

**PART XIII**

**SMUGGLING, SEIZURES, AND PROSECUTIONS GENERALLY**

125. All goods and all ships and boats which by this Ordinance are declared to be forfeited shall and may be seized by any officer of the customs; and such forfeiture of any ship or boat shall include the guns, tackle, apparel, and furniture of the same, and such forfeiture of any goods shall include all other goods which shall be packed with them, as well as the packages in which they are contained; and all carriages or other means of conveyance, together with all horses and all other animals, and all other things made use of in any way in the concealment or removal of any goods liable to forfeiture under this Ordinance, shall be forfeited.

**Smuggling, seizures, and prosecutions generally.**

**Forfeiture of ship to include tackle & c.**

126. (1) Where any officer of customs, or any peace officer or excise officer acting in aid or assistance of any officer of customs, has reason to suspect that smuggled goods are being transported or removed in any vehicle of any description whatsoever, it shall be lawful for such officer-

**Stoppage, inspection, and search of vehicles suspected to be transporting smuggled goods & c.**

(a) To give such orders, directions or signals, or to use such devices, or to take such other measures, as may be necessary to stop the vehicle or to cause it to be halted; and

(b) To inspect and search the vehicle.

(2) Where the Director-General has reason to suspect that any road is being used by Vehicles which transport or remove smuggled goods, he may erect or cause to be erected across the road or any part thereof a barrier or barriers of such nature and description as to him may seem necessary for the purpose of stopping vehicles using that road or causing such vehicles to be halted.

**(83, 83 of 1988)**

(3) Where any barrier has been erected under subsection (2) across any road or any part thereof, it shall be lawful for any officer of customs or for any peace officer or excise officer acting in his aid or assistance:-

(a) To give such orders, directions or signals as may be necessary to cause any vehicle of any description whatsoever using such road to stop or to be halted at such barrier; and

(b) To inspect and search every vehicle stopped or halted at such barrier, for the purpose of ascertaining whether any smuggled goods are being transported or removed in such vehicle.

(4) Where any order, direction or signal is given under any of the preceding provisions of this section for the purpose of stopping any vehicle, the driver or other person for the time being in charge of such vehicle shall forthwith stop the vehicle or cause it to be halted in accordance with such order, direction or signal; and any driver or other person who fails or refuses to comply with such order, direction or signal shall be guilty of an offence and liable on conviction thereof to a fine not exceeding one hundred thousand rupees.

(5) Neither the Director-General, nor any other officer of customs, nor any peace officer or excise officer acting in aid or assistance of any officer of customs, shall be liable to any action or prosecution, whether civil or criminal, by reason of the erection of any barrier, or the stoppage, inspection or search of any vehicle, or of any other act or thing done in pursuance of the powers conferred by the preceding provisions of this section, notwithstanding that smuggled goods may not in fact be found in any vehicle which is stopped, inspected or searched as hereinbefore provided.

(6) In this section-

(a) "Peace officer" has the same meaning as in the Code of Criminal Procedure Act;

(b) "Excise officer" has the same meaning as in the Excise Ordinance.

**(83, 83 of 1988)**

**(83, 83 of 1988)**

**Arrest of persons reasonably suspected of an offence under the ordinance.**

127. Every offence under this Ordinance shall be deemed to be cognizable within the meaning of the Code of Criminal Procedure Act, and any person against whom a reasonable suspicion exists that he has been guilty of any such offence may be arrested in any place either upon land or water by any officer of customs or other person duly employed for the prevention of smuggling. Every person so arrested shall with all convenient dispatch, be taken before the nearest Director-General to be dealt with according to law.

**(83, 83 of 1988)**

**(83, 83 of 1988)**

**Persons arrested to be produced before a Magistrate under certain circumstances**

127A. Where a Director-General is of opinion that a person arrested and produced before him in terms of section 127 for an offence under this Ordinance is a person capable of interfering with the investigation or that the nature of the offence is such that it is desirable to keep that person in custody for the proper investigation of the offence for more than twenty four hours, he shall produce such person before a Magistrate.

**(65, 83 of 1988)**

**Access to persons in custody for purpose of investigation.**  
**(65, 83 of 1988)**

127B. Notwithstanding anything in any other law, a customs officer conducting an investigation under this Ordinance in respect of any person arrested under section 127 and kept in custody under section 127A, shall have the right to access to such person and the right to take such person during reasonable hours, to any place for the purpose of investigation.

128. (1) The Director-General or any officer of customs authorized in that behalf in writing by the Director-General may -

**Power to enter and search certain premises and seize certain goods and documents & c.**

(a) At all reasonable hours by day or night enter and search any building or place in which he suspects there are:

**(2, 25 of 1958)**

(i) Any uncustomed goods,

**(83, 83 of 1988)**

(ii) Any goods enumerated in the table of prohibitions and restrictions in Schedule B and imported or brought into the Island contrary to the prohibitions and restrictions referred to in that Schedule, or

(iii) Any books of accounts or other documents containing any evidence relating to an offence under this Ordinance which, or which he suspects, has been or is being committed;

(b) Break open any door, vault, chest, trunk, package or other place of storage which he may consider reasonably necessary to break for the purpose of exercising his powers under the preceding provisions of this subsection; and

(c) Where he discovers any such goods, books or documents, seize and store them in a place of security selected by the Director-General.

(2) The Director-General or any officer of customs referred to in subsection (1) may request any person in charge or occupation of any building or place specified in paragraph (a) of that subsection to assist the Director General or such officer to enter and search that building or place in the exercise of the powers of the Director-General or such officer under that subsection, and if such person when so requested fails to assist the Director-General or such officer, he shall be guilty of an offence.

(3) If any person obstructs the Director-General or an officer of customs referred to in subsection (1) in exercising any power under that subsection, he shall be guilty of an offence.

(83, 83 of 1988)

(4) A person who is guilty of an offence under subsection (2) or subsection (3) shall be liable on conviction to a fine not exceeding one hundred thousand rupees.

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

129. Every person who shall be concerned in importing or bringing into Sri Lanka any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, and whether the same be unshipped or not, and every person who shall unship or assist, or be otherwise concerned in the unshipping of any goods which are prohibited, or of any goods which are restricted and imported contrary to such restriction, or of any goods liable to duty the duties for which have not been paid or secured, or who shall knowingly harbour, keep, or conceal, or shall knowingly permit, or suffer, or cause, or procure to be harboured, kept, or concealed, any such goods, or any goods which have been illegally removed without payment of duty from any warehouse or place of security in which they may have been deposited, or into whose hands and possession any such goods shall knowingly come, or who shall assist or be concerned in the illegal removal of any goods from any warehouse or Place of security in which they shall have been deposited as aforesaid, or who shall be in any way knowingly concerned in conveying, removing, depositing, concealing, or in any manner dealing with any goods

(66, 83 of 1988)

**Person concerned in importing prohibited or restricted goods, whether unshipped or not, and persons unshipping, harbouring or having custody of such good, to forfeit treble the value or, one hundred thousand rupees**

(19, Law 35 of 1974)

(67, 83 of 1988)

liable to duties of customs with intend to defraud the revenue of such duties or any part thereof, or who shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of such duties or any part thereof, shall in each and every of the fore-going cases forfeit either treble the value of the goods, or be liable to a penalty of one hundred thousand rupees, at the election of the Director-General.

(67, 83 of 1988)

(83, 83 of 1988)

**Persons concerned in, exporting prohibited or, restricted goods.**

(20, Law 35 of 1974)

(68, 83 of 1988)

(83, 83 of 1988)

**Forfeited ships.**

(69, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

**If the goods removed prior to examination, penalty upon parties concerned in the removal.**

(21, Law 35 of 1974)

(70, 83 of 1988)

130. Every person who shall be concerned in exporting or taking out of Sri Lanka or attempting to export or take out of Sri Lanka any prohibited goods or any goods the exportation of which is restricted contrary to such prohibition or restriction whether the same be laden for shipment or not and every person who shall export or attempt to export any goods liable to duty the duties for which have not been paid or secured, or in any manner deal with any goods liable to duties of customs with intend to defraud the revenue of such duties or any part thereof, or who shall be knowingly concerned in any fraudulent evasion or attempt at evasion of such duties or any part thereof, shall in each and every of the foregoing cases forfeit either treble the value of the goods, or be liable to a penalty of one hundred thousand rupees at the election of the Director-General.

131.(1) Any ship not exceeding 250 tons tonnage, knowingly used in the importation or exportation of any goods prohibited of import or export, or in the importation, exportation or conveyance, or in the attempted importation, exportation or conveyance, of any goods with intent to defraud the revenue, shall be forfeited.

(2) The owner or master of any ship exceeding 250 tons tonnage, which would be liable to forfeiture under this section if the ship were of less than 250 tons tonnage, shall forfeit a sum not exceeding one hundred thousand rupees, and the ship may be detained on the orders of the Director-General until such sum is paid or until security for its payment is given to the satisfaction of the Director-General.

132. Every person who shall remove any goods imported into Sri Lanka from any ship, quay, wharf, or other place previous to the examination thereof by the proper officer of customs, unless under the care or authority of such officer, or who shall remove or withdraw from any quay, wharf, or other place any goods entered to be warehoused after the landing thereof, so that no sufficient account is taken thereof by the proper officer, so that the same are not duly warehoused, and every person who shall assist or be otherwise concerned in such removal or withdrawal, or shall knowingly harbour, keep or conceal or shall knowingly permit or suffer, or cause or procure to be harboured, kept, or concealed, any such goods, or into whose possession any such goods shall knowingly come, every such person shall forfeit either treble the value thereof, or be liable to a penalty of one hundred thousand rupees, at the election of the Director-General.

133. Every person who shall assist or be otherwise concerned in the unshipping, landing, or removal, or in the harbouring of such goods, or into whose hands or possession the same shall knowingly come, shall forfeit treble the value thereof, or the penalty of one hundred thousand rupees, at the election of the Director-General of Customs; and the averment in any information to be exhibited for the recovery of such penalty that the Director-General has elected to sue for the sum mentioned in the information shall be deemed sufficient proof of such election, without any other or further evidence of such fact.
- (83, 83 of 1988)  
**Persons assisting in unshipping or harbouring such goods liable to treble the value or one hundred thousand rupees.**
- (22, Law 35 of 1974)
- (83, 83 of 1988)
- (83, 83 of 1988)
134. In all cases where any penalty, the amount of which is at any time to be determined by the value of any goods, is directed to be sued for under this Ordinance, such value shall be deemed and taken to be according to the rate and price which goods of the like sort or denomination, and of the best quality, bear at such time at the place of importation, and upon which the duties due upon importation have been paid.
- (71, 83 of 1988)  
**How value to be ascertained.**
135. All goods, and all ships and boats, and carriages and all cattle, liable to forfeiture under this Ordinance, shall and may be seized in any place, either by land or water, by any officer of the customs or police, or any Grama Seva Niladhari, or any person employed for that purpose, by or with the concurrence of the Minister and every person who shall in any way hinder, oppose, molest or obstruct any officer of the customs or police, or any Grama Seva Niladhari, or any person so employed as aforesaid in the exercise of his office, or any person acting in his aid or assistance, or shall rescue, or cause to be rescued any goods which have been seized, or shall attempt or endeavor to do so, or shall before or at or after any seizure stave, break, or otherwise destroy any goods to prevent the seizure thereof, or shall rescue the same, then and in any such case the party so offending shall be guilty of an offence, and shall for every such offence forfeit a sum not exceeding one hundred thousand rupees.
- Goods, vessels etc, liable to forfeiture may be seized by officers, &c.**
- Persons resisting officers or rescuing or destroying goods to prevent seizure, to forfeit one hundred thousand rupees.**
- (2, Law 35 of 1974)
136. If any goods liable to forfeiture under this Ordinance shall be stopped or taken by any Police Officer or Grama Seva Niladhari, such goods shall be conveyed to the custom house nearest to the place where the goods were stopped or taken, and there delivered to the proper officer appointed to receive the same, within a reasonable time after the said goods were stopped and taken; and in case any police officer or Grama Seva Niladhari stopping such goods shall neglect to have the same conveyed to such customs-house within a reasonable time, such police officer or Grama Seva Niladhari shall forfeit a sum not exceeding one hundred thousand rupees.
- (73, 83 of 1988)  
**Goods stopped or taken by police officer.**
- (23, Law 35 of 1974)
137. If any officer of the customs, or any person employed for the protection of the revenue, shall make any collusive seizure, or deliver up, or make any agreement to deliver up, or not to seize any ship, boat, or goods liable to forfeiture under this Ordinance, or shall take any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty, every such officer or other person shall forfeit for every such offence a sum not exceeding one hundred thousand rupees, and be rendered incapable of serving the
- (73, 83 of 1988)  
**Officers making collusive seizures, or taking bribes, and persons giving bribes, subject to penalties.**
- (74, 83 of 1988)

Government of Sri Lanka in any office whatever; and every person who shall give or offer, or promise to give or procure to be given any bribe, recompense, or reward to, or shall make any collusive agreement with, any such officer or person as aforesaid, to induce him in any way to neglect his duty, or to do, conceal, or connive at anything whereby the provisions of this Ordinance may be evaded, shall forfeit a sum not exceeding one hundred thousand rupees.

(2, Law 35 of 1974)

138. It shall be lawful for any officer of customs to go on board any ship which shall be within the limits of any port or airport in Sri Lanka, and search any person on board, and his baggage or other belongings and it shall be lawful for him to search any person who shall have landed from any ship or any person passing or having passed through the custom house and the baggage or other belongings of such person, provided such officer shall have good reason to suppose that such person shall have any uncustomed, restricted or prohibited goods secreted about his person or in his baggage or other belongings; and if any person shall obstruct any such officer in the performance of any such duty, every such person shall be guilty of an offence, and shall be liable on conviction thereof to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a term not exceeding five years or to both such fine and imprisonment.

(74, 83 of 1988)

**Officers may search persons on board or on shore in certain cases.**

(75, 83 of 1988)

139. If any person throws overboard any goods from a ship for the purpose of preventing the seizure thereof, he shall be guilty of an offence and liable to a fine not exceeding one hundred thousand rupees; and if, in a prosecution for any such offence, it is proved to the satisfaction of the court that goods were thrown overboard while any officer of customs was on board in exercise of the powers. Conferred by section 64 or section 118 or section 138 of this Ordinance or in the course of an attempt by an officer of customs to seize the goods, it shall be presumed unless the contrary is proved that they were so thrown overboard for the purpose of preventing seizure.

**Prohibition against the throwing over board or goods & c.**

(2, Law 35 of 1974)

(76, 83 of 1988)

140. Before any person shall be searched by any such officer as aforesaid it shall be lawful for such person to require such officer to take him before a Magistrate, or before the Director-General or other superior officer of customs, who shall determine whether there is reasonable ground to suppose that such person has any uncustomed or prohibited goods about his person; and if it shall appear to such Magistrate, Director-General, or other superior officer of customs that there is reasonable ground to suppose that such person has any uncustomed or prohibited goods about his person, then such Magistrate, Director-General, or other superior officer of customs shall direct such person to be searched in such manner as he shall think fit; but if it shall appear to such Magistrate, Director-General, or other superior officer of customs that there is not reasonable ground to suppose that such person has any uncustomed or prohibited goods about his person, then such Magistrate, Director-General, or other superior officer of customs shall forthwith discharge such person, who shall not in such case be liable to be searched; and every such officer as aforesaid is hereby authorized and required to take such person, upon demand, before any such Magistrate, Director-General, or other superior officer of customs, detaining him in the meantime

**Before such search the person may require to be taken before a Magistrate or a superior officer of the customs.**

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

Provided that no person being a female shall be searched by any other person than a female duly authorized for that purpose by the Director-General.

(83, 83 of 1988)

(83, 83 of 1988)

(83, 83 of 1988)

141. If any such officer shall not take such person with reasonable dispatch before such Magistrate, Director-General,, or other superior officer of customs when so required, or shall require any person to submit to be searched by him, not having reasonable ground to suppose that such person has any uncustomed or prohibited goods about his person, such officer shall forfeit and pay a sum not exceeding two hundred rupees.
- Penalty on officers for misconduct with respect to search.**
- (83, 83 of 1988)**
142. If any passenger or other person on board any ship or boat, or after landing there from, shall upon being questioned by any officer of the customs whether he has any foreign goods upon his person or in his possession, deny the same, and any such goods shall, after such denial, be discovered upon his person or in his possession, such goods shall be forfeited, and such person shall forfeit treble the value of such goods.
- (24, Law 35 of 1974)**  
**Penalty on persons on board falsely denying having foreign goods about him.**
143. (1) If any ship or boat which is liable to seizure or examination under this Ordinance, or which officers of customs are empowered by this Ordinance to board, shall not bring to when required so to do:-
- Power to fire at vessels failing to bring to when required.**
- (a) the master of such ship or boat shall forfeit the sum of five hundred rupees; and
- (25, Law 35 of 1974)**
- (b) it shall be lawful for the officer of customs having the charge or command of any vessel flying the Sri Lanka Customs flag, having first caused a gun to be fired as a signal, to fire at or into such ship or boat; and such officer of customs or any other person acting in his aid or assistance or by his direction shall be and is hereby indemnified and discharged from any action or prosecution, whether civil or criminal, in respect of any act done in pursuance of the powers conferred by this section;
- Provided, however, that the powers conferred on any officer of customs by the preceding provisions of this section shall not be exercised except in relation to a ship or boat which is for the time being within the territorial waters of Sri Lanka.
- (2) Where any vessel, other than a vessel duly authorized by the Director-General in that behalf, flies the Sri Lanka Customs flag, the master or person in charge of the vessel shall be guilty of an offence and liable to a fine not exceeding two hundred rupees.
- (3) in this section, " Sri Lanka Customs flag" means a flag of such design or description as may be specified by the Director-General by notice published in the Gazette to be the Sri Lanka Customs flag.
- (83, 83 of 1988)**
144. If any person fails to pay any sum of money which he, under this Ordinance, has forfeited, or becomes liable to forfeit or to pay as a penalty, the officers of customs may refuse to pass any goods which that person imports or brings into or is seeking to export or to take out of Sri Lanka until that sum is paid:
- (83, 83 of 1988)**  
**Goods not to be passed if incurred penalty is not paid.**
- Provided that nothing in the preceding provisions of this section shall be deemed to prohibit the recovery of such sum by the Director-General under any other provision of law.
- (83, 83 of 1988)**

145. All penalties and forfeitures which shall be incurred under this Ordinance shall and may be sued for and recovered in the name of the Attorney-General in the respective courts of Sri Lanka, in like manner as other revenue cases. **Recovery of penalties.**
146. If any person by reason of any act or omission becomes liable, under the provisions of any section of this Ordinance to forfeit any goods or any sum of money, or to any penalty other than a fine, such person shall, in addition, be guilty of an offence and shall, on conviction after summary trial before a Magistrate:- **Persons liable to forfeiture or penalty under any section of the Ordinance to be guilty of an offence.**
- (a) if the act or omission by reason of which he becomes liable to the forfeiture or penalty, relates to the importation or exportation of any goods set out in Column I of Schedule F to this Ordinance and in excess of the amount set out in the corresponding entry in Column II of that Schedule, be liable to the penalty set out in the corresponding entry in Column III of that Schedule ; **(77, 83 of 1988)**
- (b) if the act or omission by means of which he becomes liable to forfeiture or penalty relates to the importation or exportation of any goods which are not set out in Schedule F and the value of such goods exceeds two hundred and fifty thousand rupees, be liable to imprisonment of either description for a term not less than three months, and not more than two years or to a fine not exceeding twenty five thousand rupees or to both such imprisonment and fine; and
- (c) if the act or omission does not relate to such importation or exportation, be liable to imprisonment of either description for a term not exceeding two years or to a fine not exceeding ten thousand rupees or to both such imprisonment and fine:
- Provided, however, that no prosecution shall be instituted against any person under this section, unless the Director-General is of opinion that the forfeiture or penalty, as the case may be, whether imposed or not, cannot or is not likely to be recovered from such person. **(83, 83 of 1988)**
147. (1) Every offence under this Ordinance shall be summarily triable by a Magistrate. **Prosecutions for offences and application of fines.**
- (2) No prosecution for any offence under this Ordinance shall be instituted except by, or with the written sanction of, the Director-General or a Director of Customs hereinafter referred to as "Director". **(83, 83 of 1988)**
- (3) The Director-General may at any time compound any offence under this Ordinance: **(83, 83 of 1988)**
- Provided that where a prosecution has been entered against any person for any offence under this Ordinance, the Director-General may compound such offence at any time before judgment and may withdraw such prosecution.
- (4) Notwithstanding the provisions of any written law to the contrary, all fines recovered in respect of offences under this Ordinance shall be paid into the hands of the Director-General at the port or place where or nearest to which the same shall have been recovered, and applied in the manner provided in section 153. **(83, 83 of 1988)**



147A. Notwithstanding the provisions of any written law to the contrary, a Magistrate shall have jurisdiction to impose on any person guilty of any offence under this Ordinance, any punishment prescribed for such offence.

**(83, 83 of 1988)  
Magistrates to have jurisdiction to impose any punishment prescribed for offences under this Ordinance.**

148. In any information or other proceeding for any offence against this Ordinance the averment that such offence was committed within the limits of any port or of the territorial waters of Sri Lanka shall be sufficient, without proof of such limits, unless the contrary be proved.

**(27, Law 35 of 1974)  
Averment of offence.**

149. When any penalty is imposed upon any person committing or concerned in the act by which such penalty is incurred, and such offence shall have been committed by several persons jointly, or several persons shall have been concerned in the same, such several persons shall jointly and severally incur every such penalty; and it shall be lawful to proceed against such persons to recover such penalty jointly by one information or severally by separate information, as the Attorney-General may deem expedient.

**Several persons concerned in the same offence jointly and severally liable to the penalty, and may be sued either by one or by separate information.**

150. Whenever goods not specified in the boat-note mentioned in section 38 have been concealed in any boat during the loading, transit, or unloading of such boat in any harbour or port of Sri Lanka, the discovery of such goods on board such boat shall be received in all courts of Sri Lanka as prima facie evidence that the goods have been either stolen by the tindal and boatmen employed in such boat or that the same have been unlawfully received on board by the tindal and boatmen employed on such boat with knowledge that the same have been stolen; and shall be conclusive thereof unless and until such tindal and boatmen or any of them shall satisfactorily account for the presence of such goods on board such boat.

**Goods not specified in boat note when found concealed in any boat to be presumed to have been stolen or unlawfully received by tindal and boatmen of such boat.**

151. Whenever goods not specified in the boat-note mentioned in section 33 shall be found in the possession of any tindal or boatman when on board the boat in which he is employed, or when on the quays or wharves of any port or harbour of Sri Lanka, such tindal or boatman, in whose possession such goods are found, shall be presumed to have stolen the goods or to have unlawfully received the same knowing them to have been stolen; unless and until such tindal or boatman shall satisfactorily account for his possession thereof.

**Goods not mentioned in boat note when found in possession of any tindal or boatmen when on board of boat or on wharves to be presumed to have to be stolen.**

152. (1) If any goods are seized for non-payment of duties or any other cause of forfeiture, and any question shall arise in any proceedings whether civil, criminal or otherwise, whether the duties have been paid for the same or whether the same have been lawfully imported, or law-fully laden or exported, the proof thereof shall lie on the owner or claimer of such goods or on the person against whom any contravention of this Ordinance is alleged and not on the Attorney-General or the officer who seized or stopped such goods or on the prosecution.

**Onus probandi to be on the party & c.**

(2) Where in any proceedings referred to in subsection (1) the question arises whether there has been an attempt to export or take out of Sri Lanka any goods, then, if such goods are found in any place on or near the sea-shore or the bank of any river in such quantities or packed in such manner as to suggest that such goods are intended to be exported or taken out of Sri Lanka, such goods shall be presumed to be goods in respect of which an attempt to export or take out of Sri Lanka has been made.

(3) In any proceedings referred to in subsection (1), a certificate purporting to be under the hand of the Director-General or a Director that the goods referred to in that certificate are in his opinion imported goods, shall be prima facie proof of such fact and shall be admitted in evidence without any further proof that it is so signed; and it shall not be competent for any court to require the Director-General or the Director to disclose the reasons upon which such opinion is expressed.

**(83, 83 of 1988)**

**(83, 83 of 1988)**

**Disbursement of forfeitures and penalties recovered under this ordinance.**

**(73, 83 of 1988)**

**(83, 83 of 1988)**

153. The amount--

(1) Of all forfeitures and penalties recovered under this Ordinance or under this Ordinance read with the provisions of any other written law; and

(2) of the proceeds of all such goods as may be disposed of by the Director-General under section 162 of this Ordinance, or under this Ordinance read with the provisions of any other written law,

shall be paid into the hands of such Director-General and shall (after deducting any expenses incurred) be paid and applied as follows : -

(a) one half to the Deputy Secretary to the Treasury, out of which sixty per centum shall be credited to the Consolidated Fund and the balance forty per centum to the Customs Officers Management and Compensation Fund (hereinafter in this Ordinance referred to as " the Fund" ) ; and

**(83, 83 of 1988)**

(b) the other half into a reward fund under the control of the Director-General for distribution, in accordance with a scheme to be approved by the Minister, among customs officers concerned and informers.

**(83, 83 of 1988)**

153A. (I) The sum of money in the Fund shall be utilized for the following purposes: (a) providing such facilities as appear to the Director-General to enhance the effectiveness of the management of Customs; and (b) granting compensation to any customs officer who is permanently, totally, partially disabled or temporarily incapacitated, or in the event of death of any customs officer, to the legal heirs, in any case where such disablement, incapacitation or death, as the case may be, is due to an injury- (i) Received by such officer while on duty, or (ii) Received by such officer while on a journey (a) from his place of residence to his place of work to report for duty, or (b) from his place of work to his place of residence after duty, or (iii) received by such officer, while not on duty in the performance of some act which is within the scope of his

**Purposes for which the moneys of the fund may be applied.**

**(79, 83 of 1988)**

**(83, 83 of 1988)**

ordinary duties, or (iv) received by such officer in consequence of any act performed in the execution of his duties, or (v) received by such officer as a result of any act of reprisal occasioned by, or arising out of, any action taken by him in the execution of his duties. (2) The Director-General may with the approval of the Minister by regulation provide for the principles and conditions subject to which such compensation will be granted and for all other matters necessary or expedient for the establishment and operation of such a Fund. (3) Any compensation granted in accordance with regulations made under the preceding provisions of this section in respect of disablement, incapacitation or death of a customs officer shall be in addition to any pension, gratuity, compensation, allowance, or other benefit granted in respect of such disablement, incapacitation or death under the Minutes on Pensions<sup>9</sup> or any other written law. 4. (1) All ships, boats, goods, and other things which shall have been or shall hereafter be seized as forfeited under this Ordinance, shall be deemed and taken to be condemned, and may be dealt with in the manner directed by law in respect to ships, boats, goods, and other things seized and condemned for breach of such Ordinance, unless the person from whom such ships, boats, goods and other things shall have been seized, or the owner of them, or some person authorized by him, shall, within one month from the date of seizure of the same, give notice in writing to the Director-General or other chief officer of customs at the nearest port that he intends to enter a claim to the ship, boat, goods, or other things seized as aforesaid, and shall further give cash security to prosecute such claim before the court having jurisdiction to entertain the same and otherwise to satisfy the judgment of the court and to pay costs in such sum as the Director-General or proper officer of customs at the port where or nearest to which the seizure was made shall consider sufficient. If proceedings for the recovery of the ship, boat, goods or other things so claimed be not instituted in the proper court within thirty days from the date of notice and security as aforesaid, the ship, boat, goods, or other things seized shall be deemed to be forfeited, and shall be dealt with accordingly by the Director-General or other proper officer of customs. (2) If after the institution of proceedings in the proper court, the claimant shall give cash security to restore the things seized or their value in such sum as the Director-General or proper officer of customs at the port where or nearest to which the seizure made shall consider sufficient., the ship, boat, goods or other things seized may, if required, be delivered up to the claimant at the discretion of the Director-General or Director.

(83, 83 of 1988)

154. (1) All ships, boats, goods, and other things which shall have been or shall hereafter be seized as forfeited under this Ordinance, shall be deemed and taken to be condemned, and may be dealt with in the manner directed by law in respect to ships, boats, goods, and other things seized and condemned for breach of such Ordinance, unless the person from whom such ships, boats, goods and other things shall have been seized, or the owner of them, or some person authorized by him, shall, within one month from the date of seizure of the same, give notice in writing to the Director-General or other chief officer of customs at the nearest port that he intends to enter a claim to the ship, boat, goods, or other things seized as aforesaid, and shall further give cash security to prosecute such claim before the court

**Seized goods, if unclaimed for a month, to be condemned and dealt with according.**

(29, Law 35 of 1988)

(83, 83 of 1988)

having jurisdiction to entertain the same and otherwise to satisfy the judgment of the court and to pay costs in such sum as the Director-General or proper officer of customs at the port where or nearest to which the seizure was made shall consider sufficient. If proceedings for the recovery of the ship, boat, goods or other things so claimed be not instituted in the proper court within thirty days from the date of notice and security as aforesaid, the ship, boat, goods, or other things seized shall be deemed to be forfeited, and shall be dealt with accordingly by the Director-General or other proper officer of customs.

**(83, 83 of 1988)**

(2) If after the institution of proceedings in the proper court, the claimant shall give cash security to restore the things seized or their value in such sum as the Director-General or proper officer of customs at the port where or nearest to which the seizure made shall consider sufficient., the ship, boat, goods or other things seized may, if required, be delivered up to the claimant at the discretion of the Director-General or Director.

**(83, 83 of 1988)**

155. No claim to anything seized under this Ordinance shall be admitted by such court, unless such claim be entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing be made by the owner, or by his attorney or agent, by whom such claim shall be entered, to the best of his knowledge and belief, nor unless the claimant shall at the time of filing his libel or plaint to establish his claim satisfy the court that he has given notice and security as in section 154 enacted.

**(83, 83 of 1988)**  
**Claim to thing seized to be entered in the name of the owner.**

156. No summons shall be sued out against, nor a copy of any process served upon, any officer of the Customs or other person as aforesaid, for anything done in the exercise of his office, until one month after notice in writing shall have been delivered to him, or left at his usual place of abode, by the party who intends to sue out such summons or process, his attorney or agent, in which notice shall be clearly and explicitly stated the cause of the action, the name and place of the abode of the person who is to bring such action, and the name and place of abode of the attorney or agent; and no evidence of the cause of such action shall be produced except of such as shall be stated in such notice; and no judgment shall be given for the plaintiff unless he shall prove on the trial that such notice was given; and in default of such proof the defendant shall receive in such action a judgment and costs.

**Notice to be given to officers.**

157. Every such action as in section 156 referred to shall be brought within two months after the cause thereof, and shall be laid and tried in the district where the facts were committed; and if the plaintiff shall become non suited, or shall discontinue the action, or if judgment shall be given against the plaintiff, the defendant shall receive the costs of suit.

**Actions to be brought within two months of the cause of them.**

158. It shall be lawful for such officer or other person as aforesaid, within one month after such notice, to tender amends to the party complaining, or to his agent, and to plead such tender in bar to any action, together with other pleas; and if the court shall find the amends sufficient, it shall give judgment for the defendant; and in such case, or in case the plaintiff shall become non-suited, or shall discontinue his action, or judgment shall be given for the defendant, such defendant shall be entitled to costs as in section 157 mentioned:

**Officer may tender amends.**

Provided always that it shall be lawful for such defendant, by leave of the court where such action shall be brought at any time before issue joined, to pay money into court as in other actions.

159. In case any information shall be brought to trial on account of any seizure made under this Ordinance, and a judgment shall be given for the claimant thereof, and the court before which the cause shall have been tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action or prosecution on account of such seizure; and if any action shall be brought to trial against any person on account of such seizure, wherein a judgment shall be given against the defendant, if the court before which such information shall have been tried shall have certified on the said record that there was a probable cause for such seizure, the plaintiff shall only be entitled to a judgment for the things seized, or the value thereof, and not to any damages, nor to any costs of suit.
- Judge may certify probable cause of seizure.**
160. All actions or prosecutions for the recovery of any of the penalties or forfeitures imposed by this Ordinance may be commenced or prosecuted at any time within three years after the offence committed by reason whereof such penalty or forfeitures shall be incurred, any law, usage, or custom to the contrary notwithstanding.
- Limitations of suits.**
161. All persons employed for the protection of the revenue under the direction of the Minister or of the Director - General shall be deemed and taken to be duly employed for the protection of the revenue; and the averment in any information that such person was so duly employed shall be sufficient proof thereof, unless the defendant in such information shall prove to the contrary.
- Persons employed for the protection of the revenue to be deemed to be duly employed.**
- (83, 83 of 1988)**
162. All ships and boats, and all goods whatsoever, which shall have been seized and condemned for a breach of this Ordinance, shall be disposed of as soon as conveniently may be after the condemnation thereof, in such manner as the Director-General or other proper officer of customs shall direct
- Vessels and goods seized and condemned may be disposed of as the Director General, & c. shall direct.**
- (83, 83 of 1988)**
- Provided that all horses, cattle, or goods of a perishable nature may be sold forthwith.
163. In all cases in which under this Ordinance any ships, boats, conveyances, goods, or other things have become liable to forfeiture, or shall have been forfeited, and in all cases in which any person shall have incurred or become liable to any penalty, it shall be lawful for the Director-General, should he deem such forfeiture or penalty unduly severe, to mitigate the same; but all cases so determined by the Director-General shall nevertheless be liable to revision by the Minister.
- Director- General in certain cases may mitigate forfeiture or penalty.**
- (83, 83 of 1988)**
164. In case any goods, ships, or boats shall be seized as forfeited, or detained as undervalued, by virtue of this Ordinance, it shall be lawful for the Minister to order the same to be restored in such manner and on such terms and conditions as he shall think fit to direct; and if the proprietor of the same shall accept the terms and conditions prescribed by the Minister, he shall not have or maintain any action for recompense or damage on account of such seizure or detention and the person making such seizure shall not proceed in any manner for the purpose of obtaining the condemnation thereof.
- (83, 83 of 1988)**  
**Restoration of seized goods, ships, & c.**

165. The Minister may, by any order made for that purpose, direct any ship, boat, goods, or other commodities whatever, seized under this Ordinance, to be delivered to the proprietor thereof, whether condemnation shall have taken place or not, and may also mitigate or remit any penalty or fine or any part of any penalty or fine incurred under this Ordinance, or may release from confinement, any person committed under this Ordinance on such terms and conditions as to him shall appear to be proper:

**The minister may restore seizures, and mitigate or remit punishments and penalties.**

Provided always that no person shall be entitled to the benefit of any order for such delivery, mitigation, remission, or release, unless such terms and conditions are fully and effectually complied with.

166. (1) Any person who, within the limits of any port, is found, or is proved to have been in possession or in charge of any article which is suspected to have been stolen from any ship, boat, quay, warehouse, or wharf of any port of Sri Lanka, may be charged with being, or having been, in possession of property which is reasonably suspected to have been stolen; and if such person does not give an account to the satisfaction of the Magistrate as to how he came by such article, and the Magistrate is satisfied that, having regard to all the circumstances of the case, there are reasonable grounds for suspecting such article to have been stolen, such person shall be guilty of an offence, and shall be liable on conviction before a Magistrate to a fine not exceeding one hundred rupees, or to imprisonment of either description for a period not exceeding six months.

**Possession of articles suspected to have been stolen.**

(2) Where any officer of customs or any police officer finds any person in possession or charge of any article which he suspects to have been stolen, he may seize such article and bring or cause to be brought such person before a Magistrate and charged as aforesaid.

166A. Where a person is suspected to be concerned with an offence under section 129 or section 130 of this Ordinance and the value of the goods in respect of which the offence is alleged to have been committed exceeds five hundred thousand rupees, then notwithstanding anything in this Ordinance or in any other written law such offence shall be deemed to be a non-bailable offence.

**Where the offence is concerned with goods, the value of which exceeds five hundred thousand rupees such offence to be deemed a non bailable offence. (80, 83 of 1988)**

166B. In imposing a penalty or ordering a forfeiture under sections 27, 28, 29, 30, 31, 32, 38, 47, 52, 56, 57, 59, 62, 63, 64, 67, 68, 74, 76, 77, 110, 119, 129, 130, 131, 132, 133, 135, 136 and 137, the Director-General shall have regard to the following : -

**Guidelines for imposing penalty or ordering for forfeiture.**

**(80, 83 of 1988)**

(a) the gravity of the contravention giving rise to the penalty or forfeiture;

**(83, 83 of 1988)**

(b) the amount of revenue lost as a result of such contravention;

(c) the availability or shortage, as the case may be, of the goods with respect to which such contravention has been committed.