

Miscellaneous Provisions

Question 1

Explain briefly the provisions of the Customs Act, 1962 relating to the powers vested in the customs officers to take samples.

Answer

As per the provisions of **section 144** of the Customs Act, the proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for:

- (a) examination or testing or,
- (b) ascertaining the value thereof, or
- (c) any other purposes of this Act

Question 2

Whether the right of warehouse-keeper to recover the warehousing charges from the sale proceeds of the goods kept therein is superior to the right of the Revenue to recover custom duty? Answer briefly, by referring to section 150(2)(b) of the Customs Act, 1962.

Answer

In the case of **Associated Container Terminals Ltd. v. Union of India 2008 (226) E.L.T 169**, Delhi High Court held that as per the words used in section 150(2)(b), the right of warehouse keeper to recover the warehousing charges from the sale proceeds appeared to be superior to the right of the Revenue to recover customs duty. The Court noted the following words used in section 150(2)(b):

“-----and other charges, if any, payable in respect of goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods”.

High Court observed that these words make it clear that it does not pertain to custom duty and refers to the payment of warehousing charges. So, **it takes precedence over recovery of custom duty** which is relatable to section 150(2)(e) of the Customs Act, 1962.

Question 3

Where any goods not being confiscated goods are sold under any provisions of the Customs Act, 1962 and sale proceeds are applied for specified purposes. However, the balance of sale proceeds is still left. How to dispose of said balance.

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Answer

The above balance shall be paid to the owner of the goods in accordance with provisions of Section 150(2) of the Customs Act, 1962. However, according to proviso inserted to section 150(2) w.e.f. 08.04.2011 where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

Question 4

Explain with reference to the Customs Act: service of order etc. under Section 153 of the Customs Act.

Answer

According to section 153 of the Customs Act 1962, order or decision passed or any summons or notice issued under the Customs Act, shall be served by tendering the order, decision, summons or notice or sending it by registered post **or by such courier as may be approved by the Commissioner of Customs**. In case if this is not possible, the order, decision, summons or notice shall be affixed on the notice board of the customs house.

Question 5

If any duty demanded or drawback paid is recoverable from a person, what is the procedure envisaged under section 142 of the Customs Act, 1962?

Answer

Section 142 of the Customs Act provides following procedure for recovery of duty demanded or drawback paid:

- a. Deducting from any amount payable by any Customs Officer to such person.
- b. Detaining and selling goods belonging to such person, which are under control of customs authorities;
- c. Issuing a certificate to District Collector in whose district any property of the person is situated or where he carries on business.
- d. Distraining and detaining any property belonging to the person and selling the same.
- e. Recovering from successor by attaching goods, materials, machinery, plant etc. transferred to successor in trade or business.
- f. Enforcing a bond executed under the Act.

Question 6

Briefly explain the provisions relating to creation of first charge on the property of the assessee

Answer

W.E.F. 08.04.2011 Section 142A has been inserted in the Customs Act, 1962. As a result, if an assessee or any other person under this Act does not make payment of any amount of duty, penalty, interest or any other sum payable under this Act, then first charge will be created on the property of such assessee or the person. However, aforementioned first charge will be subject to the following:-

- (i) Any sum payable under section 529A of the Companies Act, 1956.
- (ii) Any sum payable under Recovery of Debts Due to Banks and the Financial Institutions Act, 1993
- (iii) Any sum payable under the Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002.

Exercise

1. *State the provisions in the Customs Act, 1962, which govern the appearance by an authorised representative and the qualifications for such a person.*
2. *Discuss the provisions of section 143A of Customs Act, 1962 in respect of duty deferment.*
3. *Differentiate between rules and regulations.*
4. *Briefly explain the provisions in respect of recovery of any sums due to the Government under the Customs Act, 1962.*