

Miscellaneous Provisions

Question 1

Write short note on “Rules & Regulations” with reference to Customs Act 1962.

Answer

According to **section 2(36)** of the Act, “**rules**” means the **rules made by the Central Government** under any provision of this Act. **Section 156** of the Act gives the Central Government the general power to make rules.

As per **section 2(35)** of the Customs Act, 1962, “**regulations**” means the **regulations made by the Central Board of Excise and Customs (CBEC)** under any provision of this Act. The Board gets the authority to make regulations under **section 157** of the Customs Act, 1962.

While the rules are to be framed in consistence with the provisions of the Act, the regulations are subject to an additional limitation, i.e. they should not be contrary to the rules also.

Rules have to be placed before the Parliament, while regulations framed by CBEC are not required to be placed before the Parliament. However, both are “subordinate legislations” and are legally valid and enforceable.

Question 2

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

After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct. No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof.

15.2 Customs and Foreign Trade Policy

Question 3

Imported goods, not being confiscated goods, have been sold under the Customs Act, 1962 and sale proceeds applied for specified purposes as per section 150 of the customs Act. Explain how will the balance of sale proceeds (left after being applied for the specified purposes) be disposed?

Answer

The balance sale proceeds left after being applied for the purposes specified under section 150(2) shall be paid to the owner of the goods. However, 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 the provisions relating to "service of order etc." under section 153 of the Customs Act.

Answer

According to section 153 of the Customs Act 1962, any 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. If this is not possible, the order, decision, summons or notice shall be affixed on the notice board of the customs house.

Question 5

What are the different ways prescribed under section 142 of the Customs Act, 1962 in which the sums due to the Government can be recovered from any person?

Answer

Section 142 of the Customs Act provides the following ways for recovery of the sums due to the Government:

- a. Deducting the amount payable from any money owing to the defaulter which may be under the control of any Customs Officer.
- b. Detaining and selling goods belonging to such person, which are under the control of customs authorities;
- c. Issuing a certificate to District Collector in whose district any property of the person is situated or where he resides or carries on his business.
- d. Distraint and detaining any property (movable/immovable) belonging to the person and selling the same.
- e. Recovering from successor by attaching and selling goods, materials, machinery, plant etc. transferred to successor in trade or business.

- f. Recovering from a person other than from whom money is due, if that other person holds money for/on account of the first person.

Question 6

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

Answer

Section 142A of the Customs Act, 1962 provides that any amount of duty, penalty, interest or any other sum payable under the Customs Act has a first charge on the property of the assessee or the person in default. However, aforementioned first charge is 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. *When can the information in respect of certain persons be published? Discuss with reference to section 154B of the Customs Act, 1962.*
- 3. *Differentiate between rules and regulations.*
- 4. *Briefly explain the provisions of Section 147 of the Customs Act, 1962 relating to liability of principal and agent.*