

# **The Jammu and Kashmir Customs Act, 1958 (1901 A.D.)**

JAMMU & KASHMIR

India

## **The Jammu and Kashmir Customs Act, 1958 (1901 A.D.)**

### **Rule**

### **THE-JAMMU-AND-KASHMIR-CUSTOMS-ACT-1958-1901-A-D of 1901**

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The Jammu and Kashmir Customs Act, 1958 (1901 A.D.)[Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution 8, dated 4th December, 1901].An Act to consolidate and amend the Customs Law of the Jammu and Kashmir State.

**1. The Jammu and Kashmir Customs Act, 1958 is repealed by the Taxation Laws (Extention to Jammu and Kashmir) Act, 1954, (Act of Parliament No. 41 of 1954) subject to the exceptions and savings as contained in section 5 and 6 of the said Act of Parliament. The relevant portions of sections 5 and 6 are as follows:-**

"5. Repeals. - Save as otherwise provided in section 6, the following laws are hereby repealed, namely:-X X X XX X X X(f)the Jammu and Kashmir Customs Act, Svt. 1958, with the exception of the following provisions, namely:-(i)section 25 in so far as it authorises the State Government to prohibit the importation or exportation of newspapers or books as defined in the Jammu and Kashmir State Press and Publications Act of Svt. 1989,(ii)sections 25A, 25B and 25C, and(iii)any other provision contained in the said Act which may be necessary or relevant for the purpose of carrying into effect the provisions contained in the sections referred to in sub-clauses (i) and (ii).

**6. Savings. - (1) Notwithstanding the repeal by section 5 of any of the laws referred to therein-**

\*(a) the Jammu and Kashmir Customs Act, Svt. 1958, shall continue to have effect for the purposes of the levy, assessment collection or refund of any duty on motor spirit referred to in section 3, or

levy, assessment and collection of any duty due in respect of the import or export before the 14th day of May, 1954, of any article into or from the State of Jammu and Kashmir, or for the purpose of imposing any penalty or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid ;X X X X"\*The saving of the power to levy and collect duty on all motor spirits imported into the State otherwise than in petrol tanks by a supplier in the State or by an authorised agent on his behalf was to remain in force for a period often years w.e.f. 14-5-1954 [vide section 3 of the Taxation Laws (Extension to Jammu and Kashmir) Act, 1954].

## **Chapter I**

### **Preliminary**

#### **1. Title, extent and commencement.**

- This Act may be called the Jammu and Kashmir Customs Act, 1958. It extends to the whole of the territories of the State and shall come into force in any local area within the said territories from such date and to such extent as [x x x ] [Words 'His Highness Maharaja Bahadur or' omitted by Act X of Svt. 2010. (For earlier amendments see Acts X of 1996 and II of 1997).] the Government by notification in the Jammu and Kashmir Government Gazette shall direct.[2. Repealed.] [Repealed by Central Act 41 of 1954.]

#### **3. Interpretation.**

- In this Act, unless there be something repugnant in the subject or context,-(a) ["Inspector General of Customs and Excise"] [Now 'Commissioner'.] denotes the person authorised to exercise, subject to the approval of the Government the chief control in matters relating to the Customs and Excise revenue;(b) ["Superintendent Customs and Excise"] [Now Deputy Commissioner'.] denotes the Chief Executive Officer of the Customs and Excise Department for any specified area and includes any other officer empowered by the Government to exercise all or any specified powers of the Superintendent Customs and Excise under this Act;(c) ["Customs and Excise Officer"] [Now 'Excise and Taxation Officer'.], includes every officer of the Customs and Excise department for the time being in separate charge of a range or customs post or mahal or duly authorised to perform all or any special duties of an officer so in charge.[Chapters II, III and IV] [Repealed by Central Act 41 of 1954.][4 to 24. Repealed] [Repealed by Central Act 41 of 1954.].

## **Chapter V**

### **General Provisions Regarding Import and Export**

#### **25. Powers to prohibit or restrict importation or exportation.**

- [The Government] [Substituted by Act X of Svt. 1996 for 'His Highness the Maharaja Bahadur'.] may from time to time by notification in the Jammu and Kashmir Government Gazette, prohibit or restrict the importation or exportation of goods or animals of any specified description, or the

import or export of specified goods by specified routes, or the import or export of any goods [between sunset and sunrise] [In section 25 words 'between sunrise and sunset' deleted at the end of the section and inserted after the words 'any goods' by notification No 14 published in Government Gazette dated 17th Phagan, 1983.] across specified portion of the frontier of the State territory [x x x] [In section 25 words 'between sunrise and sunset' deleted at the end of the section and inserted after the words 'any goods' by notification No 14 published in Government Gazette dated 17th Phagan, 1983.]. [Explanation. - "Goods" include any news paper or book as defined in the Press and Publications Act, Svt. 1989.

## **25A. Power to detain packages containing certain publications imported into Jammu and Kashmir State.**

(1) Any Customs Officer not below the Rank of [Inspector of Customs] [Substituted by Act IX of Svt. 2008 for 'Assistant Inspector'.] [or any officer authorised by the Government in this behalf] [Inserted by Act X of Svt. 2003.] may detain any package, brought whether by land or air into the Jammu and Kashmir State which he suspects to contain-(a) any newspaper or book as defined in the Press and Publications Act No. I of 1989, or (b) any documents, containing any seditious matter of any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the [State Subject] [Now Permanent Residents.] or which is deliberately and maliciously intended to outrage the religious feelings of any such class, by insulting the religion or the religious beliefs of the class, that is to say, any matter the publication of which is punishable under sections [121 to 130, 152-A and 295-A of the Ranbir Penal Code] [Substituted by Act X of Svt 2003 for '103, 120-B & 215-A of the Ranbir Dand Bidhi'.] and shall forward such package to [such officer as the Government may appoint in this behalf] [Substituted by Act X of Svt. 2003 for 'the nearest magistrate of the first class'.] (2) Any officer detaining a package under the provisions of sub-section (1) shall, where practicable forthwith send by post to the addressee or consignee of such package a notice of the fact of such detention. (3) [The Government] [Substituted by Act X of Svt. 2003 for 'the Minister of the State empowered to act under the press and Publication Act No. I of Svt. 1989'.] shall cause the contents of such package to be examined, and [if it appears to the Government] [Substituted by Act X of Svt. 2003 for 'if appears to him'.] that the package contains any such matter as is described in sub-section (1) may pass such orders as to the disposal of the package and its contents as [they may deem] [Substituted by Act X of Svt. 2003 for 'he may deem'.] proper and if it does not so appear shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force; [Provided that any person interested in any package detained under the provisions of this section may, within two months from the date of such detention, apply to the Government for release of the same, and the Government shall consider such application and pass such orders thereon as they may deem proper] [Proviso substituted by Act X of Svt. 2003.]: Provided further that if such application is rejected, the applicant may within two months from the date of the order rejecting the application apply to High Court for release of the package or its contents on the grounds that the package did not contain any such newspaper, book or other document containing any such matter as is described in sub-section (1). (4) In this section "document" includes also any painting, drawing or photograph or other visible representation.

## **25B. Procedure for disposal by High Court of applications for release of packages so detained.**

- Every application under the second proviso to sub-section (3) of section 25-A shall be heard and determined in the manner provided by sections 99-D to 99-E of the Code of Criminal Procedure of 1989 [by a special Bench of the High Court constituted in the manner provided by section 99-C of the said Code] [Inserted by Act X of Svt. 2003.],

## **25C. Jurisdiction barred.**

- No order passed or action taken under section 25-A shall be called in question of any Court otherwise than in accordance with the second proviso to sub-section (3) of that section] [Explanation to section 25 and section 25-A, 25-B and 25-C added by Act IV of 1989.].[26 to 28. Repealed] [Sections 26 to 28 repealed by Central Act 41 of 1954.].

# **Chapter VI**

## **Offences and Penalties**

### **29. Offences in respect of imports or exports.**

- Any person who-X X X X(d)imports or exports goods the import or export of which is prohibited under section 25,(e)conceals any prohibited or dutiable goods in his luggage, orX X X X(g)[attempts or abets the commission of offences detailed in clauses (x x ) (d) and (e) (x x x x) shall be liable to fine, which may amount to three times the duty on the goods, if any, in respect of which the offence has been committed, or five hundred rupees, which ever is greater, and the goods in respect of which the offence has been committed shall be liable confiscation.] [Clause (g) added by Chief Ministers letter No 7682/P. 3, 17, dated 29th January, 1917 published in Government Gazette dated 26th Har, 1974.]

### **29A. [ Packages and contents included in confiscation of goods. [Section 29-A inserted by Act IX of Svt. 2007.]**

- The confiscation of any goods under this Act, includes any package in which they are found and all other contents thereof.Also conveyances and animals used in removal. - Every boat, cart or other means of conveyance and every horse or other animal used in the removal of any goods liable to confiscation under this Act, shall in like manner be liable to confiscation.][30. Repealed.] [Section 30 repealed by Central Act 41 of 1954.]

### **31. Obstruction of Customs and Excise Officers.**

- If any person intentionally obstructs any Customs and Excise Officer, or any other person duly employed in the prevention of smuggling, in the exercise of any powers given under this Act to any

such officer or person, he shall be liable to imprisonment not exceeding six months, or to fine not exceeding one thousand rupees, or to both.

### **32. Connivance at fraud or breach of duty by Customs and Excise Officer**

- If any Customs and Excise Officer, or other person duly employed for the prevention of smuggling, practices or attempts to practise any fraud for the purpose of injuring the Customs revenue or abets or connives at any such fraud or any attempt to practise any such fraud, or if any such officer or person is guilty of a wilful breach of the conditions of this Act, he shall be liable to imprisonment for any term not exceeding two years, or to fine not exceeding one thousand rupees, or to both. This punishment shall be in addition to any departmental punishment such as dismissal from service or confiscation of security which the Inspector General of Customs and Excise may order. Appeal against such orders of departmental punishment shall lie to the Minister-in-Charge whose orders shall be final.

### **33. Search on insufficient grounds or disclosure of particulars learnt officially by Customs and Excise Officers.**

- If any Customs and Excise Officer, or other person duly employed as such, requires any person or premises to be searched for dutiable or prohibited goods, or requires any person to be detained without having reasonable grounds to believe that there are dutiable or prohibited goods concealed about such person or premises, and if any such officer or person, except in the discharge of his duty in good faith, discloses any particulars learnt by him in his official capacity, or if any Customs and Excise Officer, except as permitted by the Act, parts with the possession of any samples delivered to him in his official capacity, such officer or person shall be liable to a penalty not exceeding five hundred rupees. [34. Repealed.] [Sections 34 repealed by Central Act 41 of 1954.]

### **35. Offences by whom punishable.**

- The offences described in section 20 shall be punishable by the [Superintendent Customs and Excise,] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.] and those described in sections 31, 32 and 33 by the Magistrate of the first class within whose jurisdiction, respectively, they are committed :[x x x x] [Proviso repealed by Act 41 of 1954.]

### **36. Procedure in enquiries by Superintendents of Customs and Excise.**

- In the conduct of all enquiries held into offences under this Chapter, [Superintendents Customs and Excise] [Substituted by Act IX of Svt. 2008 for 'Inspectors of Customs and Excise'.] shall be guided, so far as is practicable, by the provisions of the law governing the Criminal Procedure of the Government, and all decisions given and sentences imposed by them shall be appealable to the Inspector General of Customs and Excise, [an appeal against whose orders shall lie to [the Government] [Added by order published in Government Gazette dated 18th Sawan. 1961].]

## **Chapter VII**

### **Procedure Relating to Offences**

#### **37. Power to search on reasonable suspicion.**

- Any Customs and Excise Officer duly employed in the prevention of smuggling may search any person who is crossing the frontier of [the territories of the State,] [Substituted by Act X of Svt. 2010 for 'His Highness the Maharaja Bahadur's territory'.] or who has recently crossed it: Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person : Provided also that a female shall not be searched by any but a female.

#### **38. Power to stop carts etc. and search for goods on reasonable suspicion.**

- Any duly empowered Customs and Excise Officer, or other person duly employed for the prevention of smuggling may stop and search for smuggled goods any cart or pack animal or other means of conveyance : Provided that he has reason to believe that smuggled goods are carried thereby.

#### **39. Powers to issue search warrants.**

- Any [Superintendent of Customs and Excise] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.] may, on application by a Customs and Excise Officer stating his belief that smuggled or prohibited goods are secreted in any place within the local limits of his jurisdiction, issue a warrant to search for such goods. Such warrant shall be executed in the same way and shall have the same effect as a search warrant issued under the law relating to Criminal Procedure.

#### **40. Persons reasonably suspected may be arrested.**

- Any person against whom a reasonable suspicion exist that he has been guilty of an offence under this Act may be arrested by any Customs and Excise Officer, or other person duly employed for the prevention of smuggling.

#### **41. Persons arrested to be taken to nearest Magistrate or Superintendent of Customs and Excise.**

- Every person arrested on the ground that he has been guilty of an offence under this Act, shall forthwith be taken before the nearest Magistrate or [Superintendent Customs and Excise] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.].

## **42. Person taken before Magistrates or Superintendents of Customs and Excise may be detained or admitted to bail.**

- When any such person is taken before a Magistrate or [Superintendent Customs and Excise,] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.] he shall be released on giving security to the satisfaction of the officer before whom he is taken to appear at such time and place as such officer may appoint.

## **43. Persons escaping may be afterwards arrested.**

- If any person liable to be arrested under this Act, is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and taken before a Magistrate or [Superintendent Customs and Excise,] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.] to be dealt with as if he had been arrested at the time of committing such offence.

## **44. Seizure of things liable to confiscation.**

- Anything liable to confiscation under this Act may be seized by any Customs and Excise officer or other person duly employed for the prevention of smuggling.

## **45. Things seized how to be dealt with.**

- All things seized on the ground that they are liable to confiscation under this Act as soon as conveniently may be, be deposited in such custody as the Inspector General of Customs and Excise may, from time to time, appoint for the purpose.[46. Repealed.] [Sections 46 and 47 repealed by Central Act 41 of 1954.][47. Repealed.] [Sections 46 and 47 repealed by Central Act 41 of 1954.]

## **48. Enforcement of payment of fine.**

- When a [fine] [Substituted by Act I of Svt. 1998 for 'penalty'.] or increased rate of duty is adjudged against any person under this Act by any Customs and Excise Officer, such officer if such [fine] [Substituted by Act I of Svt. 1998 for 'penalty'.] or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any Customs and Excise Officer. When a Customs and Excise Officer who has adjudged a [fine] [Substituted by Act I of Svt. 1998 for 'penalty'.] or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of [fine] [Substituted by Act IX of Svt. 1998 for 'penalty'.] or increased rate of duty un-recovered, and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such [fine] [Substituted by Act IX of Svt. 1998 for 'penalty'.] or increased rate had been a fine inflicted by himself.

#### **49. Deposit pending appeal of duty demanded.**

- Where any appeal is laid in respect of any duty or [fine] [Substituted by Act IX of Svt. 1998 for 'penalty'.] adjudged under this Act [by any Customs and Excise Officer] [Inserted by Act IX of Svt. 2008.] the owner shall, pending the appeal, deposit in the hands of the [Superintendent Customs and Excise,] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.] for the province in which the dispute arises the amount adjudged by the order appealed against. When delivery of any goods is withheld merely by reason of such amount not having been paid, the [Superintendent Customs and Excise,] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.] shall, upon such deposit being made, cause such goods to be delivered to the owner. If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the [Superintendent Customs and Excise] [Substituted by Act IX of Svt. 2008 for 'Inspector of Customs and Excise'.] shall return such amount or portion, as the case may be to the owner of such goods on demand by such owner.

#### **50. Penalty under the Act not to interfere with punishment under other law.**

- The award of any [fine] [Substituted by Act I of Svt. 1998 for 'penalty'.], confiscation, penalty or increased rate of duty under this Act, shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

### **Chapter VIII**

#### **Miscellaneous**

#### **51. All persons in Government service bound to report offences against the Act.**

- Every officer employed by the Government and every village headman or chowkidar shall be bound to give immediate information to a Customs and Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge, and all such officers and all village headmen and chowkidars shall be bound to take all reasonable measures in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

#### **52. Power to frame rules for grant of rewards for detection of offences.**

- The Government may frame rules for the grant of rewards by the Inspector General of Customs and Excise to Customs and Excise Officers or other persons who have been instrumental to the detection or punishment of offences against this Act.



### **53. No compensation for loss or injury except except on proof of neglect or wilful Act.**

- No owner of goods shall be entitled to claim from any Customs and Excise Officer compensation for any loss or damage occurring to such goods at any time while they remain or are law fully detained at any custom-house, post or mahal or under charge of any Customs and Excise Officer, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such Customs and Excise Officer.

### **54. Notice of proceedings, Limitation.**

- No suit or proceeding shall be commenced against any person for anything purporting to be done in pursuance of this Act, except after a month s previous notice in writing of the intended proceeding and of the cause thereof has been given to such person, nor after the expiration of three months from the accrual of such cause.[55. Repealed.] [Section 55 repealed by Central Act 41 of 1954.]

### **56.**

All rules made under this Act shall be notified in the Jammu and Kashmir Government Gazette and shall .hereupon have the force to law, and any notification made by any authority under powers conferred by this Act may be cancelled in like manner by the same authority.