.no. 4/48/56-cus. iii, dated the 25th september, 1975 (copies appended) inter alia stating that before imposition of personal penalties adjudicating officers should keep in mind the possibility of recovering them ultimately. The board desires that these instructions should again be circulated among adjudicating officers.

[c.b.e & c.f. no. 4/93/70-cus.iii dated 30-9-1970]

copy of board's letter f.no. 4/48/57-cus.iii, dated the 25th sept, 1975, addressed to all collectors of customs (by name).

"the board desires that before imposing personal penalties, adjudicating officers should keep in mind the possibility of recovering them ultimately. If excessively heavy personal penalties are imposed on persons who cannot pay them the amounts have ultimately to be written off. Where an adjudicating officer feels that a heavy personal penalty would be merited but is held back from imposing it on concerned has no means of paying up the penalty, he should consider having recourse to prosecution in a court of law after taking such legal and other advice as may be necessary, and if the evidence is found to be strong enough to justify such a course".

Speedy recovery of arrears of penalty and other dues - step
regarding

The board desires that the recovery of penalties and other dues is not deferred on the ground that the party has filed an appeal, unless the appellate authority stays recovery.

[cbe&c ,f.no. 445/1/80-cus.iv dated 21-2-80]

Penalty - recovery of after death of individual:-

In regard to a case where a person preferred an appeal against personal penalty without paying the amount and died before the recovery of the penalty, it has been held by the board in consultation with the ministry of law that in view of the provisions of section 193 sea customs act'62 the penalty or increased rate of duty adjudged against any persons under the customs act by an officer of customs can be recovered from the goods, in respect of which it is levied as also from the other goods of the persons liable for same. consequently the penalty can be recovered from the property of the deceased and also from the heir and successors to the property.

Since the penalty will be recovered from the property of the deceased which after the death of the person concerned vests in his/her heirs or successors the right of appeal and revisions conferred on the grieved person under section 188 (section 128 customs act'62 and 191 (section 131 customs act 62) of the sea customs act devolves upon the heirs and legal representatives of the deceased party. therefore it is not correct to say that the appeal would abate on the death of the party and the heirs and legal representatives would be required to file a fresh appeal.

It would, however, be necessary for the heirs or legal representatives to get themselves substituted as appellants and the advocate who may have filed the appeal on behalf of the deceased, if any, would have to file a fresh power of attorney. since there is no provision in the sea customs act regarding the time within which the heirs should apply to be brought on record, they may be allowed to apply within six months of the death of the person concerned, or such extended time as the collector may deem necessary taking into consideration the circumstances of the particular case. if no such steps are taken the collector may proceed to adjudicate the appeal on the facts before him. if the penalty is not deposited, he will express his inability to consider, the appeal in view of the provisions of section 189 of the sea customs act (section 129 customs act'62)

[c.b.r. letter no.45(3)-cus.i/53 dated 4.9.53]

Penalty recovery after it is written off:-

The is no objection to the recovery and credit of any penalty or a portion thereof which was previously written off. the order to "write off"

is outside the customs act and is passed with reference to articles 227(b) of the civil account code. it does not stop the customs officer from subsequently collecting the money if possible.

[r.dis. 14454]

Penalty - consideration of facts before deciding:-

In decidig the penalty to be imposed consideration should be given to the following points,inter alia,(i) whether the facts and evidence point to a deliberate intention to defraud; if not,the degree of culpable negligence,if any,should be estimated;(ii) the amount of duty involved in consequence of the misdeclaration; and (iii) the previous record of the importer in the matter of similar offences.

Fine & Penalty - Pinpointing of on Bill of Entry:-

In cases involving confiscation of goods and imposition of penalty in the appraising and export department,the pin point typewriter operator will pin point the amounts in the original copies of the bills of entry in all cases.

Accounts department will see that this is done when the bills of entry are presented to them for payment of fine/ penalty are not pin pointed may be returned to the principal appraisers concerned.

Warning - legality of - under the customs act, 1962:-

Warnings are not contemplated as a punishment under the customs act,and as such a warning should not be in writing at all or made part of the formal adjudication order. a warning could however,be conveyed orally to the party concerned. It will also be open to the adjudicating authority to record in the formal order that there has been a breach of law but in view of the extenuating circumstances no penal action is being taken on the present occasion,but this leniency may not be repeated. the latter course may be followed wherever it is considered that a warning should be administered.

[board's f.no.1/17/59-cus.vi dated 27.6.1962, instruction no.11/62 - cus.vi]

A warning was issued to indicate that the particular consignment was released taking a len-ient view and that such leniency would not be shown again. however,it was further decided that if the party did not accept the decision that the goods were not covered by the licence he could prefer an appeal to the appropriate authority. but if the party agreed that the goods were not covered by the licence then there was no scope for an appeal.

[f.no.1/13/68-cus.vi. dated 28.8.69]

Note:- in such cases a formal order signed by the adjudicating officer will be necessary indicating the extent to which the party may prefer on appeal to the appellate authority. (collector of custom calcutta order dated 10.11.69 in file no. s/21-126/69a)

Customs act, 1962-sec.128-goods released on 'caution' as a special case-filing of appeal

 In cases where the offence is of a minor character or of a technical nature the customs houses release the goods on 'caution' or "as a special case", but do not grant wharf-rent exemption certificate, nor grant the importers an opportunity to file an appeal even in cases where they do not accept the decision.

2. The Board desires that in order to avoid disputes, in cases where licence is not acceptable and goods are released on 'caution' or 'as a special case' and if the importers request for an appealable order, it should be issued to them as is being done in terms of ministry's letter f.no. 1/13/68-cus. vi dated the 28th march, 1969 in cases where goods are released on "warning".

[board's letter f.no. 511/2/72/cus. vi dt. 29.5.72]

Order in original to issue (i) when s.c.m. issued and (ii) when assessment made under orders of Assistant Collectors:-

 Where a show cause notice is issued but the adjudicating authority decides not to take any penal action, a formal order should be issued if the importer request for the same. similarly, where assessment of any goods is decided under the orders of the assistant collector or any higher officer, a formal order should be issued if the importer asks for one.

It has been represented to the board that in a number of cases the assessable values had been enhanced by the assessing officers under the orders of the assistant collectors, leaving it to the assesses to lodge claims for refund of duty charged in excess. the assesseees are not informed of the fact that the values have been enhanced under the orders of the assistant collector or officer below the assistant collector as no formal orders are issued indicating that in case the party is aggrieved it is open to him to file an appeal. This results in filing the appeals to inappropriate authorities and in certain cases the appeals becoming time barred by the time the assesses are informed about the proper officer to whom the appeal should be preferred. the board have therefore, decided that in cases where the assessments against the assesses are made by or under the orders of the assistant collector, a formal order should be issued so that the assesses could know the grounds on which the decision was taken and the procedure to be followed in getting his grievances redressed.

[board's f.no. 16/23/67 -lci dated 18.5.1967]

Issue of appealable orders in cases of dispute

Board's letter f.no. 1/8/70/cus. iv dated 18.1.1971 is reproduced below for the guidance of the staff.

It has been brought to the notice of the board that in a number of cases where there are disputes between the importers and the custom house regarding the valuation or rate of duty applicable, appealable orders are not being issued in some of the custom houses, with the result that in several cases the importers suffer as the grounds for action taken by the custom house, the authority to whom the appeal lies and the period for filing the appeal are not indicated for their guidance.

The board have therefore decided that whenever there has been any dispute between the importers and the custom house regarding the valuation of goods or the rate of duty applicable thereto, an appealable order should be issued by the assistant collector giving reasons for his decision. However, a mere suggestion by the party that the assessment should be at a lower rate without giving any reasons therefore should not be considered as a ground for filing appeal. In addition to the type of cases listed in para above, whenever demands are raised in terms of the conditions of the bond for production of valid import trade control licences, the assistant collector, the deputy collector or the collector whoever is competent authority to adjudicate the case should issue an appealable order discussing the points made out by the party and indicating the reasons for not holding the licence produced as valid.

Similarly while raising demands in terms of the conditions of other types of bonds, appealable orders should be issued discussing the points made out by the importers and bringing out the reasons for holding that the money demanded is due to the custom house.

[s.o. (cochin)-21/71 (issued in file c.1/6/71-cus.)]

Order in original- Precautions in drafting:-

The board have observed that in many instances the presentation of facts, the arguments advanced by the party, the arguments in rebuttal and the conclusions reached in adjudication orders are not often cogent and lacked clarity. It was also noticed that in some cases material facts or arguments advanced were omitted or even if they were mentioned, their critical appreciation with reference to the conclusions reached was not evident from the orders themselves. It was also felt that at times there was a tendency to overlook, in the adjudication orders, the party's point of view and to marshal facts and arguments in favour of revenue only. Such orders suffer from an infirmity inasmuch as they are not conformity with the canons of natural

justice.

[board's f.no.15/21/65-cus.vi dated 23.5.1966]

The detailed guidelines for the officers concerned with the adjudication are provided in the note appearing at page 224 para 7 of the technical bulletin, vol. xii no.2., which is reproduced for reference.

Instructions regarding drafting of adjudication orders in conformity with canons of natural justice

The board have observed that in many instances the presentation of facts, the arguments advanced by the party, the arguments in rebuttal and the conclusions reached in adjudication orders are not often cogent and lacked clarity. it was also noticed that in some cases material facts or arguments advanced were omitted or even if they were ,emptomed, their critical appreciation with reference to the conclusions reached was not evident from the orders themselves. It was also felt that at times there was a tendency to overlook, in the adjudication orders, party's point of view and to marshal facts and arguments in favour of revenue only. such orders suffer from an infirmity inasmuch as they are not in conformity with the conons of natural justics.

As a result of an analysis of about one hundred adjudication orders, the directorate of inspection (customs & central excise) have prepared a note pinpointing the principal defects in such orders. A copy of the said note is appended for the information and guidance of all the officers concerned.

[board's f.no. 15/21/65-cus.vi, dated 23-5-1966.]

The Main defect from which most of the orders suffer from is that, they are not "speaking orders". it is one of the important ingredients of the principles of natural justice that the authorities vested with quasi-judicial powers must pass "reasoned orders", even though no such obligation may have been laid down in the statute.this is particularly so when there is provision for appeal against the order. the general pattern followed in drafting adjudication orders has been to, first set out the facts of the case as enumerated in the show cause notice, then state the various arguments put forward by the parties and then to dispose of the matter in one sentence by adding something on these lines, viz. "i have carefully considered the arguments put forward. i am not convinced of the ground adduced by the party. the evidence produced is not satisfactory". orders of this type will not help the parties in understanding when the particular pleas put forward by them have been dismissed as unconvincing or unsatisfactory and what exactly they should do to convince the appellate or revisionary authorities. even at the appeal stage, it becomes difficult for the appellate authority to know the grounds on which the claims made by the parties were rejected. the importance of passing a self-contained order which not only sets out the facts of the case, the arguments put forward by the party as also the detailed grounds on which each point made by the party

is accepted or rejected cannot be over emphasised. Every adjudicating officer should recount in their orders all the essential arguments put forward by the parties, deal with each of them on merits and come to a reasoned conclusion on every single point. though, no doubt, this will result in the orders being elaborate and consequently take more time of adjudicating officers, it is necessary that in the interests of justice, this is invariably done.

Some adjudication orders lack proper analysis of the evidence submitted by the parties. an attempt should be made to consider carefully every piece of evidence submitted by the party and sufficient grounds should be adduced in the order for rejecting or accepting the same. the present tendency is to dismiss the evidence submitted, by a sweeping statement that "the evidence has been carefully considered but has not been found to be acceptable". another defect is that in many adjudication orders, it is not clearly brought out in what manner and to what extent the provisions of the law have been contravened. it is desirable that the provisions of the particular sections that are alleged to have been infringed be set out clearly and that the same be brought out unambiguously in the orders issued. the contents of the provisions which had been violated and the manner in which they were violated should be brought out clearly and in a reasoned manner. this defect is particularly noticed in cases dealing with the violation of foreign exchange regulations act. whenever there is a misstatement or misdeclaration of the full export value in the shipping bills, the adjudication orders invariably state that there has been an infringement of section 12(1) of f.e.r.a. a most of the adjudication orders never explain how mis-statement or mis-declaration amounts to a violation of section 12(1) of f.e.r.a. under section 12(1) of f.e.r.a. what is required of the exporters is a declaration of the full export value. a false statement in g.r.form would be an offence under section 22 of the f.e.r.a. and will not attract the penal provisions of the customs act, 1962 under section 23a of the f.e.r.a. when the full export value is not stated in the g.r. 1 form, the charge, therefore, should be that a declaration as required under section 12(1) has not been made. the charge should not be that there has been a mis-declaration and consequently there has been a violation of section 12(1) of f.e.r.a. similarly, while dealing with the offences under section 8 of the f.e.r.a. the particular notifications which are alleged to have been infringed should be quoted and the manner in which the notification has been infringed should be suitably brought out. the present tendency is merely to refer to the notification issued under section 8(1) or (2) and to state that there has been a violation of the notifications without clearly bringing out how exactly there has been a violation. in a few cases dealing with under valuation, the adjudication officer, instead of coming to a definite conclusion as to the correct value, merely state that the value of the goods could under no circumstances be less than a particular amount and since the declared value is less than that, an offence of under-valuation is established. such orders are vague and are likely to be questioned in courts of law. it is always desirable to come to a definite conclusion regarding the value of the goods in cases of

under-valuation.

when imposing personal penalty under section 112 or 114 of the customs act 1962, it is always desirable to bring out how the person concerned has committed in act of omission or commission or abetted such an act or how exactly section 112(b) of the customs act 1962 is attracted before a penalty is imposed. a few cases have also come to notice where the grounds on which the goods were finally confiscated, were slightly different from those on the basis of which the show cause notices were issued. in such cases, it is always desirable to issue revised show cause notices. baggage adjudication orders also suffer from being vague, on account of full details not being furnished in the order in all baggage cases, it is necessary to state clearly in the order itself, the particular items which have been treated as coming within the scope of the allowances admissible under the baggage rules and their value. The present practice is to refer to some annexures attached to the order and sometimes, this leads to doubts in the mind of the appellate authority. when using cyclostyled forms for issue of spot adjudication orders, in baggage cases, it should be ensured that all irrelevant portions are stricken off and all necessary additions are made. sometimes, when part of the goods is being confiscated absolutely and part released on payment of redemption fine, the adjudication orders are so worded that it is not clear whether the redemption fine is for the entire portion of the goods confiscated or only for a part thereof. the orders should be drafted in a manner leaving no room for ambiguity.

Section 111(o) of the customs act 1962 has been invoked for penal action in cases where it is suspected that a person has sold certain items of his baggage in contravention of the proviso to clause 11(g) of the import (control) order, 1955, dated 17-12-55. the adjudication orders dealing with such cases do not try to establish that

- (a) The subject goods had, in fact, been imported as baggage;
- (b) The particular condition in the proviso to clause 11(g) which had been contravened; and
- (c) The manner in which the provisions had been contravened. before action can be taken under section iii(o) of the customs act 1962, it is necessary to prove the non-fulfilment of the required conditions. the onus of proof in such cases is invariably on the custom house.

Despite instructions on the subject, some adjudication orders still mention that the goods cannot be removed without payment of duty or demurrage charges. these things should not be mentioned in the order itself but indicated suitably in the endorsement under which the order is forwarded to the party. when the goods imported under the licence do not conform to the description in the licence or are shipped prior to the date of issue of the licence under which they are claimed to have been imported, the licence can be treated as having

been fully utilised for importing the said goods in terms of section 3(2) of the import (control) order, 1955. when action is taken in terms of this clause, it is necessary to bring out the provisions of the clause suitably in the order.

In adjudicating cases relating to parcels coming as gifts, the provisions of the import (control) order laying down the monetary limits up to which the parcels can come as gifts into india should be clearly indicated.

In certain adjudication orders, the findings of the adjudication officer are expressed in terms such as "the goods are deemed to have been imported unauthorisedly". it would be better to express the conclusion of the adjudicating officer in direct terms as " i hold the goods as having been imported unauthorisedly....."

When certain licences are held as not covering the goods imported, the orders passed sometimes do not give full details of the licences produced and as to why they are not valid for the goods under consideration . the orders should be clear in this regard.

Except in cases covered by sec.123 of the customs act,1962 it has to be borne in mind that the onus of proving the offence rests with the custom house.in a number of adjudication orders,it is seen that this onus has been shifted to the parties,particularly in case of allegedly smuggled goods,the importation of which was prohibited in the last few years.the department`s case usually rests on presumptions and doubts and inability of the parties to prove how exactly the goods were imported.then in some cases the scope of sec.123 is even extended to clocks even though only watches are to be covered.

A case has recently come to the notice of the board where a passenger had brought goods in excess of the limit permissible under the baggage rules. as the passenger was not in possession of an import trade control licence for the import of the said goods,they were seized for taking action under the sea customs and the import and export (control) acts. the said goods really consisted of two sets of goods, namely:

- (i) Certain goods,the import of which is banned.
- (ii) Others which were dutiable and can be imported on the basis of an import trade control licence.

After following the prescribed procedure,the adjudicating officer confiscated certain sets of goods under section 167 (8) of the sea customs act (section 111 customs act) read with section 3(2) of the import and export (control)act. the remaining set of seized goods (i.e.prohibited goods) were also confiscated under the provisions of section 167(8) (section 111

customs act) read with sections 168 of sea customs act. the adjudicating officer, however, allowed the owner to redeem 'the goods' on payment of fine and penalty without clearly stating the set of goods to which this clause of the order was intended. the party paid the requisite fine and penalty and was allowed to clear the goods, the import of which was not banned, and was not allowed to clear the remaining goods the import of which is prohibited. the party appealed that the goods which were still detained, should also be allowed to be cleared as no distinction had been made in the order-in-original, and the order as it stood, allowed the redemption of the entire goods on payment of requisite fine and penalty. since the intention as to which set of goods was to be redeemed on payment of fine and penalty had not been made clear in the operative part of the order, the entire set of goods, including those which the adjudicating officer really intended to confiscate without giving an option to redeem, had also to be released on payment of customs duty, this benefit had to be given to the party due to the technical defect in the wording of order-in-original. the board, therefore, desire that such defects should in future be avoided in passing orders-in-original. care should be taken to ensure that there is no scope for ambiguity and that the intention is clearly brought out in the body of the order by stating separately and explicitly the types of goods which are to be confiscated without giving an option to redeem and the others in respect of which the confiscation is to be subject to redemption on payment of fine.

[board's f.no.2/13/61-l.c.i. dated 13.11.1961]

Section 48 customs act 1962-invoking of-when adjudication orders are passed:-

In cases which have been adjudicated and the fines in lieu of confiscation have been paid within the period specified in the order-in-original or within such extended period as may be allowed, the provisions of section 48 of the customs act 1962 cannot be invoked. if there has been a substantial increase in the duty, it is upto the adjudicating officer to refuse to extend the redemption period and sell the confiscated goods, if he so chooses.

[collector's (cal.custom house) order dated 17.9.65]

Section 13 customs act 1962-remission of duty question of when adjudication order issued:-

No remission of duty under section 13 can be granted on goods pilfered after an adjudication order is intimated to the party by being endorsed on the bill of entry.

[collector's (cal.custom house) orders dated 17.9.66]

Obscene literature deterrent punishment:-

In the recent past cases of importation/exportation of

obsence literature and articles have increased considerably. in order to check this tendency in such cases,deterrent punishment as provided under the law should be inflicted on the offenders.

[c.b.r. letter f.no. 20/4/61-cus.i datd 29.4.61]

Unauthorised import of feature films -absolute confiscation of

Import of feature films is allowed only through the state trading corporation. it is not considered desirable that unauthorised imports of feature films should be allowed be cleared even on payment of fines because sometimes the importer may even take the risk of payment of fine as they might be in a position to realise a large sum of money from the exhibition of the film thus neutralising the fine imposed.

The board have therefore decided that unauthorised imports of feature films be confiscated absolutely and no option to redeem the same on payment of fine in lieu of confiscation need be given.

[c.b.e.&c f.no.478/65/72-cus.vii dated 10-9-1972]

Obvious errors in order in original:-

In a case of under valuation a "show cause" memo was issued under section 167(37),sea customs act (section 111 of customs act'62) and action was finally taken under this particular section. the order original,however,through a clerical error erroneously indicated the section under which the penal action was taken as section 167(8),sea customs act (section 111(d) customs act'62).

In the order in appeal,the board upholding the collector's decision,was plwased to direct that as the order in original did not correctly express the collector's intention,section 167(37) sea customs act should be substituted in plae of section 167(8),sea customs act in the order in original. A clerical error of this sort does not in any way affect the

Decision of the adjudicating officer (also see section 154 of the customs act,1962)

Release of goods pending adjudication procedure regarding:-

It has been decided,as a result of the recommendation of the customs study team with a view to relieving congestion in the port commissioner's/trust transit sheds,to extend the facility of removal of imported goods in respect of which adjudication proceedings are in progress from the sheds by the importers for keeping with themselves for safe custody pending finalisation of the proceedings,and payment of fine in lieu of confiscation and penalty etc. this facility may,in his discretion,be granted by the assistant collector of customs concerned,or when he is not the adjudicating officer, in

consultation with such officer. requests will be considered after it is decided that the proceeding under the customs act, 1962 and import trade control act should be instituted and the cases are such as are disputed and are likely to require detailed scrutiny before final adjudication order is passed. such permission may be granted on importer's making a written request (see form 47 of the appendix) and filing a bond with surety in the proforma form no.39 of the appendix.

The amount of the bond should be equal to the fine likely to be imposed. for this purpose it will be necessary to carefully ascertain the market price of the goods.the appraiser concerned for this purpose will record the market price and the amount of duty leviable on the goods. he may also record any other relevant factor which will help in fixing the fine in terms of section 125 customs act 1962. the figures should be so reported as to help the adjudicating officer in readily arriving at the amount for which importer should execute the bond. the amount of the bond shall be fixed with the approval of the adjudicating officer.

When the adjudicating officer has accorded permission for removal of such goods,the bond will be accepted in the usual manner. a register called the 'preclearance bond register' to list such cases will be opened by each unit/group and the entries made after the bond is accepted. the register will be taken by hand by dealing clerk to the assistant collector in charge on 1st day and 16th day of every month after preparing an abstract of the pending cases after the last entry. the register will be put up with relevant file and assistant collector may pass such order as he deems fit to expedite disposal of the case. on the 15th day and the last day of the month the register with the file will first be put up to the appraiser concerned who would indicate in the file,the progress of the case which will be countersigned by principal appraiser of the group for consideration of assistant collector next day. since the importer themselves are not likely to be interested in expeditious disposal of the case it is impressed upon the officers and the staff that the unit/group concerned exercise utmost care to finalise the case expeditiously once the adjudication proceedings are completed. pending cases will be reported in the monthly arrears report of the group/unit.

Since the recommendation of the customs study team envisages the facility for the purpose of detailed scrutiny for licence validity being done after removal it should be ensured that appropriate customs duty is realised before the facility is extended to such goods. for this purpose the bill of entry filed for clearance of the goods will be classified with the remarks for clearance of the goods will be classified with the remarks for use of the accounts department "after duty,duplicate triplicate and exchange control copy to be returned to the group for further action in regard to the file no.....

On receipt in the group, the scrutinising appraiser will issue the usual order on the duplicate bills of entry to shed staff for necessary action, other copies shall be retained in the file. The importers will present the duplicate bill of entry in the shed, where goods are lying for necessary appraisal if not already done, and for endorsing for removal from the transit shed.

The shed appraiser will ensure that the bills of entry number and file number are stencilled very prominently on each of the cases and examining officer puts his full signature on each package in indelible ink and endorses the duplicate bills of entry to that effect under his full

Signature.

The Shed Appraiser will endorse the following on the duplicate Bill of entry:-

"allowed to be stored in the importers custody without passing out of customs control pending adjudication". After removal of the goods from port commissioner's/trust shed, the duplicate bill of entry will be obtained from port commissioner/trust by the shed e.o. and will be forwarded to unit/group concerned within 24 hours. A record will be kept of such cases with bill of entry number and file number in register to be maintained.

The duplicate bill of entry received from the shed will be placed in the relevant file for prompt action thereafter.

Similar facility may also be extended to goods arriving by air.

[customs study team recommendation no.74 c.o.i.min of fin. letter f.1/24/67-cus.vi. dated 2.11.67]

Release of imported material against import licence requiring the licensee to execute a bond with a bank guarantee for fulfilling of an export obligation

 With regard to the licence for import of capital goods or raw material, components, spares, etc., which carry a specific condition to the effect that the licensees would execute a bond with bank guarantee undertakings a prescribed Export obligations, the chief controller of imports and exports has referred to a case where the collector of customs, Madras, confiscated the goods imported by a licensee on account of his failure to execute a bond and bank guarantee undertaking the prescribed export obligation as per the condition of the licence. The goods were, however, subsequently released to the same party for home consumption on payment of a fine in lieu of the confiscation although the party did not execute the bond and bank guarantee for fulfilling the export obligation to which the relevant import licence was subjected. On being

addressed by the jcci & e, madras, the licensee has contended that, as the custom authorities has allowed the goods to be cleared for home consumption treating the import as unauthorised and he, viz., the licensee was given the option of obtaining release of the imported machinery by paying the penalty, the condition attached to the licence regardig export obligation was null and void.

The cci & e is examining the ase of the party further in consultation with the law ministry to see whether action can be taken against the licensee under the itc regulations.

It has however been decided that in cases where a particular import licence carries a condition requiring the licensee to execute a bond backed by a bank guarantee and where the licensee, for any reason, fails to comply with this condition, the customs authorities should consul the office of the cci&e (dy.cci&e, enf. divn., office of the cci&e, new delhi) before releasing the confiscated goods to the licensee even on payment of redemption fine. the customs authorities may also make suh a reference where confiscated goods imported against a licence requiring the execution of a bond with a bank guarantee are proposed to be disposed of by public auction. such a reference should be made before the goods are actually put on auction.

When reference are made to the licensing authorities before adjudication of the cases where the importer has failed to execute bonds for fulfillment of export obligation, the custom house, should go ahead with the adjudication of the case after one or two reminders if the view of the licensing authorities are not communicated within two months of the date of the reference.
[f.no. 8/84/70-cus. vii dated 24.11.70]

Goods confiscated vest in government - question of delivery on payment of redemption fine:-

When confiscation is adjudged under section 182 of the sea customs act (section 122 of the customs act'62) the thing confiscated forthwith vests in government in accordance with the first para of section 184 (section 126 customs act'62). such vesting takes place irrespective of whether or not the thing confiscated is,at the time of adjudging confiscation in the possession of the officer adjudging confiscation,if,it is not in his possession,he is entitled under para 2 of section 184(section 126 of the customs act'62) to take its possession, if necessary with the aid of the police. the power of the adjudging officer under section 184 (section 126 customs act 62) to take possession of the confiscated things is unrestricted and can be enforced against any one,including a bonafide purchase of the thing for value,whether from the importer or in an auction sale held by the port trust as in the present case.

It is against the background of this legal position that the question has to be considered whether fine paid by the owner of goods in lieu of

confiscation in accordance with the order issued under section 183(section 125 customs act 62) should be refunded if possession of the confiscated goods has not been taken. when an option to pay fine in lieu of confiscation is given to the owner of the goods under section, it would be for wuch owner to decide whether he should or should not exercise the option. if he pays the fine,the confiscation stands cancelled and the confiscated thing is divested from government. the adjudging officer will not then take any action under para 2 of section 184(section 126 customs act'62) to obtain possession of the confiscated goods. if he fails to pay the fine,the confiscation continues and the adjudging officer would take steps under para 2 section 184 (section 126 customs act'62) to obtain possession of the goods confiscated.

Payment of fine in lieu of confiscation merely entitles the owner of the goods to secure a cancellation of confiscation;it does not further entitle him to obtain possession of the confiscated goods from the adjudging officer if such officer is not in possession thereof.

[board's no. 91/60/65-l.c.i. dated 4.2.1957]

When part goods are offending:

Whenever a show cause memo is issued in respect of part of the goods covered by a bill of entry the scrutinizing appraiser,while making his recommendation for adjudication should invariably indicate that the offending goods are only part of the goods imported. similarly,the drafting clerk should ensure that the order-in-original specified that the order of confiscation relates to the affending part of the goods only.

In cases where the offending goods form an individual unit which cannot be confiscated partly,though the order of confiscation will cover the entire goods,the redemption fine will be based on the value not covered by the licence. engaging a counsel for the department in important adjudication cases

The Board have since accepted the recommendation of the public accounts committee that atleast in important cases of adjudication government should be represented by competent legal experts. as has been observed by the board ,the question of engaging legal counsel to represent the department would normally arise in respect of the really important cases which come up for adjudication at collector's/additional collector's level ,since engaging a counsel in every case would be too costly and may delay the adjudication proceedings, particularly where the goods are under detention.

Having regard to all these aspects, the heads of the departments should in future select only those specific cases where engaging of a counsel to represent the department would be considered absolutely necessary and put the same to board giving full justification of collector and/or additional

collector as the case may be. the sanction of the board has to be obtained for all such cases where counsel is to be engaged. the order of the board should be given effect to immediately.

[c.b.e.c new delhi's letter f.no.494/111/75-cus.vi,dated the 1st oct.,1975]

Passing of orders in original immediately after completion of personal hearing

It has come to notice of board that inordinate delays occur in passing order in original even after completion of personal hearings. this not only goes against the interest of justice but also unnecessary repetition of hearing has to be resorted to in cases of transfer of adjudicating officers.

2. Board has considered the matter. it is expected that it would be possible to pass a final order in original by adjudicating officers immediately after completion of personal hearings but in no case later than a week of the completion of personal hearing.

3. The board has therefore directed that orders in original should be passed immediately after completion of personal hearings. delays more than a week in passing such orders would be viewed seriously by the board. these instructions may be followed in letter and spirit by all adjudicating officers . field formations may be advised suitably.

f.no.223/59/88-cx.6 dt.2.11.88 circular no. 76/88-cx.6

Samples to retain where denovo proceedings apprehended

It has come to the board's notice that in certain cases where the appellate authority sets aside the orders of the adjudicating authority on the ground of violation of principles of natural justice , and leaves it to the discretion of the adjudicating authority to adjudicate the case denovo , after compliance of the principles of natural justice ,it sometimes becomes difficult for the adjudicating authority to launch the denovo proceeding on account of the fact that the goods ,which provide the main evidence, have already been cleared by the party on payment of duty, fine etc. the board has considered this question carefully and desires that in such cases the adjudicating authorities should retain samples of goods involved for use if necessary at the stage of appeal ,revision petition or denovo adjudication . there is no legal bar to the retention of samples in this manner ,since section 144 of customs act,1962 empowers the proper officer to draw samples of goods for "examination or testing ,or any other purposes of the act" and the words `any other purposes` occurring here could include the purpose of deciding appeal and revision as also de novo adjudication.

[f.no.55/112/68-cus.-v, dated 18-12-1968]

Adjudication Cell

Introduction

Action to be taken before taking cases for adjudication central adjudication cell- working power source under customs act standing orders circulars

(a) adjudication -passing of quasijudicial orders by asstt./dy./ addl.collectors

(b) acceptance of financial status for determining the personal penalty

(c) proper filling of evidence on record during the adjudication proceedings

(d) departmental orders not to be quoted while passing adjudicateion orders

other instructions

submission of case records alongwith copy of the orders
adjudication-office procedure

(a) issue of showcause notice

(b) mode of dispatch of s.c.n.

(c) time allowed for reply to s.c.n.

(d) procedure if the show-cause notice refused by the party

(e) entry of particulars of show-cause notice in register

(f) endorsement of previous offences

(g) entry in the register with realisation particulars

(h) action to be taken if duty/penalty not paid by the party burden of proof

principles of natural justice

personal hearing

adjudicating authority should be free from bias

concept of bias

senior officer -question of association with investigation

concept of personal hearing

invoice or documents of other party not to be shown at the time of personal hearing

show-cause notice

framing of charges - procedure regarding

issue of show-cause notice to owners of conveyances used in

transportation of goods liable to confiscation issue of separate show-cause notices one relating to seized goods and other relating to offence cases booked for past clearances

a copy of show-cause notice to be delivered to the party through

clearing agent ,if employed by the party.

show-cause memo - person to whom to be issued

show-cause notice - avoidance of issuer piecemeal

examination of goods and other precautions to take offenders or accused - avoid use of the words

location of goods mentioned in the examination report to be mentioned in the s.c.n. reply to show-cause notice - ordinarily not to ask within twenty four hours - time to be allowed

signing of show-cause notice

show-cause memo under sec. 123 customs act'62

show-cause memo -to be sent by registered/a.d. post failure to reply to show-cause memo

false information in reply to show-cause memo revised show-cause memo to be issued when ground of confiscation

appears different
 show-cause memo when not desired
 documents supplying of- where show-cause memo issued -question of
 court fee
 disclosure of information by customs authorities
 affidavit-in-reply - to avoid discrepancy
 adjudicating officers should act on evidence and not on mere
 suspicion
 cross examination
 presence of counsel & cross examination during hearing
 cross examination of witness in departmental adjudications
 copies of records of cross examination - request for how to deal
 cross examination of technical experts like deputy chief chemist
 when to allow
 certified copies of the bills of entry with departmental notings -
 reliance in cross examination .question of refusal to answer
 delegation of quasi judicial functions
 reasoned order
 issue of speaking orders by the adjudicating authorities
 speaking orders
 fair hearing
 who should hear
 personal hearing by government of india at revision stage -
 whether obligatory
 technical advisers - presence of during personal hearing
 right to be represented by a counsel
 consultation by the adjudication authority
 persons concerned whether abettor or actual perpetrators &
 question of mens rea

- (a) persons liable for penal action under customs act, 1962
- (b) whether abettor or actual perpetrators are persons concerned
- (c) mens era

margin of profit - market enquiries

norms of imposition of fines

norms for consideration of adjudicating officers in case of i.t.c.
 contraventions

avoidance of piecemeal adjudication

postponement of action under sec. 112,114 or 135 of the customs act

1962

piecemeal adjudication - one by the lower officer and another by the higher officer

adjudication not barred when goods out of customs control

legal misc. - passing of adjudication orders on holiday

legal misc. - passing of adjudication orders on holidays – crew members and passengers

second order a nullity in case of adjudication on same transaction

office note not to recommend final decision or penalty

ascertainment of market value

adjudication of cases when referred to law courts

state governments are liable for action

v.i.p. members of parliament /ministries ,diplomatic & consular

officers - proceedings after board's approval

re-adjudication when trial denovo ordered - question of enhancement of fine or penalty

readjudication of cases in which orders are set aside for failure

to comply with the principles of natural justice.

drug act and rules - procedure of adjudication of offences thereunder

order to communicate on bills of entry when filed for

expeditious clearance

adjudication order - order-in-original . form of order in original consideration in regard to order in original - defects to avoid orders of higher authorities not to quote orders to be signed in full signing of order in original - question whether successor in office can sign

customs act 1962 sec.128 - warning issued in simple cases -
 orders issued under the signature of the officers who pass the
 orders - instructions regarding
 adjudication orders passed by an officer and communicated by his
 successor - instructions regarding
 fixation of time-limit for issue of order-in-original - orders
 regarding
 re-shipment /re-export - option given in adjudication order
 re-shipment and adjudication order
 circumstances under which re-shipment is allowed
 endorsement of a bill of entry for re-shipment
 re-shipment and missing contents
 failure to re-ship the goods and refund of re-shipment fine
 condition - imposition of in adjudication order to avoid
 section 12 and section 17(2) customs act.1962 applicable to goods
 confiscated
 where goods absolutely confiscated - citing of proper authority need
 of confiscation of goods
 payment of fine in lieu - question of possession of goods
 redemption fine - period of redemption and penalty orders regarding
 penalty & fine retention of - question of when ordered
 readjudication denovo
 imposition of personal penalties by adjudicating officers
 instruction no. 5 of 1970
 speedy recovery of arrears of penalty and other dues steps
 regarding.
 penalty - recovery of after death of individual
 penalty - recovery after it is written off
 penalty - consideration of facts before deciding
 fine & penalty - pinpointing of on bill of entry
 warning - legality of - under the customs act 1962
 customs act 1962 - sec. 128 - goods released on caution as a special
 case - filing of appeal
 order in appeal to issue - (i) when s.c.n.issued and
 (ii) when assessment made under orders of assistant collectors
 issue of appealable orders in cases of dispute
 order in original - precautions in drafting
 instructions regarding drafting of adjudication orders in
 conformity with cannons of natural justice
 section 48 customs act 1962 - invoking of - when adjudication orders
 are passed
 section 13 customs act 1962 - remission of duty - question of
 when adjudication order issued
 obscene literature deterrent punishment
 unauthorised import of feature films - absolute confiscation of
 obvious errors in order in original

release of goods pending adjudication - procedure regarding
release of imported material against import licence requiring the
licensee to execute a bond with a bank guarantee for fulfilling of
an export obligation

goods confiscated vest in government - question of delivery on
payment of redemption fine

when part goods are offending
engaging a counsel for the department in important adjudication
cases

passing of orders-in-original immediately after completion of
personal hearing

samples to retain where denovo proceedings apprehended

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end ed. no corrections applied