

Understanding the Nitty-Gritty of Up-to-Date of Pakistan's Customs Act, 1969

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Abstract: Pakistan's Customs Act, 1969 was enacted consolidating and amending the various laws on Customs. There are mainly six methods of valuation of goods including transaction value method, identical goods method, similar goods method, deductive methods, computed method and fall back method. Under Section 79 of the Act, Goods Declaration is filed duly supported by various documents for assessment of leviable duty and taxes. In case of misdeclaration, untrue statement or error etc. section 32 comes into play. Search Warrant is to be obtained by the Gazetted Officer of Customs from the Judicial Magistrate to recover the secreted goods under Section 162 of the Act, Seizure of things liable to confiscation is made under Section 168 of the Act. Section 156 provides the scope of offence(s), nature of breach and penalty thereof. Section 187 of the Act fixes initial burden of proof upon the person involved, which may be rebutted by the Customs authorities. The purpose of adjudication includes confiscation of goods, recovery of duty and other taxes not levied or short levied, recovery of erroneously refunded amount and imposition of fine. An option to fine in lieu of confiscation of goods can be given under Section 181 of the Act. The pecuniary power of adjudication is provided under Section 179 of the Act, whereas there are Appellate forums available in the form of Collector Appeals, Customs Appellate Tribunal and High Court. In addition to this, another mechanism under Alternate Dispute Resolution (ADR) is available under Section 195-C of the Act. In case of commission of cognizable offence, a FIR is lodged and a Special Judge takes cognizance of the offence(s) under the Code of Criminal Procedure, 1989. An appeal or Revision can be filed before the Court having the Powers High Court. The main challenge before the Customs is determination of value of goods paid or payable in relation to the item being valued. In case inaccurate value, either it is the business class who suffers or the state's fiscal interests are jeopardized on account of lack of requisite capacity of the Customs Officer to successfully address the issue of value of goods and pass the buck onto the importer for charging misdeclaration and a lengthy process of adjudication is initiated against the importer and exporter as well as Clearing Agent as this value holds good for the imposition of Sales Tax, Income Tax and Federal Excise duty.

Keywords: Historical perspective of Customs Act, 1969, Methods of valuation of goods, Powers of Adjudication and Appellate forums, Trial of offence(s).

INTRODUCTION

Historically speaking, the Sea Customs Act was enacted in the year 1878 consolidating and amending the laws of Customs. Prior to this old Act, in the year 1924, another Act relating to levy of duties of Customs on articles imported or exported by land from or to the territory outside the Country, Customs law was applicable, as there was no Air Customs Act, the administration of air Customs was governed by rules made under the Air ships Act, 1911. The Customs Act, 1969 consolidated and the provisions relating to sea, land and air Customs into a single comprehensive enactment. For the purpose of interpretation, Explanatory notes to the Harmonized Description and coding system published by World Customs Organization, Brussels as amended from time to time shall be considered as authentic source of interpretation. For the purpose of classification in the first Schedule to Customs Act, the Board shall be the final authority to determine classification of any matter meant to be imported or exported [1].

On every financial year, a federal budget is presented in the Parliament to bring changes in federal tax laws in the forms of fiscal changes/amendments which are suggested in the form of a Finance Bill. If the Finance Bill is passed by the National Assembly with amendments or without amendment proposed by its members, then such amendments are adopted in the form of Finance Act. The latest Finance Act, 2023 has been passed incorporating certain changes in the Customs Act 1969. In this way all the tax laws including Customs Act, 1969 are amended to stay up-to-date to keep abreast with latest fiscal development worldwide and or meet the fiscal needs of the country by incorporating tax-related measures.

MAIN KINDS OF DUTIES

Broadly speaking, there are mainly three types of duties which can be categorized as under:

These categories may include *Ad valorem rate of duty*, *specific rate of duty* and *mixed or composite rate of duty*. The first category of the term is "*Ad valorem rate of duty*" means the rate of duty leviable according to the value of goods. Example of *ad valorem* rates are 5.8 %, 17% and 35% etc.. The second category of the

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term is “*Specific rate of duty*” means a rate of duty charged according to weight measure, quantity or number. For example 1.1 Rupees per kilogram, 0.5 Rupees per litre, \$ 2.12 per cubic meters. The third category of the term is “*Mixed or composite rate of duty*” means combining the ad valorem rate of duty unite specific rate of duty. Examples are 33.1 Rupees per kilogram, plus 7.4 % and 100 cent each, plus 7.7% [2]. Customs multiplies the rate by quantity to determine the duties owing.

In respect of United States Code, Michael J. Horton in his book under the title of Import and Customs Handbook, he framed common issues which Customs department has to verify in the invoice:

- (i). Is value shown for each item on the invoice reasonable or might the goods be undervalued?
- (ii). Is the invoiced description of the merchandise sufficiently accurate to permit proper classification?
- (iii). Does the package contain the proper quantity of items as invoiced, or is there Excess merchandise?
- (iv). Does the package contain exactly those items the packing list or invoice says, it should contain, and no others? [3].

These four questions are equally important to scrutinize the value of any goods as declared by the importer who has first hand knowledge about actual value of the goods as compared to any other person if he could fairly declare such value as he is privy to the transaction of import of goods with the exporter. In order to determine The value of any goods imported into or exported out of Pakistan, the importer is primarily allowed to declare its transaction value accurately and precisely by way of filing goods declaration (GD) under Section 79ofthe Act in case of import or under Section 131of the Act in case of export of goods.

The Customs authorities are competent for checking of particulars of import, declaration, assessment and duty and taxes in case of availing Customs computerized system. However, in an exceptional cases and keeping in view the customer's fair track record, the goods may be cleared without checking or examining the same through green channel in order to facilitate the business community or ease of doing business in Pakistan. The Legislature

has devised the following methods for determination of value of the goods.

METHODS OF VALUATION OF GOODS FOR ASSESSMENT

(I). In Pakistan, Section 25of the Act provides complete mechanism or methods for determination of the Customs value of either imported or exported of the goods. This section provides six different methods for determining the value of the goods. The first and foremost is the transaction value that is price actually paid and payable for the goods when sold for export to Pakistan. And there are certain prerequisite conditions including the impact full condition that the buyer and seller must not be related parties *inter se* in order to rule out any presumption or assumption of concealing the actual transaction value on account of likelihood of influencing the price of the goods detrimental to the interests of the national exchequer. Subsection (1) to (4) of Section 25 and Rules 107 to 116 of Customs Rules,2001 contain primary methods of valuation, and in the first instance such primary method of valuation is required to be adopted in each case [4].

Before finalizing the determination of the Customs value there are certain factors or costs involved worthy of consideration. For instance, cost of transport, loading and unloading charges, handling charges and the cost of insurance. However, there is a cost added to the price which is incurred by the importer but is not included in the price actually paid or payable of the imported goods. For instance commission including indenting commission and brokerage. Such cost(s) may be added subject to one condition that such cost may have actually been included in case the transaction which may have actually been taken place between two or more unrelated persons. Similarly such additions are also permissible in case such additions are in effect incurred under the head of Royalties and licence fees, subject to one condition that such cost was incurred as a condition of sale of the goods.

There is another scenario wherein the buyer and seller happened to be *inter se* related parties, however the circumstances may suggest that such relationship has not virtually influenced the price or the importer can establish that such value is approximately close to the same price while comparing the value of the goods at or about the same time with same country of origin, commercial quantity and quality and there is hardly any material difference in the transaction value of such sales.

In case, the appropriate officer is of the opinion that the importer cannot establish that the relationship has not caused any impact on the price and if there are reasons to believe that the declared price is apparently inaccurate on whatsoever grounds, the appropriate officer is empowered to convey his reservation or suspicion in writing to any persons allegedly involved. Such officer is under legal obligation to provide him an opportunity of being heard in order to seek clarification or justification in the price difference or defend his value determined by him. If the importer fails to give plausible explanation or defend his position satisfactorily, then the Customs value cannot be treated as transaction value under sub section (1) of Section 25 of the Act. Although the transaction value is the preferred basis of determination, however in case, it is not acceptable by the Customs authorities, then the Customs authorities have to resort to other methods in order to arrive at correct and precise value of the goods by applying other methods of determining the value of goods.

(II). Transaction value of identical goods is one of forms of determination of goods. One of the essential conditions for determination of identical goods for export to Pakistan is that it has to occur or take place almost during the same time period. And the identical goods must be more or less or almost come under the same range of commercial level and substantially the same quantity as far as possible. In case the transaction value of identical goods are sold at a different commercial level and or in different quantities, a reasonable adjustment has to be accounted for on account of demonstrated evidence which could reasonably justify the accuracy or precision of the value of the goods. Important factors must be accounted for, in terms of difference in distances and modes of transport between the goods being valued and identical goods in question.

It was held by the Hon'ble Supreme Court of Pakistan that where the importer was able to show transaction value of each of two imported consignments being US\$ 175 and US\$ 180 per metric ton respectively, which was reflected in the Letter of Credit and the Goods Declaration filed at the time of in-bonding of goods and the importer contending that the goods at the time of in-bonding upon inspection were found to be of secondary quality instead of prime quality and as similar goods of secondary quality imported from the same country of origin and shipped on the same ship were assessed at US\$157 per metric ton, the Hon'ble Supreme Court held "when the goods

without any difficulty could be assessed on the transaction value under section (1) of Section 25 of the Act i.e. the price actually paid and payable for the goods sold to Pakistan, then the question of invoking subsection (5) of Section 25 did not arise at all [5].

(III). There is another method for determination of Customs value by means of applying value of similar goods if we want to understand the difference between identical goods and similar goods, we need to look at statutory definition of as provided under Customs Act, 1969. Basically these are the criteria to be considered before treating such goods as similar goods.

Sub-section 13(b) of Section 25 of the Act defines the terminology of an identical goods which means goods which are the same in all respects including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical';

Sub-section 13(c) of Section 25 of the Act defines the terminology of Similar Goods which means goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quantity of the goods, their reputation and the existence of a trade mark are among the factors to be considered in determining whether goods are similar';

(VI). There is another kind of method which is called deductive value in order to determine Customs value of the imported good if such goods cannot be determined on the touchstone of similar goods, then certain other factors need to be considered. The first and foremost factor is the unit price at which identical or similar imported goods are so sold in the aggregate quantity round about the same time frame or transaction of sale taking place between the unrelated persons. The other important factors worth consideration are commission's general expenses relating to sales in Pakistan, the cost of transport, insurance and other associated costs incurred within Pakistan. Another factor which merits consideration is the Customs duties and taxes on account of importation or sales of the goods.

In case the imported goods neither identical nor similar goods, then the Customs value would be based upon or depend on the unit price at which the imported goods or identical goods or similar goods are sold in Pakistani market after importation of good, however before the expiry of ninety days after such importation.

(V). There is another method which is called "*computed value*". In case Customs value cannot be determined under deductive method, then customs value may be computed by considering and summing up of the cost of value of materials and fabrication or other processing employed in producing the imported goods and by adding an amount of profit and general expenses equal to that normally reflected in sales of good of the same class or kind as the goods being valued which are made by producer in the Country of exportation for export to Pakistan.

(VI). In addition to earlier methods, there is another method called "*Fall back method*". In case the Customs value of the imported goods cannot be calculated, determined or fixed under either transaction value or identical good method or deductive method, computed method, then Customs value may be determined by way of using reasonable means on the basis of a value deduced or derived from among the methods of valuation as mentioned in the earlier mentioned methods by applying such methods in a flexible manner and to the extent applicable to arrive at a customs value. The Finance Act, 2007 inserted an amendment in Section 25(10) of the Act, that methods of Customs like transaction value method, identical goods method, similar goods method, deductive method, computed method, and fall back method, such methods need not to be sequentially except reversal of sub-section (7) and (8), at the import's request, if so agreed by Collector of the Customs.

An appropriate officer of Customs as authorized by the Board Collector of Customs shall have the power to access to business premises. This power can be exercised during the working hours for audit, inquiry or investigation or to inspect the goods, stocks or record data, document or any other record. The Board or collector of Customs is also authorized to conduct audit for ascertaining the correctness of declaration, documents, recorder value of imported goods.

Section 25 (15) for the purpose of Customs value of any exported goods it is the value at the relevant time, on a sale in open market for exportation to the country to which the goods are sent, considering the following factors namely that the goods are treated as having been delivered to the buyers on board the conveyance and secondly that the seller shall bear packing, commission, transport, loading and all other costs charges and expenses including regulatory duty, thirdly where goods are manufactured in accordance with any patented invention or are goods to which any patented

design has been applied, the Customs value shall be determined taking into consideration the value of the right to use design in respect of the goods and lastly that where goods are exported for sale, whether or not after further manufacture under a Pakistan trade mark, the Customs value shall be determined taking into consideration the value of the right to use the patent design or trade mark in respect of the goods.

In Sadia Jabbar case, the Hon'ble Supreme Court has held that "when Section 25 of Customs Act, 1969 exhaustively provided modes for determination of value, resorting to Section 25A of the Act without any convincing reason was uncalled for [6].

Section 25 A has been devised which has overriding effect on Section 25 of the Act. Section 25A of the Act commences with the phrase 'Not with standing the provisions contained in section 25'. It also means despite, in spite of, even if, with regard to, however, in any event, nevertheless, still and yet [7].

Under Section 25 A of the Act, the Director General of Customs valuation either at his own discretion or on account of filing of reference by any person or by an officer of Customs may determine the Customs value of any goods or category of goods imported into or exported out of Pakistan in line with the methods as provided in section 25 of the Act, whichever is applicable.

Despite the provision of section 25 of the Act, any decision or Judgment of any forum, authority or Court, the Director can determine the Customs value under section 25 A of the Act. However, he may resort to any internationally acclaimed publication periodical, bulletins or official website of manufacturers or indenters of such goods the customs value determined under this section shall be considered as Customs value for assessment purpose in relation to any good, imported or exported. The discretion of the Director has been structured in a way to arrive at precise determination of goods by resorting to any authentic source of information.

Section 25 had stood earlier, and Section 25-A which has subsequently evolved containing therein the non-obstante clause which has created confusion and the Customs authorities are reluctant to apply any of the other methods available in the Scheme of Section 25 of the Act. The Customs authorities have started applying valuation ruling issued under Section 25 A of the Act regardless of the fact that it is an estimation of

value and is not reflective of transactional value [8]. It has further compounded the situation as the same customs value is also used to apply for imposition of sales tax, income tax and excise duty in respect of imported goods, therefore its impact resonates throughout the economic system [9]. The Customs authorities in most of the cases rely upon value notified through valuation regards of the facts it is rightly applicable or not. They try to thrust upon the notified valuation rulings, this reliance at least save them from the onerous responsibilities of determining value of goods on itemized based keeping in view all other cost related factors affecting the price of the goods. The Customs authorities either lack the requisite capacity or expertise to determine value of the goods by applying judicious and conscientious mind to save the business class from loading unjust value or cause loss to the national exchequer by unfair value.

Under the US Customs law, there is a concept of "the import specialist". The import specialist works in the classification and value branch, a unit directly under the district director. The import specialist is responsible for determining where, in the Tariff Schedule each item is classified and consequently, the rate of duty that applies. Since, duties on most imported goods are a percentage of their value, the import specialist also appraises the merchandise. The acts of classification and appraisal taken together, determine exactly how much duty is owing on any given importation [10].

In Pakistan, there is a Power of taking samples of goods for examination or testing or for ascertaining the value thereof by the appropriate officer in the presence of owner of the goods under Section 199 of the Customs Act, 1969. The controversy does not end here rather it has further compounded the controversy by not accepting the result or findings of the lab test. The accuracy of the test result is still a big question mark for acceptance due to lack of transparency in the process and repeated exercise is conducted to get favourable results. The samples are repeatedly forwarded to the concerned lab(s), even the expert are neither skilled for right determination of classification nor it is their mandate to decided the classification factor and the discretion is still open with the appropriate officer to decide the value at his unstructured discretion.

There is another aspect of the matter that the Customs authorities are only concerned with higher value of the goods regardless of the fact it is actual value or not. There is proviso to Section 25A of the Act that value declared in a goods declaration filed under

section 79 or value as mentioned in terms of Section 131 for export purpose or revealed from invoice retrieved from the consignment, out of all such values or even determined as per section 25(A) (1) of the Act, it is only the higher value which shall be considered as to be the Customs value disregarding any other value which may be derived from any other manner.

In case of disagreement in arriving at Customs value as determined under section 25A (2A), the Director General of valuation is competent to determine the value as the applicable Customs value. Finance Act, 2014 has inserted section 25A (4) in the Act, which envisages customs value remains in the field until and unless the same is revised or rescinded by the competent authority. However, the Act provides an Appeal to the Appellate Tribunal against the Order passed in revision by the Director General Customs Valuation under sub-section (f) of Section 194-A of Customs Act, 1969.

Section 25A renumbered and amended as Section 25C by Finance Act 2006 [11]. It has been provided that if the goods sought to be cleared has been undervalued and the buyer makes an offer to the Collector of Customs and if he is satisfied with the offer, he may after approval of the respective Chief Collector may entertain such offer or to allow to buy-out at substantially higher value.

Such an offer must be accompanied by twenty five percent of the offer price. He may give an option to the importer to match this offer price, however if the importer fails to clear the imported goods within seven days, the appropriate officer may take over the goods on payment of Customs value declared in the goods declaration plus five percent of such declared value. The imported goods taken over as mentioned above shall be delivered to the officer, the two Pay Orders is required to be issued, one equal to the Customs value declared in the goods declaration plus five percent in the name of importer and another Pay Order equal to the remaining amount of value of imported goods and the amount of duties and taxes leviable on the imported goods in the name of collector of Customs.

In case the local buyers fails to take the delivery despite service of notice upon him, the Pay Order equal to twenty five percent of the amount shall be forfeited in favor of the Federal Government and the imported and the imported goods shall be released to the importer as per Customs value determined under section 25 or 25 A of the Act

Despite Section 25 of the Act, there is another non-obstante clause which envisages that the Director General Valuation in exercise of his discretion or subsequent to filing of Review petition submitted before him within 30 days from the date of determination may revoke or determine the value de novo. However, such proceeding positively be concluded within sixty days of the filing of the Review Petition or initiation of proceedings.

A proper determination of the customs value is therefore absolutely essential as it leads to affordability of goods at reasonable price by common man and alleviation of Poverty [12].

Powers of Prohibition and Restrictions for Importation and Exportation

Legally speaking, there is Chapter IV under the Act which stipulates the provision in relation to 'Prohibition and Restriction' of importation and exportation. There is a blanket and outright prohibition in relation to bringing into or taking out of Pakistan. The unqualified, absolute and unconditional prohibition which has been provided in Section 15 of the Act. For instance, counterfeit coins or counterfeit currency notes, any obscene book, pamphlet, goods having a counterfeit trade mark, goods involving infringement of copyright or goods imported or exported in violation of Intellectual Property Rights.

There is another kind of prohibition or restriction relating to importation and exportation of good and the Federal Government is vested with the Powers to regulate the bringing into or taking out of Pakistan. There are several other Acts which prohibit restrict the import or export of goods into or out of Pakistan. Such prohibition or restriction shall also be deemed to be prohibited and restricted under this section and whole Customs Act shall apply [13].

Some of the important Acts are mentioned herein below:

1. The imports and exports (control) Act, 1950 (sub section 3)
2. The Foreign Exchange Regulation Act, 1947; (sub section 8)
3. The Copyright ordinance, 1962; (sub section 58)
4. The Antiquities Act, 1975 (sub section 26)

5. The Pakistan Animal Quarantine (Import and Export of Animals and Animals Products ordinance, 1979. (Sub Section 04)
6. The Petroleum Act, (Sub Section 3 & 4)
7. The Destructive Insect and pest Act, 1914 (sub Section 3(1) and (4))
8. The Drug Act, 1976 (Sub Section 23)
9. The Merchandise Marks Act, 1889 (Sub Section 5 A)
10. The Prisons Act, 1919 (Sub Section 3)
11. The Arms Act, 1878 (Sub Section 6)
12. The Dangerous Drug Act, 1930 (Sub Section 4)
13. The Explosive Act, 1884 (Sub Section 3)

This Section must be read together with the above Acts. If there is violation of such Acts as regards to import and export of goods, then violation is not only of such Acts but of the Customs Act also. The Federal Government under Notification No. SRO 112 (I)/83 dated February 12, 1983 (reported as PTCL 1983st.330) has prohibited certain items like any map of Pakistan, diamonds of all hands, Gold and Silver throw, skins and feathers of all birds other than domestic birds, Rhinoceros Horns unmanufactured wool, lamb skins, casing, Hens and duck eggs, oilcakes either in cake or in powered form only under certain conditions, fruits only under conditions, Fish Meals with certain conditions, ginger, garlic and onion in accordance with certain conditions, Dry salted and unsalted shell fish unless complied with certain condition, Bones unless complied with certain conditions, unmanufactured Animal hairs unless complied with certain conditions and Mangoes unless such mangoes, are graded and marked in accordance with the Mangoes, (Grading and Marking Rules 1979 [14]. Furthermore Notification SRO 639 (I)/2015 provides complete details regarding such articles as reported PTCL 2016 St. 252 [15].

Section 17 of the Act provides that in case of violation of Section 15 or 16, such goods are liable to detention for seizure or confiscation subject to approval of an officer of an assistant Collector of Customs, and seizure for confiscation through adjudication, if required. However, there is a proviso to this section which envisages that the period of detention shall not

exceed more than fifteen days. The chief collector of Customs may extend this period to not more than fifteen days. The expression detention or detain cannot be construed as seizure. In the absence of the definition of the word “detain”, the dictionary meaning are to be taken. The expression “detention” or detain cannot be construed as seizure [16].

Penal Consequences of Untrue Declaration, Statement or Document

The pivotal section 79 of the Act relates to declaration and assessment of goods at import stage for home consumption or warehousing, transshipment, or for any other approved purposes. The owner of any imported goods is required to make declaration within 10 days of the arrival of such goods. It is essential requirement of law that such declaration must be accurate and the same is duly supported by Commercial Invoice Bill of Lading or Air Way Bill, Packing List or any other document for the purpose of clearance of goods. These goods are essential for assessing and paying his liability of duty, taxes and other charges thereon.

In case of filing untrue statement or error etc., then Section 32 of the Act may be applied upon any person who files any untrue declaration, notice certificate or any other documents in relation to matter of Customs. He did it knowingly or has reason to believe that such document is false in any material particular, he shall be guilty of such offence. Section 32 is a penal clause. It completely speaks of a declaration, notice, certificate or other document or statement given by the concerned person on the basis of which a consignment is released [17].

When there is some suspicion of collusion regarding non levy or short levy of duty and taxes or issuance of erroneously refund, a notice within a period of five years may be for such violation. However if non levy or short levy has occurred on account of inadvertence, error or misconstruction, then a Show Cause Notice within a period of three years may be issued calling upon such alleged person to justify or defend his position.

The corresponding section for clearance of goods for exportation purpose is stipulated in section 131 of the Act. The owner of any goods is required to file a declaration for exportation containing therein detailed particulars of his goods and be assessed and paid his liability of duty, taxes and other charges, if any in case

of claim of duty drawback, the same is to be calculated and reported in the form of declaration filed for export through Customs computerized system. The collector of Customs is also competent to cause examination of goods in respect of goods to be exported and proceed further in this regards. The show cause is to be issued within five years of relevant date there is some collusion in evasion of duty or taxes is involved and three years in case of inadvertence, error or misconstruction. However, the crucial point is which date is relevant date, whether the date is to be commenced from an order for the clearance of goods or when the duty was provisionally assessed under section 81 of the Act, when duty has been erroneously refunded or in any other case date of payment of duty or charge. This date is extremely important as if the show cause is issued beyond the relevant date it becomes time barred ipso jure and any proceeding based upon such time barred is liable to be set aside on this score only.

Search Warrant to be Obtained from Judicial Magistrate by the Gazetted Customs Officers

Powers and legal requirement of obtaining search warrant has been enacted under Section 162 of the Act. Any Gazetted officer of Customs has been authorized to obtain a warrant from the judicial Magistrate having local jurisdiction, containing therein grounds for obtaining the warrant which have been secreted in any place within his local limits and such warrant is required to be executed in the same way as is provided under the code of criminal procedure, 1898 [18]. Non-compliance of the statutory provisions of the Customs Act, 1969 renders the search and seizure non-existent in the eye of law [19].

Section 163 of the Act envisages that in case there are reasonable grounds to belief that incase immediate and urgent action is not taken for the prevention of smuggling and there is a danger of removal of such goods which is liable to confiscation. The competent authority may take appropriate action, however, he has to prepare a statement in this regard justifying grounds of his belief.

Section 164 of the Act relates to empowering the appropriate officer to stop and search conveyance. In a situation, where the appropriate officer has reason to believe that within the territories of Pakistan, including territorial waters, any conveyance is being used in the smuggling of any goods, such officer may halt such conveyance and conduct search of the conveyance or

aircraft. Finance Act, 2022 has added a proviso to Section 164 (3) of the Act, where it has been stipulated that in case of essential commodities the powers under sub section (1) shall only be exercised within bordering and coastal areas as notified by the Board.

Goods Liable for Confiscation and Issuance of Show Cause Notice

Section 168 of the Act provides that the officer like inspector/Preventive Officer/Examiner in terms of SRO 371(I)/2002 may seize any goods liable to confiscation may serve upon the owner of goods a show cause notice within two months under section 180 of the Act. The Collector of Customs may extend this period at the most of two months by writing its reasons thereof extension of limitation

The Customs authorities must give a show cause notice for confiscation of the goods within the stipulated period failing which the person from whom the goods were recovered earns a right to be restored the possession of those goods [20].

Offences and Penalties

Section 156 of the Act is a complete code in itself as far as the scope of offence(s) and penalty are concerned. This section defines the basic parameters and extent of contravention or breach under any provision of Customs Act, 1969 and range of penalty provided for. A Special judge can impose conviction and penalties keeping in view the circumstances on case to case basis. There are about 104 clauses which covers the nature of offence, the amount of penalty mentioned therein and the applicable section needs to be applied for such type of offence.

Burden of Proof under Customs Act, 1969

Section 187 of the Act envisages burden of proof lies upon the concerned person to establish his lawful authority. The burden of proof lies upon a party to produce evidence to establish the truth of facts that are necessary to satisfy all the required legal elements of the dispute. The party involved is required to prove that possession of anything in question that the same has been acquired through lawful authority, permit or license. The initial burden of proving such possession of any article in question has been saddled with the alleged person involved, thereafter the Custom Department may rebut the proof by way of any contrary evidence.

On the subject of 'burden of proof' it has been written in a book titled 'The Modern Law of Evidence' by Mr. Adrian Keans talks about two kinds i.e. legal or persuasive burden and the evidential or tactical burden which were defined as under:

"the Legal or persuasive burden, the burden of proof or the probative burden and the ultimate burden. The same has been defined as '(i) the burden of persuading the tribunal or fact, to the required standard of proof and on the whole of the evidence, of the truth or sufficient probability of every essential fact in issue. (ii) the evidential or tactical burden, the legal burden is the ultimate and final burden, whereas the evidential burden requires establishment of a prima facie case" [21]

Generally, both these burdens are cast upon the prosecution or asserter of a proposition, however in certain statutes such as Customs Act and under Article 121 of Qanun-e-Shahdat Order, 1984 [22] the burden of proof has been laid on the accused or person found in possession of prohibitory goods to prove the existence of certain condition(s), exception(s) or exemption(s) under which he may rely upon his case in support of his contention, he has to offer reasonable explanation which is either acceptable or raised a doubt. In such scenario, the burden under Section 187 of the Act will shift upon the prosecution to establish contrary evidence [23].

Despite the shifting of burden of proof and the accused person has been cast upon the burden of proof, but the Hon'ble Supreme Court held that 'equity is the soul of the law in dispensation of justice' and therefore the Court and or any Tribunal may also consider the entire circumstantial evidence to take into account while deciding any matter.

Powers of Adjudications and Appellate Forums

In Section 2 of the Act certain terminologies have been defined. Under Section 2(a) of the Act, the word *adjudicating authority* has been defined which means any authority competent to pass any order, or decision under this Act, excluding the Board, the Collector (Appeals) or the Appellate Tribunal. The process of adjudication and pecuniary jurisdiction is provided under Section 179 of the Act and this procedure is started from issuance of show cause under Section

180 of the Act. An opportunity of being heard is provided to the alleged person and show cause is decided by the competent authority. The purpose of adjudication can be categorized under four heads (1). Confiscation of goods (2). Recovery of duty and other taxes not levied or short levied (3). Recovery of erroneously refunded amount (4). Imposition of any penalty or any contravention under the Act. Customs duties have a clear revenue-raising function. Setting a certain tariff can protect country's production and encourage demand for domestic products [24].

The adjudicatory scheme incorporated in the Customs Act has established a hierarchy for adjudication of disputes between the Customs department and persons dealing with it such as importer/exporter and the Agent. An officer of Customs deciding a matter after issuance of show cause notice acts as an adjudicating authority. The segregation of functions between collection and adjudication now forms an integral part of the Customs Act [25].

Seizure takes place only when the authority competent to seize the movable property has not only intention to seize it, not only where the circumstances justifying seizure has come to his notice but he overtly seizes the movable property by divesting the possessor thereof with its possession and investing the possession in himself or through himself in some other persons.[26] Seizure of goods under Section 168 takes place either by physical taking over of such goods by the Customs officer or where physical taking over of such goods is not possible or practical it may be effected by serving on the owner of the goods or any person holding these goods in possession or charge.

An Order that he shall not remove or part with or otherwise deal with the goods except with the previous permission of such officer [27].

The Custom Act, 1969 provided that the seized goods is required to be adjudicated. Section 168 and section 180 of the Act has to be read together as the notice is only issued for adjudication proceedings and must be given in time [28]. When anything liable to confiscation is seized then adjudication of the case initiated under section 179 or such thing may be sold in accordance with the provisions of Section 201 and proceeds of such sale be kept in deposit pending adjudication of the case or as the case may be, disposal of the appeal or the final judgment by the Court.

The Act has envisages another option to pay fine in lieu of confiscation under Section 181. The Officer passing the Order to confiscation may give the owner of goods an option to pay fine in lieu of confiscated goods unless barred by the Board by any Notification. Redemption fine shall be in addition to any duty and charges payable in respect of such goods and of any personal penalty. Under the old law fine was inclusive of the duty and charges but under the present Act it is exclusive of the duty and charges. The option under Section 181 of the Act is discretionary. Failure, therefore, to give the option for redemption of goods in lieu of confiscation does not vitiate the decision or the order.

Any aggrieved person can file an Appeal before the Customs Collector within 30 days of communication of such order under Section 193 of the Act. Another

Civil and Criminal proceedings in Tabular form

Civil adjudication starts with the issuance of a Show Cause Notice 3	Criminal proceeding is initiated with the lodging of First Information Report FIR.
Power of Adjudication under Section 179 (i). Collector -----not limit (ii). Additional Collector ... not exceeding five million rupees (iii). Deputy Collector... not exceeding five million rupees (iv). Superintendent ... not exceeding one hundred thousand (v). Principal Appraiser... not exceeding one hundred thousand	Special Judge take cognizance of the Offence and there is no pecuniary jurisdiction involved
Appeal to Collector (Appeals) under Section 193 of the Act	
Appeal before Customs Appellate Tribunal under Section 194 of the Act	
Reference to High Court under Section 196 of the Act on question of law only	Appeal or Revision to Special Appellate Court under Section 185-F of the Act
Alternative Dispute Resolution (ADR) involving any dispute pertaining to Customs Duty or waiver involved under Section 195-C	No ADR in cases where FIR lodge or criminal proceeding initiated

Appeal is also provided against this Order under Section 194-A of the Act before the Customs Appellate Tribunal. And only within 90 days any aggrieved person can file Reference before the High Court on any question of law. In addition to this there is a mechanism of Alternate Dispute Resolution (ADR) provided under Section 195C of the Act, where any dispute pertaining to liability of Customs duty, admissibility of refund or rebate, waiver or fixation of penalty or fine, confiscation of goods or relaxation of any time period or procedural lapse is involved except first information reports (FIRs) cases.

After lodging of FIR, a Special Judge may take cognizance under Section 185A of any offence punishable under the Act. The Special Judge has the exclusive jurisdiction to try such offence as per procedure provided under the Code of Criminal Procedure, 1898 (Act V of 1898). An Appeal or Revision to Special Appellate Court is available under Section 185F of the Act within 60 days before any Court having the Powers of the High Court.

CONCLUSION

The author is of the view that Custom Act, 1969 has enacted a number of sections including the valuation methods which sometimes appear to be a patchwork of legislation derived from different sources of information. In Pakistani context, the Customs authorities lack the requisite capacities to determine valuation of the goods in terms of available methods in Section 25 of the Customs Act, 1969 by resorting to other modes of valuation after refusal to accept value declared by the importer. Instead, the customs authorities mostly resort to Valuation Ruling(s) issued under Section 25A of the Act, which is sometimes not applicable strict sensu in relation to any specific goods being valued. It is widely held any value notified through valuation Ruling may be close estimation or approximation and is not reflective of true transactional value. Most part of the Customs litigation revolves round the determination of exact value of the goods, it is either higher or lower than the actual value of the goods paid or payable in any

transaction. The net effect of this legal quagmire is adverse effect on the national economy of Pakistan as this value is equally valid for imposition of Sales Tax, Income Tax and Federal Excise duty. In any case either the importer/exporter or the national exchequer has to bear the brunt of lack of requisite capacity, deliberate slackness and incompetence of the Customs authorities.

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