



## **PROSECUTION UNDER CUSTOMS ACT, 1962**

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The increase in inter-dependency of the nations across the globe has resulted in increase in generation of revenue by levying tax on import of goods and also commission of offences for evasion of tax shall cause initiation of prosecution.

The Customs Act, 1962 under Chapter – XVI prescribes law pertaining to offences and prosecution. In terms of the Act, the persons who have committed offences as provided in Section 132, 133, 134, 135, 135A or 136 of the Act may be prosecuted and after conviction may be imprisoned or fine or both, as per the nature of offence. The repeated offender under Section 135 or 136(1), would be punishable with imprisonment upto a term of 7 year and with fine.<sup>1</sup>

### **Pre-Prosecution Approval**

Under Section 137(1), the prior approval of the competent authority is required as per the provisions of the Act. The decision on prosecution should be taken within 1 month of completion of the adjudication proceedings<sup>2</sup>, except where the prosecution has been initiated before the completion of adjudication proceeding. As the Act defines that the Court shall presume to be exist beyond reasonable doubt and not based upon the preponderance of probability.<sup>3</sup>

### **Compounding of Offences**

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<sup>1</sup> Section 135(2), Customs Act, 1962.

<sup>2</sup> Launching Prosecution under the Customs Act, 1962 – Revised Guidelines, Central Board of Excise & Customs, New Delhi, Ministry of Finance (Department of Revenue), Government of India, Circular No. 27/2015-Cus., dated 23.10.2015, F.No. 394/68/2013-Cus(AS).

<sup>3</sup> Section 138A(2), Customs Act, 1962.



Section 137(2) provides the option to the person to compound the offences either before or after prosecution, by the competent official as per the Act. The offer for compounding shall be given to the prosecuted person by the appropriate official as per Circular No. 54/200 5-Cus., dated 30.12.2005.

### **Summary Proceedings<sup>4</sup>**

The trial for the enlisted offences, except for the offence which are punishable under Section 135(1)(i) or 135(2) may summarily tried by the Magistrate.

### **Presence of *Mens Rea***

The Courts while prosecution proceedings shall presume of a *malafide* intention, motive, knowledge of a fact and belief in, or reason to believe, a fact<sup>5</sup> unless otherwise established by the accused.

### **Offences by Companies**

The offences provided under the Act may be committed by the companies, in such circumstances, all the person who have been in-charge and responsible for the conduct of company during the period of commission of the offence, would be held accountable for the offence.

Such person who have been responsible for the conduct of the business may escape from the prosecution if such person showcase

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<sup>4</sup> Black's Law Dictionary, "In procedure, proceedings are said to be summary, when they are short and simple in comparison with regular proceedings".

<sup>5</sup> Explanation to Section 138A(1), Customs Act, 1962.



that the offence was committed without his knowledge and (s)he has taken reasonable diligence to prevent commission of the offence.

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<sup>6</sup> The aim of the present article is to provide insights regarding prosecution and proceedings under the Customs Act, 1962. The opinions presented in the article are personal in nature and not to be deemed as legal advice.