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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 28th May, 1984/Jyaistha 7, 1906 (Saka)

The following Act of Parliament received the assent of the President on the 27th May 1984, and is hereby published for general information:--

THE EXPORT (QUALITY CONTROL AND INSPECTION) AMENDMENT ACT, 1984

No. 40 OF 1984

[27*th May*, 1984.]

An Act to amend the Export (Quality Control and Inspection) Act, 1963

BE it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Export (Quality Control and Inspection) Amendment Act, 1984.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

22 of 1963.

2. In section 2 of the Export (Quality Control and Inspection) Act, 1963 (hereinafter referred to as the principal Act), clause (*a*) shall be re-lettered as clause (*ac*), and before clause (*ac*) as so re-lettered, the following clauses shall be inserted, namely:—

'(*a*) "adjudicating authority" means the authority specified in, or under, section 10K;

(*ab*) "Appellate authority" means the Appellate authority referred to in section 10M;'.

Amendment of section 3.

3. In section 3 of the principal Act, in sub-section (*1*), in clause (*f*), for the word "eleven", the word "fifteen" shall be substituted.

Amendment of section 7.

4. In section 7 of the principal Act,—

(*a*) after sub-section (3), the following sub-section shall be inserted, namely:—

"(*3A*) Where the agency has reason to believe that a certificate issued under sub-section (*3*) has been obtained fraudulently or by misrepresentation, or the commodity in relation to which the certificate is issued has been changed or has deteriorated in quality, the agency may, by order, amend, suspend or cancel the certificate in such manner and subject to such procedure as may be prescribed:

Provided that before amending, suspending or cancelling any such certificate the holder thereof shall be given a reasonable opportunity of being heard.";

(*b*) in sub-section (*4*), after the words "a certificate", the words, brackets, figure and letter ", or by the amendment, suspension or cancellation of a certificate under sub-section (*3A*)," shall be inserted.

Insertion of new sections 10A to 10P.

5. After section 10 of the principal Act, the following sections shall be inserted, namely:—

Power to enter and inspect.

'10A. The Director of Inspection and Quality Control or any officer of the Central Government authorised by him in writing in this behalf (hereinafter referred to as the "authorised officer") may enter at any reasonable time, any premises in which—

(*a*) any commodity which has been changed after inspection by any agency referred to in sub-section (*1*) of section 7; or

(*b*) any books of account or other documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act,

are suspected to have been kept or concealed, and inspect such commodity, books of account, other documents or things and may take such notes or extracts from such books of account or other documents as he may think fit.

Power to search.

10B. If the authorised officer has any reason to believe that—

(*a*) any commodity which has been changed after inspection by any agency referred to in sub-section (*1*) of section 7; or

(*b*) any books of account or other documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act,

are secreted in any place, he may enter into and search such place or premises for such commodity, books of account, other documents or things.

Power to seize commodities, etc.

10C. (*1*) If the authorised officer has any reason to believe that any commodity is liable to confiscation under this Act, he may seize such commodity together with the package, covering or receptacle, if any, in which such commodity is found and where such commodity is found to have been mixed with any other goods or materials, he may seize such commodity together with the goods or materials with which it is so mixed:

Provided that where it is not practicable to seize any such commodity, the authorised officer may serve on the owner of the commodity an order that he shall not remove, part with, or otherwise deal with, the commodity except with the previous permission of such authorised officer.

(2) Where any commodity is seized under sub-section (1) and no notice in respect thereof is given under section 10L within six months of the seizure of such commodity, it shall be returned to the person from whose possession it was seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Director of Inspection and Quality Control by a further period not exceeding six months.

(3) The authorised officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of the authorised officer.

(5) If any person legally entitled to the documents or things seized under sub-section (3) objects, for any reason, to the retention by the authorised officer of the documents or things, he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the documents or things.

(6) On receipt of an application under sub-section (5), the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it may think fit.

(7) Where any document—

(*a*) is produced or furnished by any person or has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

(*b*) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of the investigation of any offence alleged to have been committed by any person against this Act,

and such document is tendered in evidence against the person by whom it is produced or from whom it was seized or against such person and any other person who is jointly tried, or proceeded against, with him, the court, or, as the case may be, the adjudicating authority shall, notwithstanding anything to the contrary contained in any other law for the time being in force,—

(*i*) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court or the adjudicating authority may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is under that person's handwriting, and, in the case of a document executed or attested, it was executed or attested by the person by whom it purports to have been so executed or attested;

(*ii*) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence,

Power to stop and seize conveyances.

10D. Any authorise officer may, if he has any reason to suspect that any conveyance or animal is being, or is about to be, used for the transportation of any commodity which is liable to confiscation under this Act and that by such transportation any provision of this Act has been, is being, or is about to be, contravened, at any time, stop such conveyance or animal or, in the case of an aircraft, compel it to land, and

(*a*) rummage and search the conveyance or any part thereof,

(*b*) examine and search any goods or materials in the conveyance or on the animal,

(*c*) if it becomes necessary to stop any conveyance or animal, he may use all lawful means for stopping it and where such means fail, the conveyance or animal may be fired upon,

and where he is satisfied that it is necessary so to do to prevent the contravention of any provision of this Act, he may seize such conveyance or animal.

Explanation.—Any reference in this section to a conveyance shall, unless the context otherwise requires, be construed as including a reference to an aircraft, vehicle or vessel.

Search and seizure to be made in accordance with the Code of Criminal Procedure, 1973.

10E. The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act. 2 of 1974.

Confiscation.

10F. Any commodity in respect of which—

(*a*) a certificate has been obtained from an agency referred to in sub-section (*1*) of section 7 fraudulently or by misrepresentation, or

(*b*) any provision of this Act has been, is being, or is attempted to be, contravened,

shall, together with any package, covering or receptacle in which such commodity is found, be liable to confiscation and, where such commodity is so mixed with any other goods or materials that it cannot be readily separated, such other goods or materials shall also be liable to confiscation:

Provided that where it is established to the satisfaction of the adjudicating authority that any commodity, which is liable to confiscation under this Act, belongs to a person other than the person who has, by any act or omission, rendered it liable to confiscation, and such act or omission was without the knowledge or connivance of the person to whom it belongs, such commodity shall not be ordered to be confiscated; but such other action as is authorised by this Act may be taken against the person who has, by such act or omission, rendered such commodity liable to confiscation.

Confiscation of conveyance.

10G. Any conveyance or animal which has been, is being, or is attempted to be, used for the transport of any commodity which is liable to confiscation under this Act, shall be liable to confiscation unless the owner of the conveyance or animal proves that it was, is being, or is about to be, so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use:

Provided that in the case of a conveyance or animal used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall be given an option to pay, in lieu of confiscation of the conveyance or animal, a fine not exceeding the value of the commodity which has been, is being, or is attempted to be, transported by such conveyance or animal.

Option to pay fine in lieu of confiscation.

10H. Whenever confiscation of any commodity is authorised by this Act, the officer adjudging it shall, without prejudice to the provisions of the proviso to section 10G, give to the owner of the commodity an option to pay in lieu of confiscation such fine not exceeding the value of the commodity.

Liability to penalty.

10-I. Any person,—

(*a*) who, in relation to any commodity, does or omits to do any act which act or omission would render such commodity liable to confiscation under this Act, or abets the doing or omission of such an act; or

(*b*) who acquires possession of or is in any way concerned in carrying, removing, depositing, keeping, concealing, selling or purchasing, or in any manner dealing with, any commodity which he knows or has reason to believe is liable to confiscation under this Act,

shall be liable to a penalty not exceeding five times the value of the commodity or five thousand rupees, whichever is more, whether or not such commodity has been confiscated or is available for confiscation.

Confiscation or penalty not to interfere with other punishments.

10J. No confiscation made or penalty imposed under the foregoing provisions of this Act shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

Adjudication

10K. Any confiscation may be adjudged or penalty may be imposed under this Act by the Director of Inspection and Quality Control, or, where he so directs, by a general or special order, by any officer subordinate to him.

Giving of opportunity to the owner of goods, etc.

10L. No order of adjudication of confiscation or imposing a penalty shall be made unless the owner of the commodity, conveyance or animal or other person concerned, is given a notice in writing—

(*a*) informing him of the grounds on which it is proposed to confiscate such commodity, conveyance or animal or to impose a penalty;

(*b*) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.

Appeal.

10M. (*1*) Any person aggrieved by any decision or order made under this Act may prefer an appeal,—

(*a*) where the decision or order has been made by the Director of Inspection and Quality Control, to the Central Government;

(*b*) where the decision or order has been made by any officer subordinate to the Director of Inspection and Quality Control, to the Director of Inspection and Quality Control,

within a period of forty-five days from the date on which the decision or order is served on such person:

Provided that the Appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the aforesaid period of forty-five days, allow such appeal to be preferred within a further period of forty-five days:

Provided further that in the case of an appeal against an order imposing a penalty, no such appeal shall be entertained unless the amount of the penalty has been deposited by the appellant:

Provided also that where the Appellate authority is of the opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose.

(*2*) The Appellate authority may, after giving to the appellant a reasonable opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, pass such orders as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case, with such directions as it 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 or imposing a penalty or confiscating commodity of a greater value shall not be made under this section unless the appellant has had an opportunity of making a representation and, if he so desires, of being heard, in his defence.

Powers of revision.

10N. The Central Government may, on its own motion or otherwise, call for and examine the records of any proceeding in which an order of adjudication of confiscation or imposing any penalty has been made by any officer under this Act and against which no appeal has been preferred, for the purpose of satisfying itself as to the correctness, legality or propriety of such order or decision and pass such orders thereon as it may think fit:

Provided that no decision or order shall be varied under this section so as to prejudicially affect any person unless such person—

(*a*) has, within a period of two years from the date of such decision or order, received a notice to show cause why such decision or order shall not be varied, and

(*b*) has been given a reasonable opportunity of making a representation and, if he so desires, of being heard in his defence.

Powers of adjudicating and other authorities.

10-O. (*1*) Every authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(*a*) summoning and enforcing the attendance of witnesses;

(*b*) requiring the discovery and production of any document;

(*c*) requisitioning any public record or copy thereof from any court or office;

(*d*) receiving evidence on affidavits; and

(*e*) issuing commissions for the examination of witnesses or documents.

(*2*) Every authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall be deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

2 of 1974.

(*3*) Every authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have the power to make such orders of an interim nature as it may think fit and may also, for sufficient cause, order the stay of operation of any decision or order.

Continuance of proceedings in the event of death or insolvency.

10P. (*1*) Where a penalty has been imposed by the adjudicating authority and—

(*a*) no appeal against the order imposing such penalty has been preferred to the Appellate authority and the person entitled to file such appeal dies or is adjudicated an insolvent before the expiry of the period within which the appeal can be preferred; or

(*b*) an appeal has been preferred to the Appellate authority against the order imposing such penalty but the appellant dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives, of such person or the Official Assignee or the Official Receiver, as the case may be, to prefer an appeal to the Appellate authority or, as the case may be, to continue the appeal before the Appellate authority, in place of such person and the provisions of section 10M shall, so far as may be, apply or continue to apply to such appeal.

(*2*) The powers of the Official Assignee or the Official Receiver under sub-section (*1*) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, as the case may be.'.

3 of 1909.
5 of 1920.

Amendment of section 11.

6. In sub-section (*1*) of section 11 of the principal Act, in clause (*ii*), for the words "two years", the words "three years" shall be substituted.

Insertion of new sections 11A, 11B and 11C.

7. After section 11 of the principal Act, the following sections shall be inserted, namely:—

Penalty for contravention of order made by adjudicating authority or Appellate authority.

"11A. If any person fails to pay the penalty imposed by the adjudicating or the Appellate authority or fails to comply with any direction or order made, or deemed to have been made, under this Act, he shall, on conviction, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Offences by officers and employees of agency, etc.

11B. (*1*) If any officer or employee of the Council or of any agency referred to in sub-section (*1*) of section 7, or any surveyor, sampler or employee of any testing house, referred to in sub-section (*2*) of that section enters into, or acquiesces in, any agreement to do, abstains from doing, permits, conceals or connives at, any act or thing whereby any provision of this Act is or may be contravened, he shall, on conviction, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(*2*) If any officer searches or authorises any other officer of the Central Government to search any place without having reason to believe that any commodity, books of account or documents or things of the nature referred to in section 10B are secreted in that place, he shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(*3*) If any officer or employee of the Council or of any agency referred to in sub-section (*1*) of section 7, or any surveyor, sampler or employee of any testing house, referred to in sub-section (*2*) of that section, except in the discharge in good faith of his duty as such officer or employee or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any commodity, he shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Correction of clerical or arithmetical mistakes.

11C. Clerical or arithmetical mistakes in any decision or order, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the authority by which the decision or order was made either on its own motion or on the application of the aggrieved person:

Provided that where any correction proposed to be made under this section will have the effect of prejudicially affecting any person, no such correction shall be made except after giving to that person a reasonable opportunity of making a representation in the matter

and no such correction shall be made after the expiry of a period of two years from the date on which such decision or order was made.".

Insertion of new section 16A.

8. After section 16 of the principal Act, the following section shall be inserted, namely:—

Suspension, etc., of operation of the provisions of the Act.

"16A. (*1*) If the Central Government is satisfied that circumstances exist which render it necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette, suspend or relax to a specified extent, the operation of all or any of the provisions of this Act in respect of such notified commodity or commodities generally or in respect of any area and for such period as may be specified in the notification.

(*2*) Where the operation of any provision of this Act has, under sub-section (*1*), been suspended or relaxed, such suspension or relaxation may, at any time be removed by the Central Government by a like notification.

(*3*) Every notification issued under this section shall be laid, as soon as may be after it is issued 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 notification or both Houses agree that the notification should not be issued, the notification 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 notification.".

Amendment of section 17.

9. In section 17 of the principal Act,—

(*a*) in sub-section (*2*),—

(*i*) after clause (*f*), the following clause shall be inserted, namely:—

"(*ff*) the manner in which, and the procedure subject to which, any certificate issued under sub-section (*3*) of section 7 shall be amended, suspended or cancelled;";

(*ii*) after clause (*g*), the following clause shall be inserted, namely:—

"(*gg*) the authority or person by which or by whom, and the manner in which, any document received from a place outside India shall be authenticated;";

(*b*) in sub-section (*3*), for the words "in which it is so laid", the words "immediately following the session" shall be substituted

R. V. S. PERI SASTRI,
Secy. to the Govt. of India.

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