Customs (Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995

M.F. (D.R.) Notification No. 31/95-Cus. (N.T.), dated 26-5-1995.
amended by:
Notification No. 29/99-Cus. (N.T.), dated 11-05-1999
Notification No. 67/97-Cus. (N.T.), dated 11-12-1997

In exercise of the powers conferred by section 156 read with section 142 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely :-

CHAPTER I
PRELIMINARY

RULE 1. Short Title and Commencement. - (1) These rules may be called the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

(2) They shall come into force on the date of their publication in the Official Gazette.

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

(i) 'Act' means the Customs Act, 1962 (52 of 1962);
(ii) 'Government dues' means any duty or drawback to be recovered from any person or any interest or penalty payable by any person under the Act and has not been paid.
(iii) 'Certificate' means the certificate required to be issued by an [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under clause (c) of sub-section (1) of section 142 of the Act.
(iv) 'Commissioner' means any person appointed as Commissioner of Customs or Commissioner of Central Excise under the Act.
[(v) 'Proper Officer' means an officer subordinate to the Commissioner and not below the rank of Assistant Commissioner of Customs or Assistant Commissioner of Customs and Central Excise, who is authorised by the Commissioner for the purpose of attachment and sale of defaulter's property and for realising the amount mentioned in the certificate.]
(vi) 'Defaulter' means any person from whom government dues are recoverable under the Act.
(vii) Other words or terms used in these rules shall have the same meaning assigned to them under the Act.

CHAPTER II
PROCEDURE FOR ATTACHMENT OF PROPERTY

RULE 3. Issue of Certificate. - Where any Government dues are not paid by any defaulter, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may prepare a Certificate signed by him specifying the amount due from such person and send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any movable or immovable property or resides or carries on his business or has his bank accounts.

RULE 4. Issue of Notice. - On receipt of the Certificate mentioned in rule 3 above, the Commissioner may authorise any officer subordinate to him to cause notice to be served upon the defaulter requiring the defaulter to pay the amount specified in the Certificate within seven days from the date of the service of the notice and intimate that in default, such subordinate officer is authorised to take steps to realise the amount mentioned in the Certificate in terms of these rules.

RULE 5. Attachment of property. - If the amount mentioned in the notice issued in terms of the preceding rule is not paid within seven days from the date of service of this notice, the Proper Officer may proceed to realise the amount by attachment and sale of defaulter's property. For this purpose, the proper officer may detain the defaulter's property until the amount mentioned in the Certificate together with the cost of detention is paid by the defaulter.]

RULE 6. Attachment not to be excessive. - Attachment by arrest or distrain of the property shall not be excessive, that is to say, the property attached shall be as nearer as possible proportionate to the amount specified in the Certificate.

RULE 7. Attachment between Sunrise and Sunset. - The attachment of the property of the defaulter by arrest or distrain shall be made after sunrise and before sunset and not otherwise.

RULE 8. Inventory. - After attachment of the property of the defaulter, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.]

RULE 9. Private alienation to be void in certain cases. - (i) Where a notice has been served on a defaulter under rule 4, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Proper Officer.

(ii) Where an attachment has been made under these rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

RULE 10. Share in property. - Where the property to be attached consists of the share or interest of the defaulter in property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

RULE 11. Attachment of property in custody of court or public officer. - Where the property to be attached is in the custody of any court or Public Officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Proper Officer by whom the notice is issued.

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Proper Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

RULE 12. Service of notice of attachment. - A copy of the order of attachment shall be served on the defaulter in the same manner as prescribed for the service of order or decision in section 153 of the Act.

RULE 13. Proclamation of attachment. - The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Proper Officer.

RULE 14. Property exempt from attachment. - (i) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from attachment and sale under these rules.

(ii) The decision of the Proper Officer as to what property is so entitled to exemption shall be final.

CHAPTER III
PART A
PROCEDURE FOR SALE OF PROPERTY

RULE 15. Sale of property. - If the amount mentioned in the Certificate together with the cost of detention of the property is not paid within a period of thirty days from the date of attachment of the

property, the Commissioner may authorise the Proper Officer to proceed to realise the amount by sale of the defaulter's property in public auction :

Provided that the Commissioner shall be competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and order that any bid shall be accepted only on the condition that it is not less than such reserve price.

RULE 16. Negotiable instruments and shares in a corporation. - Notwithstanding anything contained in these rules, where the property to be sold is a negotiable instrument or a share in a corporation, the Proper Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

PART B

SPECIAL PROVISIONS IN RESPECT OF SALE OF IMMOVABLE PROPERTY

RULE 17. Proclamation of sale. - Where any immovable property is ordered to be sold, the Proper Officer shall cause a proclamation of the intended sale to be made in the language of the district.

RULE 18. Contents of proclamation. - A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible -

(a) the property to be sold;
(b) the revenue, if any, assessed upon the property or any part thereof;
(c) the amount for the recovery of which sale is ordered;
(d) the reserve price, if any, below which the property may not be sold; and
(e) any other thing which the Proper Officer considers it material for a purchaser to know in order to judge the nature and value of the property.

RULE 19. Mode of making proclamation. - (i) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Proper Officer.

(ii) Where the Proper Officer so directs, such proclamation shall also be published in a local newspaper and the cost of such publication shall be deemed to be costs of the sale.

(iii) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Proper Officer, otherwise be given.

RULE 20. Setting aside of sale where defaulter has not saleable interest. - At any time within thirty days of the sale, the purchaser may apply to the Proper Officer to set aside the sale on the ground that the defaulter has no saleable interest in the property sold.

RULE 21. Confirmation of sale. - (i) Where no application is made for setting aside the sale under the foregoing rule or where such an application is made and disallowed by the Proper Officer, the Proper Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(ii) Where such application is made and allowed and where, in the case of any application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Proper Officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to the person affected thereby.

RULE 22. Sale Certificate. - (i) Where sale of any immovable property has become absolute under these rules, the Proper Officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(ii) Such certificate shall state the date on which the sale became absolute.

RULE 23. Purchaser's title. - (i) Where any property is sold in terms of these rules, there shall vest in purchaser's the right, title and interest of the defaulter at the time of the sale even though the property itself be specified.

(ii) Where immovable property is sold in terms of these rules and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

RULE 24. Irregularity not to vitiate sale, but any person injured may sue. - No irregularity in the conduction of sale of any property shall vitiate the sale but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or if (such other person is the purchaser), for the recovery of specific property and for compensation in default of such recovery.

RULE 25. Prohibition against bidding or purchase by officer. - No officer or other person having any duty to perform in connection with any sale under these rules, either directly or indirectly, shall bid for, acquire or attempt to acquire any interest in the property sold.

RULE 26. Prohibition against sale on holidays. - No sale under these rules shall take place on a Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government a local holiday for the area in which the sale is to take place.

CHAPTER IV
MISCELLANEOUS

RULE 27. Disposal of the sale proceeds. - The sale proceeds of the property of the defaulter shall be utilised in the following manner, namely :-

(a) the sale proceeds shall first be utilised for meeting the cost of sale;

(b) the balance shall be utilised for satisfaction of the amount mentioned in the Certificate issued under rule 3 together with the cost of detention of the property;

(c) the balance, if any, shall be utilised for recovery of any other Government dues payable by the defaulter; and

(d) the balance, if any, shall be paid to the defaulter.

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RULE 28. Procedure on death of defaulter. - If at any time after the Certificate has been issued by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs], the defaulter dies, the proceedings under these rules may be continued against the legal representatives of the defaulter, and the provisions of these rules shall apply as if the legal representatives were the defaulter.