

Gold (Control) Act, 1968

UNION OF INDIA

India

Gold (Control) Act, 1968

Act 45 of 1968

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1. [Amended by The Gold (Control) Amendment Act, 1971 (Act 21 of 1971) on 24 June 1971]

Gold (Control) Act, 1968(Act 45 of 1968)Last Updated 30th November, 2019[Dated 1st September, 1968]An Act to provide in the economic and financial interests of the community, for the control of the production, manufacture, supply, distribution, use and possession of, and business in gold ornaments and articles of gold and for matters connected therewith or incidental theretoBe it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:-

Chapter 1 Preliminary

1. Short title and extent.

(1)This Act may be called the Gold (Control) Act, 1968.(2)It extends to the whole of India.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)["adjudicating authority" means an authority competent to pass any order or decision under this Act, but does not include the Administrator, Collector (Appeals) or Appellate Tribunal; [Substituted by Act 44 of 1980, (w.e.f. 11-10-1982).](aa)"Administrator" means the Administrator appointed under Section 4;(aaa)"Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under Section 129 of the Customs Act, 1962 (52 of 1962);](b)"article" means any thing (other than ornament), in a finished form, made of, manufactured from or containing, gold, and includes-(i)any gold coin,(ii)broken pieces of an article, but does not include primary gold;(c)"artisan" means a person (other than a certified goldsmith) who is employed by a licensed dealer, whether on cash or deferred payment or on commission, remuneration or other valuable

consideration, to make, manufacture, prepare, repair, polish or process any article or ornament or to melt, process or convert gold for the purpose of making, manufacturing, preparing, repairing or processing any article or ornament;(d)"certified goldsmith" means a self-employed goldsmith who holds a valid certificate, referred to in Section 39;(e)"coin" means a thing which is stamped and issued by or on behalf of Government or by any other authority in exercise of its sovereign power in order to be used for the time being as money, whether such coin is a current coin or not;(ee)["Collector (Appeals)" means a Collector of Central Excise (Appeals) or a Collector of Customs (Appeals) appointed under Section 4 to be a Collector (Appeals) for the purposes of this Act;] [Inserted by Act 44 of 1980, (w.e.f. 11-10-1982).](f)"commencement of Part XII-A of the Defence of India Rules, 1962" means the day on which that Part was initially inserted into the Defence of India Rules, 1962, that is to say, the tenth day of January, 1963;(g)"company" means a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), and includes a foreign company as defined in Section 591 of the said Act;(h)"dealer" means any person who carries on, directly or otherwise, the business of making, manufacturing, preparing, repairing, polishing, buying, selling, supplying, distributing, melting, processing or converting, gold whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes-(i)a Hindu undivided family which carries on such business;(ii)a local authority, company, society registered under the Societies Registration Act, 1860 (21 of 1860), co-operative society incorporated under any law with respect to co-operative societies, club, firm or other association of persons which carries on such business, or-(a)buys or accepts gold (for the purpose of making ornaments) from,(b)makes, manufactures, prepares, repairs or polishes ornaments for,(c)processes, melts or converts gold (for the purpose of making ornaments) for,(d)sells, supplies or distributes ornaments or other gold (for the purpose of making ornaments) to, its members;(iii)a commission agent, broker, del credere agent, auctioneer or other mercantile agent, by whatever name called, who carries on such business on behalf of any principal, but does not include the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or any banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949), in so far as such bank sells or transfers, or exhibits for sale or transfer, any gold.Explanation. - For the purposes of this Act-(a)every person who acts as an agent of a dealer residing outside India and carries on the business of such dealer in India or acts on behalf of such dealer as-(i)a mercantile agent as defined in the Sale of Goods Act, 1930 (3 of 1930), or(ii)an agent for handling gold or documents of title relating to gold, or(iii)an agent for the collection or payment of sale price of gold or as a guarantor for such collection or payment; and(b)every branch in India of a firm or company having its registered office outside India, if such firm or company is a dealer,shall be deemed to be a dealer;(i)"declaration" means a declaration which is required by this Act or was required by Rule 126-I, of the Defence of India Rules, 1962, or the Gold (Control) Ordinance, 1968 (6 of 1968) to be made with regard to the ownership, possession, custody or control of gold;(j)"gold" means gold, including its alloy (whether virgin, melted or re-melted, wrought or unwrought), in any shape or form, or a purity or not less than nine carats and includes primary gold, article and ornament;(k)"gold coin" means a coin made of gold of any purity, whether such purity exceeds nine carats or not;(l)"Gold Control Officer" means a Gold Control Officer appointed under Section 4;(m)"licensed dealer" means a dealer who holds a valid licence granted under Section 27 authorising him to carry on business as a dealer;(n)"licensed refiner" means a refiner who holds a valid licence granted under Section 17 authorising him to carry

on business as a refiner;(o)"notification" means a notification published in the Official Gazette;(p)"ornament" means a thing, in a finished form, meant for personal adornment or for the adornment or any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with all or any of them, and includes parts, pendants or broken pieces of ornament.Explanation. - For the purposes of this Act, nothing made of gold, which resembles an ornament, shall be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State or Union Territory;(q)"prescribed" means prescribed by rules made under this Act;(r)"primary gold" means gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires;(s)"refiner" means a person who, being the owner, lessee or occupier of a refinery, is engaged in the business of melting, assaying, refining, alloying or extracting gold from any ore, salt or chemicals or subjecting it to any other process;(t)"refinery" means a place where gold is melted, assayed, refined, alloyed or extracted from any ore, salt or chemicals or subjected to any other process for the purpose of making primary gold and includes a place where gold is assayed at the request of any dealer or other person, whether for the purpose of making primary gold or not, but does not include a place where gold is melted, alloyed or subjected to any other process by a licensed dealer or his artisan or a certified goldsmith for the purpose of making, manufacturing, preparing, repairing, polishing or processing any article or ornament;(u)"standard gold bar" means primary gold of such fineness, dimensions, weight and description and containing such particulars as may be prescribed;(v)"value", in relation to primary gold, article or ornament, means,-(i)when the gold is seized under this Act, the market price of such gold as on the date on the seizure thereof,(ii)when the gold is not available for seizure, the market price of such gold as on the date on which the notice referred to in Section 79 is issued.Explanation. - "market price",- (i)in relation to gold seized, means the price at which such gold is ordinarily sold or offered for sale at, or near to, the place of seizure; and(ii)in relation to any other gold, means the price at which such gold is ordinarily sold or offered for sale at, or near to, the place where the offence in relation to that gold is detected.

3. Act not to apply to gold belonging to Government or the Reserve Bank.

- Nothing in this Act shall apply to, or in relation to,-(a)any gold belonging to, or in the possession, custody or control of, Government or the Reserve Bank of India,(b)any melting, assaying, refining, alloying, extruding of gold done by Government in any refinery owned or occupied by it, for the purpose of making or manufacturing primary gold for its own use or for the use of the Reserve Bank of India.

Chapter 2

Administrator and Gold Control Officers

4. Appointment and functions of Administrator and Gold Control Officers.

(1)The Central Government shall, by notification, appoint an Administrator for carrying out the purposes of this Act.(2)The Central Government may, by notification, appoint as many persons as it thinks fit to be Gold Control Officers for the purpose of enforcing the provisions of this Act.(3)The Administrator shall discharge his functions subject to the general control and directions of the Central Government.(4)The Administrator may authorise such person as he thinks fit to also exercise all or any of the powers exercisable by him under this Act other than the powers under sub-section (6) of this section [***] [Omitted by Act 44 of 1980, (w.e.f 11-10-1982).] and different persons may be authorised to exercise different powers.(5)Subject to any general or special direction given or condition imposed by the Administrator any person authorised by the Administrator to exercise any powers may exercise those powers in the same manner and with the same effect as if they had conferred on that person directly by this Act and not by way of authorisation.(6)The Administrator may also-(a)perform all or any of the functions of, and(b)exercise all or any of the powers conferred by this Act or any rule or order made thereunder on any officer lower in rank than himself.(7)A Gold Control Officer shall, subject to such limitations, restrictions and conditions as the Central Government may think fit to impose, exercise such powers and discharge such functions as are specified or conferred, as the case may be, by or under this Act.

5. Power of Administrator to issue directions and orders.

(1)The Administrator may, if he thinks fit, make orders, not inconsistent with the provisions of this Act, for carrying out the provisions of this Act.(2)The Administrator may, so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act, by order-(a)regulate, after consultation with the Reserve Bank of India, the price at which any gold may be bought or sold, [* * *] [Omitted 'and' by Act 26 of 1969, (w.e.f. 3-7-1969).][* * *] [Omitted '(b)' by Act 26 of 1969, (w.e.f. 3-7-1969).]

6. Power of Administrator to call for returns as to receipt or sale of hypothecated gold.

(1)The Administrator may, if he is of opinion that it is necessary in the public interest so to do, require any person who lends or advances money on the hypothecation, pledge, mortgage or charge of any article or ornament to make to him, in such form and within such time as may be specified, a return as to the receipt, delivery or sale of such article or ornament and as to the persons from whom they were received or, as the case may be, to whom they were delivered or sold.(2)The Administrator may, by order, authorise any Gold Control Officer to examine the accounts relating to the receipt, delivery or sale of any gold, of any person who advances any money on the hypothecation, pledge, mortgage or charge of any article or ornament, and if any gold is found in the possession of such person which is not entered in such accounts or which is in excess of the quantity shown in such accounts, and which is not otherwise accounted for to the satisfaction of such officer, such gold shall be deemed to be in the possession of such person in contravention of the provisions of this Act.

7. Administrator, etc., to be public servants.

- The Administrator, a Gold Control Officer, and any person authorised by the Administrator or the Central Government and performing any functions under this Act, shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

Chapter 3

Restrictions relating to the Manufacture, Acquisition, Possession, Sale, Transfer or Delivery of Gold

8. Restrictions regarding acquisition, possession and disposal of gold.

(1) Save as otherwise provided in this Act, no person shall-(i) own or have in his possession, custody or control, or (ii) acquire or agree to acquire the ownership, possession, custody or control of, or (iii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, any primary gold, (2) [Save as otherwise provided in this Act, a person may, -(a) (i) acquire or agree to acquire the ownership possession, custody or control of, of (ii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, any ornament, unless he knows or has reason to believe that such ornament, being required to be included in a declaration, has not been so included; (b) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise, dispose of any ornament, but shall not do so if the ornament, being required to be included in a declaration, has not been so included.] (3) Save as otherwise provided in this Act, no person shall-(a) acquire, or agree to acquire, the ownership possession, custody or control of, or (b) buy, accept or otherwise receive, or agree to buy, accept or otherwise receive, any article, except by succession, intestate or testamentary. (4) Save as otherwise provided in this Act, no person shall sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, any article to a person who is not a licensed dealer or refiner: Provided that a person may deliver an article to a certified goldsmith for the purpose of repairing or polishing or for the purpose of getting one or more ornaments made, manufactured or prepared therefrom: Provided further that no such sale, delivery, transfer or disposal of any article shall be made-(i) where such article is required to be included in a declaration unless such article has been included in a declaration which has been duly made by the person who intends to sell, deliver, transfer or otherwise dispose of the same, or (ii) where such article is not required to be include in a declaration, unless the sale delivery, transfer or disposal thereof has been authorised by the Administrator. (5) Notwithstanding anything contained in sub-sections (3) and (4) persons may accept or transfer, by way of gift or exchange, gold coins, not exceeding five in number, if together with the gold coins received by way of gift or exchange, the total holding of gold coins of the donee or transferee, as the case may be, does not exceed fifty grammes. (6) Notwithstanding anything contained in this section, the Administrator may, if he is of opinion that the special circumstances of any case or class of cases so require, authorise any person or class or persons to buy or otherwise acquire, accept, or otherwise receive, or sell, deliver, transfer or otherwise dispose of, any primary gold or article.

9. Restriction on the disposal of gold acquired under any authorisation made by the Administrator.

(1) Every person who acquires gold under any authorisation made by the Administrator shall observe such conditions and be subject to such restrictions as may be specified therein and shall furnish to the Administrator an account of such gold, if so required by the Administrator. (2) No person receiving, accepting, buying or otherwise acquiring gold in accordance with any authorisation made by the Administrator shall—(i) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, or (ii) expose or offer for sale, delivery, transfer, or disposal of, such gold, except in accordance with such authorisation.

10. Loans not to be obtained on hypothecation of primary gold or undeclared gold.

- No person shall obtain from any other person any loan or advance on the hypothecation, pledge, mortgage or charge of—(a) any primary gold, or (b) any article or ornament which is required to be included in a declaration unless such article or ornament has been so included: Provided that, in the case of an article which is not required to be included in a declaration, no transfer or delivery thereof shall be made unless such transfer or delivery has been intimated in writing to the Administrator.

11. Prohibition regarding making, manufacturing, etc., of primary gold, articles, ornaments, etc.

- Save as otherwise provided in this Act, no person shall—(a) make, manufacture, prepare or process, any primary gold, or (b) make, manufacture, prepare, repair, polish or process, any ornament, or (c) make, manufacture, prepare, repair, polish or process, any article, or (d) make, manufacture or prepare anything containing gold of any purity, whether such purity exceeds nine carats or not, or (e) melt, assay, refine, alloy or extract gold of any purity, whether such purity exceeds nine carats or not, or subject such gold to any other process, unless he is authorised so to do by the Administrator. Explanation. - Nothing contained in this sub-section shall apply to the polishing by any person, in his dwelling house, of any article, or ornament, or both, belonging to himself or to any other member of his family. (2) Every authorisation made under sub-section (1) shall be subject to such conditions (including conditions as to the payment or any fee or charges of supervision) and restrictions as may be specified therein.

Chapter 4

Possession of Gold by Public Religious Institutions

12. Ban on possession of primary gold when not to apply to primary gold which forms a part of structure, etc., of public religious institutions.

- Nothing in clause (1) of sub-section (1) of Section 8 shall apply to any primary gold which forms part of any structure or any other construction appendage within the precincts of a temple, church, mosque, gurdwara or any other place of public religious worship if such primary gold has been included in a declaration.

13. Disposal of gold received as offerings.

- Notwithstanding anything contained in the Act public religious institution may receive gold as offerings: Provided that-(a) where any article is received by such institution, as an offering, such article may be-(i) kept by such institution for its use, or (ii) sold to a licensed dealer or refiner, or (iii) converted into ornaments for the deity or idol, or (iv) converted, with the previous permission of the Administrator, into any new article which may be required for worship in the institution or for use in, or decoration of, the structure or other construction or appendage within the precincts of the institution; (b) where any primary gold is received by such institution, as an offering, the institution shall dispose of such primary gold by-(i) converting the same, with the previous permission of the Administrator, into ornaments for the deity, or idol, or into new articles which may be required for worship in the institution or for use in, or decoration of, the structure or other construction or appendage within the precincts of the institution, or (ii) selling the same to such licensed dealer or refiner as may be specified, and under such conditions, limitations and restrictions as may be imposed, by the Administrator.

14. Submission of monthly accounts.

- Without prejudice to the provisions of Chapter V, every public religious institution shall submit, in such form and in such manner as may be prescribed, to the Administrator monthly accounts of gold received by it as offerings and disposed of by it.

15. Responsibility of the person in charge of public religious institution.

- The persons in charge of the management of any public religious institution shall be responsible for anything done or omitted to be done by such institution in relation to any gold.

Chapter 5

Declarations

16. Declarations as to articles or ornaments.

(1) Save as otherwise provided in this Chapter, every person who owns, or is in possession, custody or control of, any article or ornament at the commencement of this Act, or acquires the ownership, possession, custody or control of any article or ornament thereafter, shall make, within thirty days from such commencement or from such acquisition, as the case may be, or within such further period as the Administrator may, on sufficient cause being shown, allow, a declaration in the

prescribed form as the quantity, description and other prescribed particulars of any article, or ornament, or both, owned, possessed, held or controlled by him: Provided that no such declaration shall be required to be made where a person who, having owned, possessed, held or controlled any article or ornament before the commencement of this Act, has already made a declaration in relation to that article, or ornament, or both: Provided further that nothing in this sub-section shall be construed as enabling any declaration to be made in respect of any gold for which the period prescribed or allowed under the law for the time being in force before the commencement of this Act had expired before such commencement. (2) For the removal of doubts, it is hereby declared that the declaration referred to in this section shall be made, in relation to any article, or ornament, or both, - (a) owned by a minor or a lunatic, by the guardian or manager of such minor or lunatic as the case may be; (b) owned by an idol or a deity, by the manager of such idol or deity, whether known as shebait or manager or by any other name; (c) owned, possessed, held or controlled by a person whose properties are under the management of any administrator or receiver, by such administrator or receiver; (d) owned, possessed, held or controlled by a person whose properties are under the management of a Court of Wards, by the manager of such Court; (e) vested in an executor or an administrator of a will or other testamentary disposition, by such executor or administrator; (f) owned, possessed, held or controlled by the members of a firm, by any partner of such firm; (g) owned, possessed, held or controlled by a Hindu Undivided Family, by the head or karta or such family; (h) which is the subject matter of any public or private trust, by the trustee of such trust; (i) owned, possessed, held or controlled by a company, whether incorporated in or outside India, by any person in charge of the management of the affairs of such company; (j) belonging to a temple, church, mosque, gurdwara or any other religious institution, by the person in charge of the management of such temple, church, mosque, gurdwara or other religious institution; (k) which is wakf property, by the mutawalli of such wakf; (l) owned, possessed, held or controlled by any society, club or other association, by the secretary or manager of such society, club or other association; (m) owned, possessed, held or controlled by any other person, by such person as may be prescribed. (3) If any person who did not own, possess, hold or control, before the commencement of this Act, any quantity of gold in excess of the quantities specified in sub-section (5), acquires after such commencement, the ownership (whether by succession, intestate or testamentary, or otherwise), possession, custody or control of any gold and if, as a result of such acquisition, the total quantity of gold owned, possessed, held or controlled by such person exceeds the quantities specified in sub-section (5), such person shall, within thirty days from the date of such acquisition or within such further period as the Administrator may, on sufficient cause being shown, allow, make a declaration in the prescribed form stating the total quantity, description and other prescribed particulars of - (a) the gold owned, possessed, held or controlled by him immediately after such acquisition, and (b) the persons from whom the ownership, possession, custody or control of such gold was acquired. (4) If any person who has made a declaration, whether under sub-section (1) or under sub-section (3) or under Part XII-A of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968 (6 of 1968), as to gold owned, possessed, held or controlled by him, acquires (whether by succession, intestate or testamentary, or otherwise) or parts with, after such declaration, the ownership, possession, custody or control of any quantity of gold, he shall, as often as he acquires or parts with the ownership, possession, custody or control of any quantity of gold, make, within thirty days from the date of such acquisition or parting with, or within such further period as the Administrator may, on sufficient cause being shown, allow, a further declaration in the

prescribed form stating the quantity, description and other prescribed particulars of the gold in relation to which such ownership, possession, custody or control has been acquired or parted with by him and giving the prescribed particulars of the person from whom the ownership, possession, custody or control of such gold was acquired or in whose favour the ownership, possession, custody or control of such gold was parted with, as the case may be. (5) No declaration referred to in sub-section (1) or sub-section (3) shall be required to be made, - (a) in relation to articles, unless the total weight of articles owned, possessed, held or controlled by, - (i) a minor, who is not a member of a family, exceeds twenty grammes, (ii) an individual (other than a minor), who is not a member of a family, exceeds fifty grammes, (iii) a family, exceeds fifty grammes, (iv) any person referred to in clauses (b) to (f) and (h) to (m) of sub-section (2), exceeds fifty grammes; (b) in relation to any ornaments, or both articles and ornaments, where both articles and ornaments are owned, possessed, held or controlled, unless the total weight of such ornaments or both articles and ornaments, as the case may be, owned, possessed, held or controlled by, - (i) an individual who is not a member of a family, exceeds two thousand grammes, (ii) a family, exceeds four thousand grammes; (c) in relation to any ornaments, or both articles and ornaments, owned, possessed, held or controlled by any person referred to in clauses (b) to (f) and (h) to (m) of sub-section (2), unless the total weight of such ornaments, or both articles and ornaments, exceeds two thousand grammes. (6) For the purposes of this section, "family" shall be deemed to consist of - (i) the husband, wife and one or more minor children, or (ii) any two or more of them, but shall not be deemed to include any other person. (7) Every licensed dealer or refiner shall make a declaration or further declaration, as the case may be, in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him in any capacity other than the capacity of a licensed dealer or refiner and the provisions of sub-section (5) shall not apply to such gold. Explanation. - Where the licensed dealer or refiner is a company or other body corporate or a firm, the declaration referred to in this sub-section shall also be made by every director of such company or body corporate or, as the case may be, every partner of such firm, in respect of the gold owned, possessed, held or controlled by him in any capacity. (8) Every declaration made under this section shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control Officer and thereafter shall be returned to the person making the declaration and the copy so returned shall be retained by such person as evidence of the declaration made by him under this section. (9) Every declaration made under this section shall be kept by the Gold Control Officer in safe custody and the particulars thereof shall be entered in a register to be maintained for this purpose. (10) A person who has made a declaration shall, as often as he acquires or parts with, after such declaration the ownership, possession, custody or control of any quantity of gold, endorse within thirty days from the date of such acquisition, or parting with, of gold, in such manner as may be prescribed, on the copy of the declaration retained by him, and shall also produce such copy within seven days from the date of such endorsement, before the Gold Control Officer, who shall make necessary changes in the register referred to in sub-section (9) and also in the copy of the declaration kept in his safe custody. (11) No person shall own or have in his possession, custody or control any quantity of gold which is required to be included in a declaration unless such gold has been included in a declaration or further declaration, as the case may be: Provided that nothing in this sub-section shall apply until the expiry of the period within which a person is entitled to make a declaration or further declaration. (12) A person upon whom a penalty has been imposed or whose gold has been confiscated under the provisions of Chapter XIII for failure to make a declaration

shall, if so directed by the authority adjudging the penalty or confiscation, make a declaration within such time as may be specified in the direction.(13)Where the period prescribed or allowed under the law in force immediately before the commencement of this Act, for any declaration to be made in respect of any gold, had not expired before such commencement, the declaration may be made within the period prescribed or allowed under such law.

Chapter 6

Refiners

17. Licensing of refiners.

(1)Save as otherwise provided in this Act, no person shall either establish a refinery or carry on business as a refiner unless he holds a valid licence issued in his behalf by the Administrator.(2)A licence issued under this section,-(a)shall be in such form as may be prescribed,(b)shall be valid for such period as may be specified therein,(c)may be renewed, from time to time, and(d)[shall be subject to such conditions and restrictions as may be prescribed.] [Substituted by Act 26 of 1969.](3)Every licence issued under Part XII-A of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968 (6 of 1968) authorising the establishment of a refinery or carrying on of business as a refiner, shall, if in force immediately before the commencement of this Act continue to be in force until the expiry of the period of its validity or until the cancellation thereof, whichever is earlier.(4)A person who holds, at the commencement of this Act, a valid licence authoring him to establish a refinery or to carry on business as a refiner shall, if he intends to continue such business after the expiry of the period of its validity, make, at least one month before the expiry of such period, an application (in such form and on payment of such fees, not exceeding one hundred rupees as may be prescribed) for the renewal of such licence.(5)A person who intends to establish a commence, after the commencement of this Act, a refinery or business as a refiner, shall make an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the issue of a licence.(6)[(a) No application for the issue of or licence to commence or carry on business as a refiner shall be granted unless the Administrator, after making such inquiry as he may think fit, is satisfied with regard to the following matters, namely:-(i)the security of the premises where the applicant intends to carry on business as a refiner, the suitability of such premises for being used as a refinery, and the existence therein of arrangements for the storage of gold before and after refining;(ii)the existence, in such premises, of equipment for the manufacture of standard gold bars, or for assaying of gold, and the quality and adequacy of such equipment;(iii)the existence, in such premises of facilities for the exercise of supervision and control by the Administrator or any other person authorised by him in this behalf;(iv)the competence of the applicant to manufacture standard gold bars; and(v)such other matters as may be prescribed.(b)No application for the renewal of licence to carry on business as a refiner shall be rejected unless-(1)the holder of such licence has been given a reasonable opportunity of presenting his case, and(2)the Administrator is satisfied that-(i)the application for such renewal has been made after the expiry of the period specified therefor, or(ii)the refinery does not continue to satisfy the matters specified in sub-clauses (i), (ii), (iii) or (v) of clause (a), or(iii)any statement made by the applicant at the time of the issue or renewal of the licence was incorrect or false in

material particulars, or (iv) the applicant has contravened any term or condition of the licence or any provision of this Act or rule or order made thereunder or of any other law for the time being in force in so far as such law prohibits or restricts the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange) or the dealing in such goods by way of acquisition or otherwise. (c) Notwithstanding anything contained in clause (a) or clause (b), a licence to commence or carry on business as a refiner shall not be issued or renewed if the Administrator, after giving the applicant a reasonable opportunity of presenting his case, is satisfied that the entire volume of the refining business done, or proposed to be done, by the applicant may be conveniently done at a refinery established or run by Government or by a corporation owned or controlled by Government. (d) Every order granting or rejecting an application for the issue or renewal of a licence shall be made in writing. (7) Any person to whom a licence has been issued or renewed under this section shall comply with the provisions of every law, rule, regulation or bye-law for the time being in force relating to refineries. (8) A person to whom a licence to carry on business as a refiner is issued under this section shall not carry on business as such refiner in the same premises in which he or any other person carries, on business, whether as a dealer or otherwise, or as a money-lender or banker who lends or advances money on the hypothecation, pledge, mortgage or charge of any gold. (9) Every licensed refiner shall ensure that every person employed by him in the refinery complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and of any other law relating to gold or foreign exchange for the time being in force.

18. Refiner to make standard gold bars only.

(1) A licensed refiner may make or manufacture standard gold bars but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare primary gold in any other form: Provide that such refiner may, in the process of manufacturing standard gold bars, make, manufacture or prepare primary gold. (2) Unless authorised by the Administrator so to do, a licensed refiner shall not make, manufacture, prepare, repair or polish any article or ornament.

19. Standard gold bar to be stamped.

(1) Every licensed refiner, who makes, manufactures or prepares standard gold bars shall put a stamp on each such gold bar certifying its purity and such stamp shall also contain such other particulars as may be prescribed. (2) No stamp referred to in sub-section (1) shall be used in stamping any standard gold bar unless such stamp has been approved by the Administrator.

20. Acquisition of gold by a refiner.

- Subject to the provisions, of Section 8, a licensed refiner may buy or otherwise acquire or accept or otherwise receive primary gold, article or ornament from a person for the purpose of refining such gold for making, manufacturing or preparing standard gold bars therefrom.

21. Sale or delivery of gold by a refiner.

- Save as otherwise provided in this Act, no licensed refiner shall sell, deliver, transfer or otherwise dispose of gold in any form, other than in the form of standard gold bars and no such sale, delivery, transfer or disposal shall be made to any person other than a licensed dealer or refiner or certified goldsmith: Provided that a licensed refiner may sell standard gold bars to any person or production by that person of a permit granted by the Administrator in this behalf or to such other person as the Administrator may authorise in this behalf.

22. Licensed refiner to comply with conditions, etc.

- A licensed refiner shall not-(i) buy or otherwise acquire or accept or otherwise receive, or (ii) melt, assay, refine alloy or extract gold or subject to it any other process, or (iii) sell, deliver, transfer or otherwise dispose of, any gold, except under such conditions, limitations and restrictions as may be prescribed.

23. Prohibition regarding possession of gold not included in any return.

- Except in the case of any quantity of gold acquired, accepted, bought or received after the date of making of any return referred to in Section 56, no licensed refiner shall, in his capacity as such refiner, either own or have in his possession, custody or control any gold which has not been included in such return: Provided that any gold acquired, accepted, bought or received after the date of making such return shall be included in the next succeeding return.

24. Licensed refiner not to keep in a refinery any gold which is not a part of his stock.

- in-trade.-Save as otherwise provided in this Act, no licensed refiner shall keep in his refinery any primary gold, article or ornament which is not a part of his stock-in-trade or held by him in his capacity as a refiner and every primary gold, ornament or article found in such refinery shall be deemed to be a part of his stock-in-trade or held by him in his capacity as a refiner.

25. Gold where to be refined when silver, etc., is also refined, in the same premises.

- If a refiner carries on, in the same premises, the business of refining silver or other metal, he shall carry on the business of refining gold in such part of the premises and under such conditions, limitations and restrictions as may be specified by the Administrator.

26. Silver refiner to keep record of gold recovered from such refining.

- Every person who refines or melts silver, including its alloys, shall-(a) maintain a record of gold, if any, recovered from such refining or melting; (b) declare on or before the fifth day of each month, in

such form as may be prescribed, the quantity of gold so recovered during the month immediately preceding;(c)sell such gold within a period of thirty days from the date of such declaration or within such further period, as, on sufficient cause being shown, may be allowed by the Administrator, to a licensed refiner or, if so authorised by the Administrator, to a licensed dealer [or to such other person or authority as may be specified by rule made in this behalf] [Substituted by Act 26 of 1969,(w.e.f. 3-7-1969).].

Chapter 7

Dealers

27. Licensing of dealers.

(1)Save as otherwise provided in this Act, no person shall commence, or carry on, business as a dealer unless he holds a valid licence issued in this behalf by the Administrator.(2)A licence issued under this section,-(a)shall be in such form as may be prescribed,(b)shall be valid for such period as may be specified therein,(c)may be renewed, from time to time, and(d)[shall be subject to such conditions and restrictions as may be prescribed.] [Substituted by Act 26 of 1969.](3)Every licence issued under Part XII-A of the Defence of India Rules, 1962, under the Gold (Control) Ordinance, 1968 (6 of 1968), authorising the commencement or carrying on of business as a dealer, shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity or until the cancellation thereof, whichever is earlier.(4)A person who holds, at the commencement of this Act, a valid licence authorising him to commence or to carry on business as a dealer, shall, if he intends to continue such business after the expiry of the period of its validity, make, at least one month before the expiry of such period, an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the renewal of such licence.(5)A person who intends to commence, after the commencement of this Act, business as a dealer, shall make an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the issue of a licence.(6)[(a) No application for the issue of a licence to commence or carry on business as a dealer shall be granted unless the Administrator, having regard to such matters as may be prescribed in this behalf and after making such inquiry in respect of those matters as he may think fit, is satisfied that the licence should be issued.(b)No application for the renewal of a licence to carry on business as a dealer shall be rejected unless the holder of such licence has been given a reasonable opportunity of presenting his case and unless the Administrator is satisfied that-(i)the application for such renewal has been made after the expiry of the period specified therefor, or(ii)any statement made by the applicant at the time of the issue or renewal of the licence was incorrect or false in material particulars, or(iii)the applicant has contravened any term or condition of the licence or any provision of this Act or any rule or order made thereunder or of any other law for the time being in force in so far as such law prohibits or restricts the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange) or the dealing in such goods by way of acquisition or otherwise, or(iv)the applicant does not fulfil the prescribed conditions.(c)Every order granting or rejecting an application for the issue or renewal of a licence shall be made in writing.][(6-A) Where the Central Government, having regard to the quantity of gold produced in India and the supply

therein of gold through lawful channels, is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, notwithstanding anything contained in this section, direct the Administrator to restrict or reduce the number of licensed dealers to such extent and in such manner as maybe specified by rules made in this behalf: Provided that no such rules shall come into force until the expiry of the period referred to in sub-section (3) of Section 114 and if, before the expiry of the said period, both Houses of Parliament agree in making any modification in the rule or both Houses of Parliament agree that the rule should not be made, the rule shall come into force only in such modified form or be of no effect, as the case may be.] [Inserted by Act 26 of 1969, (w.e.f. 3-7-1969).](7)(a)The Administrator shall specify, in each licence granted to a dealer, the premises in which such dealer shall carry on business and no other person shall carry on business as dealer in the said premises.(b)A licensed dealer shall not carry on business as such dealer in any premises other than the premises specified in his licence.(8)Every licensed dealer shall ensure that every artisan or other person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and of any other law relating to gold or foreign exchange for the time being in force.

28. Moneylending business not to be carried on in licensed premises.

- No licensed dealer shall, unless authorised by the Administrator so to do, -(a)carry on business as a moneylender or banker on the security of any article, ornament, or both,(b)permit any other person to carry on moneylending, banking or any other business in the same premises in which he carries on business as such dealer.

29. What a dealer may manufacture.

- Subject to the other provisions of this Act, a licensed dealer may make, manufacture, prepare, repair, polish or process ornaments and may also repair or polish articles, but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare any primary gold or article: Provided that such dealer may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article, ornament or standard gold bar acquired, accepted or received by him in accordance with the provisions of Part XII-A of the Defence of India Rules, 1962, or, as the case may be, the Gold (Control) Ordinance, 1968 (6 of 1968), or of this Act.

30. Ornament, etc., to be stamped.

(1)Every licensed dealer shall stamp every piece of article or ornament made, manufactured or prepared by him certifying the purity of the gold: Provided that nothing in this section shall apply to any article or ornament on which, owing to its nature or the smallness of its size, it is not possible to put such a stamp.(2)Every stamp referred to in sub-section (1) shall also contain such other particulars as may be prescribed.

31. Acquisition of gold by a dealer.

- Save as otherwise provided in this Act, no licensed dealer shall buy or otherwise acquire or agree to buy or otherwise acquire or accept or otherwise receive or agree to accept or otherwise receive any article, ornament or primary gold from a person who is not a licensed dealer or refiner: Provided that any such dealer may buy or otherwise acquire or accept or otherwise receive or agree to buy or otherwise acquire or accept or otherwise receive from a person who is not a licensed dealer or refiner, - (i) [any ornament, unless he knows or has reason to believe that such ornament, being required to be included in a declaration, has not been so included,] [Substituted by Act 26 of 1969.] (ii) any article which, being required to be included in a declaration has been so included, or where such article is not required to be included in a declaration, if the sale, delivery, transfer or disposal of such article has been authorised by the Administrator, (iii) any primary gold, if the person selling, delivering, transferring, or otherwise disposing of the same, has been authorised so to do by the Administrator: Provided further that where any such dealer has delivered any article, ornament or primary gold to his artisan or a certified goldsmith, for the purpose of making, manufacturing, preparing, repairing or polishing any ornament, he may, after such ornament has been made, manufactured, prepared, repaired or polished, take back such ornament from the artisan or certified goldsmith, as the case may be.

32. [Possession of primary gold by a licensed dealer. [Substituted by Act 26 of 1969, Section 8, for Section 32 (w.e.f. 3-7-1969).]

(1) Save as otherwise provided in this Act, no licensed dealer shall have, at any time, in his possession or custody primary gold in any form except in the form of standard gold bars: Provided that nothing in this section shall apply to primary gold which is obtained in the process of, or in connection with, the making, manufacturing, preparing or repairing of one or more articles or ornaments, if the total quantity of such primary gold in the possession or custody of such dealer does not, at any time, exceed - (a) four hundred grammes, if he does not employ any artisan, (b) five hundred grammes, if he employs not more than ten artisans, (c) one thousand grammes, if he employs more than ten but not more than twenty artisans, (d) two thousand grammes, if he employs more than twenty artisans: Provide further that the Central Government may, having regard to the needs of the trade, volume of business and the interests of the general public, increase the quantitative limits specified in the foregoing proviso. (2) Where a licensed dealer has cut a standard gold bar and has transferred or delivered a part thereof to a certified goldsmith or an artisan for the purposes specified in Section 35, he may, notwithstanding anything contained in sub-section (1), have in his possession or custody the remnant of such bar which is left with him, and in computing the quantities specified in the first proviso to sub-section (1), such remnant be excluded.] [Substituted by Act 26 of 1969.]

33. Gold which is not a part of the stock.

- in-trade, not to be kept in the business premises of a dealer. - No licensed dealer shall keep in the premises where he carries on business as such dealer any primary gold, article or ornament which is

not a part of his stock-in-trade or held by him in his capacity as a dealer and every primary gold, ornament or article found in such premises shall be deemed to be a part of the stock-in-trade of such dealer or held by him in his capacity as a dealer.

34. Sale or delivery of gold by a licensed dealer or certified goldsmith.

(1)A licensed dealer may sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of ornaments to any person.(2)Save as otherwise provided in this Act, no licensed dealer shall-(a)sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of, or(b)expose or offer for sale, delivery, transfer or disposal-(i)primary gold to any person other than a license dealer or refiner or certified goldsmith,(ii)any article to any person other than a licensed dealer or refiner:Provided that a licensed dealer shall not sell or transfer primary gold to any other licensed dealer or to any certified goldsmith in any form except in the form of standard gold bars.(3)Notwithstanding anything contained in sub-section (2), a licensed dealer may sell or deliver primary gold or article to any person in pursuance of an authorisation made by the Administrator or on production by that person of a permit granted by the Administrator in this behalf.

35. Section 34 not to apply to the transfer of gold to a certified goldsmith or to an artisan.

- Nothing contained in Section 34 shall apply to the transfer or delivery, by a licensed dealer, of any primary gold or article to any certified goldsmith or artisan for the purpose of getting any ornaments made, manufactured, prepared, repaired or polished by such certified goldsmith or artisan.

36. Acquisition, sale, etc., of gold to be subject to conditions.

- Every acquisition, acceptance, sale delivery, transfer or disposal of gold by a licensed dealer shall be made in accordance with such conditions, limitations and restrictions as may be prescribed in this behalf.

37. Licensed dealers may take assistance of specialists.

- A licensed dealer may, in the course, and for the purpose, of manufacturing ornaments, send gold to any other dealer who possesses equipment for drawing wires or for die-casting or who is a specialist in stone-setting, engraving, enamelling, polishing or any other special process necessary for an ancillary to, the making, manufacturing, preparing, repairing or polishing of such ornament and that other dealer shall return such gold to the licensed dealer from whom he had received it after the completion of the process for which it was sent to him.

38. Prohibition regarding possession of gold not included in any return.

- Except in the case of any quantity of gold acquired, accepted or received after the date of making of any return referred to in Section 56, no licensed dealer shall, in his capacity as such dealer, either own or have in his possession, custody or control any gold which has not been included in such return: Provided that any gold acquired, accepted or received after the date of making such return shall be included in the next succeeding return.

Chapter 8

Certified Goldsmiths

39. Certified goldsmiths.

(1) Save as otherwise provided in this Act, no person shall commence or carry on, business as a goldsmith after the commencement of this Act, unless he holds a valid certificate recognizing him as a goldsmith. (2) The certificate referred to in sub-section (1)-(a) shall be in such form as may be prescribed, (b) shall be valid until the death of the holder, or the cancellation, thereof, whichever is earlier, and (c) [shall be subject to such conditions and restrictions as may be prescribed.] [Substituted by Act 26 of 1969.] (3) Every certificate granted to a persons under Part XII-A of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968 (6 of 1968), recognising him as a goldsmith, shall, if in force immediately before the commencement of this Act, continue to be in force until the death of the holder, or the cancellation, thereof, whichever is earlier. (4) On and from the commencement of this Act, the following classes of persons shall be eligible to apply for the grant of a certificate, namely:-(a) a person who had been carrying on business as a goldsmith for more than a year immediately before the commencement of Part XII-A of the Defence of India Rules, 1962; (b) a person who, at the commencement of this Act, is a member of the family of a certified goldsmith and had been assisting him in his work as a goldsmith for not less than one year; (c) a person who has received any loan from the Government under any scheme for the rehabilitation of goldsmiths and has made, within six months from the commencement of this Act, an application for the grant of a certificate: Provided that a certificate granted to such person shall be cancelled unless he repays the loan, within a period of two years from the date of the grant of such certificate, in such instalment as the authority by which the loan was granted may specify in this behalf; (d) an artisan if he surrenders his identity card as an artisan; (e) [a person who belongs to a prescribed category or class to which, in the opinion of the Central Government, the certificate may be granted.] [Substituted by Act 26 of 1969.] Explanation. - A person who is engaged as a hired labourer by a certified goldsmith shall not be eligible to receive a certificate under this section. [(4-A) Where the Central Government, having regard to the interests of the general public, is of opinion that for the continuance or development of the industry of semi-manufactures and manufactures of gold, it is necessary so to do, it may, notwithstanding anything contained in sub-section (4), by notification, empower the Administrator to entertain applications for the grant of certificates referred to in sub-section (1), from persons who possess such qualifications and fulfil such conditions as may be prescribed.] [Inserted by Act 26 of 1969, (w.e.f. 3-7-1969).] (5) Every application for the grant of a certificate referred to in sub-section (1) shall be made in such form, in

such manner and on payment of such fee, not exceeding ten rupees, as may be prescribed.(6)On receipt of an application for the grant of a certificate, the Administrator may, after making such inquiry, if any, as he may consider necessary as to the antecedents of the applicant, his competence to work as a goldsmith and his suitability for the grant of a certificate, by order in writing, either grant the certificate or reject the application for the same.(7)Every certified goldsmith shall have in his possession the certificate granted to him while he carries on business as such goldsmith and shall produce it for inspection on demand by any Gold Control Officer.(8)A certified goldsmith may engage not more than one hired labourer to assist him in his work as a goldsmith but such hired labourer shall not make, manufacture, prepare, repair or process any article or ornament.

40. What a certified goldsmith may manufacture.

- A certified goldsmith may make, manufacture, prepare, repair, polish or process ornaments and may also repair or polish articles but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare any primary gold or article:Provided that, subject to the provisions of Section 42, a certified goldsmith may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article, ornament or standard gold bar acquired, accepted or received by him in accordance with the provisions of Part XII-A of the Defence of India Rules, 1962, or, as the case may be, the Gold (Control) Ordinance, 1968 (6 of 1968), or of this Act.

41. Restrictions on acquisition or sale of gold by a certified goldsmith.

- A certified goldsmith-(a)may-(i)buy standard gold bars from a licensed dealer or refiner,(ii)accept or otherwise receive any article, ornament or primary gold from a licensed dealer for the purpose of making, manufacturing, preparing, or repairing ornaments for such licensed dealer.(iii)accept or otherwise receive, subject to the provisions of Section 8, from any other person any article or ornament for the purpose of making, manufacturing or preparing ornament for such person or for the purpose of repairing or polishing such article or ornament;(b)shall not, save as otherwise provided in this Act, buy or agree to buy or sell or agree to sell any primary gold, article or ornament.

42. Limit on primary gold which a certified goldsmith may possess.

- No certified goldsmith shall either own or have at any time in his possession, custody or control any quantity of-(i)standard gold bars in excess of one hundred grammes, or(ii)any quantity of primary gold (including standard gold bars) in excess of three hundred grammes.

43. Section 37 to apply to certified goldsmiths.

- The provisions of Section 37 shall apply so far as may be to a certified goldsmith as they apply to a licensed dealer subject to the modification that every reference therein to a licensed dealer shall be construed as a reference to a certified goldsmith.

Chapter 9

Artisans

44. Artisans.

(1)A licensed dealer may employ, whether on a whole-time or part-time basis or on payment of daily wages or other remuneration, an artisan-(a)who is or was a dealer or a goldsmith or was employed by a dealer, for a period of not less than one year immediately preceding the commencement of Part XII-A of the Defence of India Rules, 1962 or at any time thereafter but before the commencement of this Act, or(b)who is eligible to obtain a certificate recognising him as a goldsmith.(2)No person shall be employed by any licensed dealer as an artisan unless an identity card has been given to such artisan by the licensed dealer and no artisan, the counter-signature of whose identity card has been refused or whose identity card has been cancelled, shall be employed by licensed dealer after such refusal or cancellation.(3)Before employing an artisan, a licensed dealer shall make inquiries as to the antecedents of the artisan and grant him an identity card, in such form and containing such particulars as may be prescribed, and enter the name and the prescribed particulars of such artisan in a register to be maintained in such form as may be prescribed and shall send such identity card within one month from the date of issue thereof to the Gold Control Officer for approval and counter-signature.(4)On receipt of the identity card of an artisan under this Act the Gold Control Officer may, after making such inquiry, if any, as he may consider necessary, either countersign the identity card or if he is of opinion that the applicant is not a suitable person for employment as an artisan, refuse in writing to countersign such identity card.(5)The Gold Control Officer may, if he is satisfied that the particulars of an artisan, as entered in the register referred to in sub-section (3) are incorrect or false in material particulars or that the artisan has contravened any provision of this Act or any rule or order made thereunder or of any other law relating to gold or foreign exchange for the time being in force, cancel the identity card of such artisan:Provided that no such cancellation shall be made unless the artisan has been given a reasonable opportunity of showing cause against the proposed action.(6)The identity card,-(a)of an artisan, who is dismissed by the dealer by whom he is employed, or(b)the countersignature of which has been refused, or(c)which has been cancelled,shall be immediately recovered by the licensed dealer by whom the artisan holding such card is employed and such dealer shall immediately recover all the quantity of gold which was in the possession, custody or control or control or such artisan on the date of such dismissal, refusal or cancellation, as the case may be.(7)No licensed dealer or certified goldsmith shall accept employment as an artisan unless he has, before commencing work as an artisan, surrendered his licence or certificate, as the case may be, to the Gold Control Officer:Provided that where such licensed dealer or certified goldsmith makes an application to the effect that he intends to resume business as such dealer or goldsmith, the licence or certificate as the case may be, which was surrendered by him may be restored to him and thereupon he shall surrender the identity card which was granted to him under this section:Provided further that no such restoration shall be made if such dealer or goldsmith has, while functioning as an artisan, contravened any provision of this Act or of any rule or order made thereunder or of any other law, for the time being in force, relating to gold or foreign exchange.

45. Functions of an artisan.

- Subject to the other provisions of this Act, an artisan may make, manufacture, prepare, repair or polish ornaments, and may also repair or polish an article, for the dealer by whom he is employed, but shall not, unless the dealer by whom he is employed is authorised by the Administrator, so to do, make, manufacture or prepare any primary gold or article: Provided that such artisan may, in the process of making, manufacturing preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article or ornament or standard gold bar received by him from the licensed dealer by whom he is employed.

46. [Limit on primary gold which an artisan may have in his possession. [Substituted by Act 26 of 1969, (w.e.f. 3-7-1969).]

- The total quantity of primary gold in the possession or custody, whether individually or collectively, of the artisans employed by a licensed dealer shall not, at any time, exceed the quantitative limit applicable, under sub-section (1) of Section 32, to such dealer.] [Substituted by Act 26 of 1969.]

47. Restrictions on the acquisition, or disposal of gold by an artisan.

(1) An artisan may accept article, ornament or primary gold from the licensed dealer by whom he is employed for the purpose of making, manufacturing, preparing, repairing or polishing ornaments for such dealer. (2) No artisan shall, save as otherwise provided in this Act, - (i) buy or otherwise acquire or agree to buy or otherwise acquire, or (ii) accept or otherwise receive or agree to accept or otherwise receive, or (iii) sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of, any article, ornament or primary gold.

48. Artisan not to work at any place other than the premises of the dealer.

- An artisan shall not work as such at any place other than the premises specified in the licence issued to the dealer by whom he is employed.

49. Artisans, to carry identity cards with them.

- Every artisan shall have in his possession the identity card granted to him while he carries on work as such artisan and shall produce it for inspection on demand by any Gold Control Officer.

Chapter 10

Cancellation and Suspension of Licences and Certificates

50. Cancellation or suspension of licence or certificate.

(1)The Administrator may, if he has any reasonable cause to believe that the holder of any licence or certificate issued, renewed or continued under this Act has made any statement in, or in relation to, any application for the issue or renewal of a licence or for the issue of a certificate under this Act which is incorrect or false in material particulars or has contravened any provisions of Part XII-A of the Defence of India Rules, 1962, the Gold (Control) Ordinance, 1968 (6 of 1968), or of this Act or any rule or order made thereunder or of any other law for the time being in force which prohibits, restricts or regulates the bringing into or taking out of India of any goods [including coins, currency (whether Indian or foreign) and foreign exchange] [Inserted by Act 26 of 1969.] or the carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing such goods or the making of any payment in relation to such goods, [suspend such licence or certificate, as the case may be, pending the completion of any inquiry or trial against the holder of such licence or certificate, for making such incorrect or false statement or for such contravention, as the case may be:Provided that no such license or certificate shall be suspended for a period exceeding ten days unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.] [Inserted by Act 26 of 1969.][* * *] [Omitted by Act 26 of 1969, (w.e.f. 3-7-1969).][(1-A) The Administrator may, if he is satisfied, after making such inquiry as he may think fit, that the holder of any licence or certificate issued, renewed or continued under this Act has made such incorrect or false statement as is referred to in sub-section (1) or has contravened the provisions of such law, rule or order as is referred to in that sub-section, cancel such licence or certificate, as the case may be:Provided that no licence or certificate shall be cancelled shall be cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.] [Substituted by Act 26 of 1969.](2)Every person whose licence or certificate has been suspended shall, immediately after such suspension, stop functioning as such licensee or holder of such certificate and shall not resume business as such licensee or holder of such certificate until the order of such suspension has been vacated.(3)Every person who holds a licence or certificate which is suspended or cancelled shall, immediately after such suspension or cancellation, surrender such licence or certificate, as the case may be, to the authority by which such licence or certificate was issued.

51. Cancellation of licence or certificate on application by dealer, refiner or certified goldsmith.

- A licensed dealer or refiner or a certified goldsmith who discontinues, or intends to discontinue, business as such dealer or refiner or certified goldsmith, may make an application to the Administrator for the cancellation of his licence or certificate, as the case may be, and thereupon the Administrator may cancel the licence or certificate which was issued or renewed to such dealer or refiner or certified goldsmith.

52. Licence to a firm to be invalid if there is any change in the partnership of a firm.

- Where any firm has been licensed under this Act to carry on business as a dealer or refiner, such licence shall, notwithstanding anything contained in this Act, become invalid on and from the date on which there is a change in the partnership of such firm, unless such change in the partnership has been approved by the Administrator.

53. Disposal of gold in the possession of licensed dealers, refiners and certified goldsmiths in certain cases.

- Where the period of validity of any licence issued to a dealer or refiner has expired or where any application for the renewal of such licence has been rejected, or where such licence or a certificate granted to a goldsmith has been cancelled, such dealer, refiner or certified goldsmith, as the case may be, shall within thirty days from the date of such expiry, rejection or cancellation, -(i) sell or otherwise transfer to any other licensed dealer or refiner the entire quantity of gold (other than ornaments) in his possession, custody or control on the date of such expiry, rejection or cancellation, as the case may be, and send intimation thereof to the Administrator; and (ii) either sell or otherwise transfer or take over as personal property any ornament which is in his possession, custody or control on the said date.

54. Display of licences.

- Every licensed dealer and every licensed refiner shall display his licence at a conspicuous place of the premises in which he carries on business as licensed dealer or refiner.

Chapter 11

Accounts and Returns

55. Accounts.

(1) Every licensed dealer, every licensed refiner and every certified goldsmith shall keep, in such form and in such manner as may be prescribed, a true and complete account of the gold owned, possessed, held, controlled, bought or otherwise acquired, or accepted or otherwise received, or sold, delivered, transferred or otherwise disposed of, by him in his capacity as such licensed dealer or refiner or certified goldsmith, as the case may be, and different forms of accounts may be prescribed for different classes of licensed dealers, refiners or certified goldsmiths. (2) Every licensed dealer, every licensed refiner and every certified goldsmith shall as and when he buys or otherwise acquires or accepts or otherwise receives, or sells, delivers, transfers or otherwise disposed of, any gold, enter in the accounts referred to in sub-section (1) the prescribed particulars of such gold and the prescribed particulars of the person from whom such gold was bought, acquired, or otherwise received or to whom such gold was sold, delivered, transferred or otherwise disposed of. (3) No licensed dealer or refiner and no certified goldsmith shall, in his capacity as licensed dealer or refiner, either own or have in his possession, custody or control any gold which has not been included in the accounts referred to in sub-section (1).

56. Returns as to gold.

(1) Every licensed dealer, every licensed refiner and every certified goldsmith shall furnish to the Administrator such returns as to the quantity, description and other prescribed particulars of gold owned, possessed, held or controlled by him, in such form and within such time as may be prescribed and different returns may be prescribed for different classes of licensed dealers or refiners or certified goldsmiths. (2) Every return shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control Officer and thereafter shall be returned to the dealer or, as the case may be, the refiner and the copy so returned shall be retained by the dealer or refiner as the evidence of the return made by him under this section.

57. Production and inspection of accounts.

(1) Every licensed dealer, and every licensed refiner and every certified goldsmith shall, if so required by the Gold Control Officer, - (a) produce before him any accounts, register or other documents, and (b) furnish to the Gold Control Officer any information relating to any gold owned by him or in his possession, custody or control or to the acceptance, receipt, acquisition, sale, delivery, transfer or other disposal of any gold by him. (2) Every account, register and other document relating to any gold or the acceptance, acquisition, receipt sale, delivery, transfer or other disposal thereof and any gold owned by or in the possession, custody or control of any licensed dealer or refiner or certified goldsmith, wherever kept, shall be liable to be inspected by any Gold Control Officer and such officer may, for the purposes of such inspection, enter, at any reasonable time, the business premises of a licensed dealer or refine or certified goldsmith.

Chapter 12

Entry, Search, Seizure and Arrest

58. Power to enter and search.

(1) Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any provision of this Act has been, or is being, or is about to be, contravened, enter and search, at any reasonable time, any refinery or the business premises of a licensed dealer or a certified goldsmith. (2) Any Gold Control Officer, not below the rank of a Superintendent of Central Excise, empowered in this behalf by the Central Government, may, if he has any reason to suspect that any provisions of this Act has been, or is being, or is about to be, contravened, authorise any officer of Government to enter and to search any premises, vaults, lockers, or any other place, whether above or below ground, or may himself do so.

59. Power to search person.

- Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any person has secreted about his person or in any other thing, - (a) any gold in respect

of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened;(b)any document which, in his opinion, will be useful for, or relevant to any inquiry or proceeding in relation to the contravention of any provision of this Act or of any rule or order made thereunder, detain and search such person or thing: provided that the period of detention, if any, under this section shall not exceed twenty-four hours.

60. Conditions under which a search shall be conducted.

(1)When any such officer referred to in Section 59 is about to search the person referred to in that section, he shall, if such person so requires, take such person without any unnecessary delay, to the nearest Gold Control Officer of gazetted rank (hereafter in this section referred to as the gazetted officer) or to the nearest magistrate.(2)If such requisition is made, the Gold Control Officer may detain the person making it until he can bring him before the gazetted officer or magistrate referred to in sub-section (1).(3)The gazetted officer or magistrate before whom any person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.(4)No female shall be searched by any one excepting a female.

61. Power to search vehicle, etc.

- Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any conveyance or animal is being, or is about to be, used for the transport of any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened, at any time stop such conveyance or animal, or, in the case of an aircraft, compel it to land, and(a)rummage and search the conveyance or part thereof;(b)examine and search any goods in the conveyance or on the animal;(c)if it becomes necessary to stop any conveyance or animal, he may use all lawful means for stopping it, and where such means fail, the conveyance or animal may be fired upon.Explanation. - Any reference to a conveyance in this Chapter and in Chapters XIII, XIV and XV shall, unless the context otherwise requires, be construed as including a reference to any aircraft, vehicle or vessel.

62. Power to search to include power to break open locks, etc.

- Every person making a search under this Act shall have the power to break open the lock of any door, almirah, safe, box, cupboard, drawer, package or any other thing, if the key thereof is withheld.

63. Power to summon persons to give evidence and produce documents.

(1)Any Gold Control Officer of a gazetted rank shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce any document or other thing in any inquiry which such officer is making in connection with any contravention of any provision of this Act.(2)A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain

description, in the possession, custody or control of the person summoned.(3)All person so summoned shall be bound to attend in person and to state the truth upon any subject respecting which they are summoned and produce such documents and other things as may be required:Provided that where any person has been summoned merely to produce a document or other thing, he shall be deemed to have complied with the summons if he causes such document or other thing to be produced instead of attending personally to produce the same:Provided that where any person has been summoned merely to produce a document or other thing, he shall be deemed to have complied with the summons if he causes such document or other thing to be produced instead of attending personally to produce the same:Provided further that the exemption under Section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.(4)Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

64. Power to call for information, etc.

- Any Gold Control Officer may, during the course of any inquiry in connection with the contravention of any provision of this Act, -(a)call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;(b)require any person to produce or deliver any document or thing useful for, or relevant to, the inquiry;(c)examine any person acquainted with the facts and circumstance of the case.

65. Power to impound or retain documents.

- Any document or other thing which is produced before any Gold Control Officer, in pursuance of the provisions of Section 63 or Section 64, may be impounded or retained in this custody by such officer for such period as he may consider necessary:Provided that no document or other thing shall be-(a)impounded without recording reasons for so doing, or(b)retained in the custody of such officer for a period exceeding fifteen days (exclusive of holidays) unless he has obtained the approval of an officer (not below the rank of an Assistant Collector of Central Excise or of Customs). who is superior to him in rank, for so doing.

66. Power to seize.

(1)If any Gold Control Officer has reason to believe that in respect of any gold any provision of this Act has been, or is being, or is attempted to be, contravened, then, he may seize-(a)such gold along with the package, covering or receptacle, if any (and the contents thereof), in which the gold is found;(b)any other goods in which any quantity of such gold has been mixed.(2)Any Gold Control Officer may seize-(a)any document or other thing which, in his opinion, will be useful for, or relevant to, any inquiry or proceeding for the contravention of any provision of this Act or any rule or order made thereunder;(b)any conveyance or animal which has been, or is being, or is attempted to be, used for the transport of any gold in relation to which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened.(3)Any document or other thing seized under sub-section (2) shall not be retained by the Gold Control Officer for a

period exceeding six months from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Administrator for such retention is obtained: Provided that the Administrator shall not authorise the retention of the document or other thing for a period exceeding thirty days after all proceedings, for which the document or other thing is useful or relevant, are completed. (4) The person from whose custody any document or other thing is seized under sub-section (2) may make copies thereof or take extracts therefrom in the presence of the Gold Control Officer or any other person empowered by him in this behalf, at such place and at such time as the Gold Control Officer may appoint in this behalf. (5) If a person legally entitled to the document or other thing seized under sub-section (2) objects for any reason to the approval being given by the Administrator under sub-section (3), he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the document or other thing. (6) On receipt of the application, under sub-section (5) the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it may think fit.

67. Presumption as to documents in certain cases.

- [Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him,] [Substituted by Act 36 of 1973] the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, - (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by or to be in the handwriting of, any particular person is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested; (b) admit the document in evidence, notwithstanding that it is not duly stamped if such document is otherwise admissible in evidence.

68. Power to arrest.

(1) Any Gold Control Officer authorised by the Administrator in this behalf may, if he has reasons to believe that any person has contravened, or is contravening, or is about to contravene any provision of this Act, arrest such person and shall as soon as possible inform him of the ground for such arrest and shall take such arrested person to the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of magistrate. (2) Any officer who has arrested any person under this section shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1898 (5 of 1898).

69. Provisions of Section 102 and 103 of the Code of Criminal Procedure to apply to search and seizure.

- The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1898 (5 of 1898), relating to search and seizure shall, so far as they are applicable, apply in relation to every search made under this Act and to every seizure made in the course of such search.

70. Power to record statements.

- Where at the time of arrest or seizure under this Act, or the detection of any contravention of any provision of this Act or any rule or order made thereunder, any person makes a statement to the officer making such arrest, seizure or detection, that officer shall record in writing the statement of such person in as nearly as possible the language in which such statement is made and shall on demand by such person furnish him with a copy of the statement.

Chapter 13

Confiscation and Penalties

71. Confiscation of gold.

- [(1) Any gold in respect of which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened, together with any package, covering or receptacle in which such gold is found, shall be liable to confiscation: Provided that where it is established to the satisfaction of the officer adjudging the confiscation that such gold or other thing belongs to a person other than the person who has, by any act or omission, rendered it liable to confiscation, and such act or omission was without the knowledge or connivance of the person to whom it belongs, it shall not be ordered to be confiscated but such other action, as is authorised by this Act, may be taken against the person who has, by such act or omission, rendered it liable to confiscation.] [Substituted by Act 21 of 1971.](2)[Where any package, covering or receptacle referred to in sub-section (1) contains any other goods, such contents shall also be liable to confiscation.(3)Where any gold is liable to confiscation under sub-section (1), it shall be so liable notwithstanding any change in its form, and where such gold is mixed with other goods in such manner that it cannot be separated from those other goods, the whole of such goods, including the gold, shall be liable to confiscation.(4)On and from the commencement of the Gold (Control) Amendment Act, 1971, the proviso to sub-section (1) shall also apply to any gold or other thing which is liable to confiscation under sub-section (2) or sub-section (3).] [Substituted by Act 21 of 1971, (w.e.f. 20-5-1971).]

72. Confiscation of conveyances.

- Any conveyance or animal which has been, or is being, or is attempted to be, used for the transport of gold in relation to which any provision of this Act or any rule or order made thereunder has been,

or is being, or is attempted to be, contravened, shall be liable to confiscation unless the owner of the conveyance or animal proves that it was so used or about to be used without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use: Provided that where any such conveyance or animal is used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall, notwithstanding the provisions contained in Section 73, be given an option to pay in lieu of confiscation of the conveyance or animal, a fine not exceeding the value of the gold in relation to which the provision of this Act or any rule or order made thereunder has been, or is being or is about to be, contravened.

73. Power to give option to pay fine in lieu of confiscation.

- Whenever any confiscation is authorised by this Act, the Officer adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding [* * *] [Omitted 'twice' by Act 21 of 1971] the value of the thing in respect of which confiscation is authorised, as the said officer thinks fit.

74. Liability to penalty.

- Any person who, in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under this Act, or abets the doing or omission of such an act, or is in charge of the conveyance or animal which is liable to confiscation under this Act, shall be liable to a penalty not exceeding five times the value of the gold or one thousand rupees, whichever is more, whether or not such gold has been confiscated or is available for confiscation.

75. Penalties for contravention, etc., not expressly mentioned.

- Any person who contravenes any provision of this Act or any rule or order made thereunder or abets any such contraventions or, who fails to comply with any provision of this Act, or any rule or order made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be liable to such penalty, not thousand rupees, for every such contravention, failure or abatement, as the case may be.

76. Reference to gold to be construed as reference to gold of any purity.

- Any reference to gold in this Chapter and in Chapters XII, XIV, XV and XVI shall, unless the context otherwise requires, be construed as including a reference to any article or thing made of, or containing, gold of any purity, whether such purity exceeds nine carats or not.

77. Confiscation or penalty not to interfere with other punishments.

- No confiscation made or penalty imposed under this Act shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

Chapter 14

[Adjudication and appeals] [Substituted by Act 44 of 1980, Section 50 and Fifth Schedule (w.e.f. 11-10-1982).]

78. Adjudication.

- Any confiscation may be adjudged or penalty may be imposed under this Act-(a)without limit, by a Gold Control Officer, not below the rank of a collector of Central Excise or of Customs;(b)subject to such limits as may be specified in this behalf, by such other Gold Control Officer, not below the rank of a superintendent of Central Excise, as the Central Government may, by notification, authorise in this behalf.

79. Giving of an opportunity to the owner of gold, etc.

- No order of adjudication of confiscation or penalty shall be made unless the owner of the gold, conveyance, or animal or other person concerned is given a notice in writing-(i)informing him of the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty; and(ii)giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and, if he so desires, of being heard in the matter:Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral:Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.Explanation. - Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made.

80. [Appeals to Collector (Appeals). [Substituted by Act 44 of 1980, Section 50 and Fifth Schedule (w.e.f. 11-10-1982).]

(1)Any person aggrieved by any decision or order passed under this Act by a God Control Officer lower in rank than a Collector of Central Excise or of Customs may appeal to the Collector (Appeals) within three months from the date of the communication to him of such decision or order:Provided that Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause

from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.(2)Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.] [Substituted by Act 26 of 1969.]

80A. Procedure in Appeal.

(1)The Collector (Appeals) shall give an opportunity to the appellant to be heard, if he so desires.(2)The Collector (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Collector (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.(3)The Collector (Appeals) may, after making such further inquiry as may be necessary pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating things of greater value shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.(4)The order of the Collector (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.(5)On the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant the adjudicating authority and the Collector of Central Excise or of Customs.

81. Appeals to the Appellate Tribunal.

(1)Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-(a)a decision or order passed by the Collector of Central Excise or of Customs as an adjudicating authority;(b)an order passed by the Collector (Appeals) under Section 80-A;(c)an order passed by the Administrator, Collector of Central Excise or of Customs or the Appellate Collector of Customs under Section 80, as it stood immediately before the appointed day;(d)an order passed by the Administrator, either before or after the appointed day, under Section 81, as it stood immediately before that day:Provided that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where,-(i)the value of the thing confiscated without option having been given to the owner thereof to pay a fine in lieu of confiscation under Section 73; or(ii)the amount of fine or penalty determined by such order, does not exceed ten thousand rupees.(2)The Administrator may, if he is of opinion that an order passed by the Collector of Central Excise or of Customs or the Appellate Collector of Customs under clause (b) of sub-section (1) of Section 80, as it stood immediately before the appointed day, is not legal or proper, direct an officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal against such order.(3)The Collector of Central Excise or of Customs, may, if he is of opinion than an order passed by the Collector (Appeals) under Section 80-A is not legal or proper direct the authorised officer to appeal on his behalf to the Appellate Tribunal against such order.(4)Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Collector of Central Excise or of Customs, or, as the

case may be, the other party preferring the appeal.(5)On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (4).(6)The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (4) or sub-section (5), if it is satisfied that there was sufficient cause for not presenting it within that period.(7)An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to in sub-section (2) or sub-section (3) or an memorandum of cross-objections referred to in sub-section (5) be accompanied by a fee of two hundred rupees.

81A. Orders of Appellate Tribunal.

(1)The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.(2)The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Collector of Central Excise or of Customs or the other party to the appeal:Provided that an amendment which has the effect has the effect of enhancing any penalty or fine in lieu of confiscation or confiscating things of greater value shall not be made under this sub-section unless the Appellate Tribunal has given notice of its intention to do so, to the other party and has allowed him a reasonable opportunity of being heard.(3)The Appellate Tribunal shall send a copy of every order passed under this section to the Collector of Central Excise or of Customs and the other party to the appeal.(4)Save as otherwise provided in Section 82-B, order passed by the Appellate Tribunal on appeal shall be final.

81B. Procedure of Appellate Tribunal.

(1)The provisions of sub-sections (1), (2), (5) and (6) of Section 129-C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge or its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962.(2)The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where-(a)the value of the thing confiscated without option having been given to the owner thereof to pay a fine in lieu of confiscation under Section 73; or(b)the amount of fine or penalty involved, does not exceed [fifty thousand rupees] [Substituted by Act 21 of 1984, Section 55 (w.e.f. 11-5-1984).].

82. Powers of the Administrator or Collector of Central Excise or of Customs to pass certain orders.

(1)The Administrator may, of his own motion, call for and examine the record of any proceeding in which a Collector of Central Excise or of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Administrator in his order.(2)The Collector of Central Excise or of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise or of Customs in his order.(3)No order shall be made under sub-section (1) or sub-section (2) after the expiry of [one year] [Substituted for 'two years' by Act 21 of 1984, Section 55.] from the date of the decision or order of the adjudicating authority.(4)Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal or the Collector (Appeals) within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Collector (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (5) of Section 81 shall so far as may be, apply to such application.

82A. Deposit, pending appeal of penalty levied.

- Where in any appeal under this Chapter, the decision or order appealed against relates to any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the penalty levied:Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose.

82B. Statement of case to High Court.

(1)The Collector of Central Excise or of Customs or the other party may, within sixty days of the date upon which he is served with notice of an order under Section 81-A, by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the

case and refer it to the High Court: Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified allow it to be presented within a further period not exceeding thirty days. (2) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such an application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the Appellate Tribunal as if it were an application presented within the time specified in sub-section (1). (3) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the Collector of Central Excise or of Customs, or, as the case may be, the other party may, within six months from the date on which he is served with notice of such refusal, apply to the High Court and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and state the case and refer it accordingly. (4) Where in the exercise of its powers under sub-section (3), the Appellate Tribunal refuses to state a case which it has been required by an applicant to state, the applicant may, within thirty days from the date on which he receives notice of such refusal, withdraw his application and, if he does so, the fee, if any, paid by him, shall be refunded.

82C. Statement of case to Supreme Court in certain cases.

- If, on an application made under Section 82-B, the Appellate Tribunal is of opinion that, on account of conflict in the decisions of High Courts in respect of any particular questions of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through the President direct to the Supreme Court.

82D. Power of High Court or Supreme Court to require statement to be amended.

- If the High Court or the Supreme Court is not satisfied that the statement in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

82E. Case before High Court to be heard by not less than two judges.

(1) When any case has been referred to the High Court under Section 82-B, it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges. (2) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who

first heard it.

82F. Decision of High Court or Supreme Court on the case stated.

(1)The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein and shall deliver its judgement thereon containing the grounds on which decision is founded and a copy of the judgement shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgement.(2)The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

82G. Appeal to Supreme Court.

- An appeal shall lie to the Supreme Court from any judgement of the High Court delivered on a reference made under Section 82-B in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court.

82H. Hearing before Supreme Court.

(1)The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under Section 82-G as they apply in the case of appeals from decrees of a High Court:Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of Section 82-F or Section 82-I.(2)The costs of the appeal shall be in the discretion of the Supreme Court.(3)Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 82-F in the case of a judgment of the High Court.

82I. Sums due to be paid notwithstanding reference, etc.

- Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, sums due to the Government as a result of an order passed under sub-section (1) of Section 81-A shall be payable in accordance with the order so passed.

82J. Exclusion of time taken for copy.

- In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite of obtaining a copy of such order shall be excluded.

82K. Transfer of certain pending proceedings and transitional provisions.

(1) Every appeal which is pending immediately before the appointed day before the Administrator the Collector of Central Excise or of Customs under Section 80, as it stood immediately before that day and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal or the Collector (Appeals), as the case may be and the Appellate Tribunal or the Collector (Appeals) may proceed with such appeal or matter from the stage at which it was on that day: Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard. (2) Every proceeding which is pending immediately before the appointed day before the Central Government under Section 82, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it: Provided that the applicant or the other party may demand that before proceeding further with that proceeding or matter, he may be re-heard. (3) Every proceeding which is pending immediately before the appointed day before the Administrator under Section 81, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Administrator as if the said section had not been substituted. (4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in Section 101-A have the right to appeal before the Appellate Tribunal in relation to such appeal or proceeding.

82L. Definitions.

- In this Chapter-(a) "appointed day" means the date of coming into force of the amendments to this Act specified in Part III of the Fifth schedule to the Finance (No. 2) Act, 1980; (b) "High Court" means,-(i) in relation to any State, the High Court for that State; (ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court; (iii) in relation to the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay; (iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India; (c) "President" means the President of the Appellate Tribunal:

83. Power of the adjudicating officer.

(1) Every person or authority making any adjudication or hearing any appeal [* * *] [Omitted by Act 44 of 1980, Section 50 and Fifth Schedule (w.e.f. 11-10-1982).] under this Act shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:- (a) summoning and enforcing the attendance of witness; (b) requiring the discovery and production of any document; (c) requisition any public record or copy thereof from any court or office; (d) receiving evidence on affidavits; and (e) issuing commissions for the examination of witnesses or documents. (2) Every person or authority making any adjudication or hearing any appeal or exercising any powers under this Act shall be deemed to

be a civil court for the purposes of Sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898). (3) Every person or authority making any adjudication or hearing any appeal [* * *] [Omitted by Act 44 of 1980, Section 50 and Fifth Schedule (w.e.f. 11-10-1982).] under this Act shall have the power to make such orders of an interim nature as it may think fit and may also, for sufficient cause, order the stay of operation of any decision or order.

84.

[* * *] [Omitted by Act 44 of 1980 (w.e.f. 11-10-1982).]

Chapter 15

Offences and Their Trial

85. Punishment for illegal possession etc., of gold.

- [(1)] [Renumbered by Act 36 of 1973.] Whoever, in contravention of the provisions of this Act or any rule or order made thereunder, - (i) makes, manufactures, prepares or processes any primary gold, or (ii) owns or has in his possession, custody or control any primary gold, or (iii) buys or otherwise acquires, or accepts or otherwise receives, or agrees to buy or otherwise acquire or to accept or otherwise receive, any primary gold, or (iv) sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or disposal, any primary gold, or (v) melts, assays, refines, extracts, alloys, or converts any gold or subjects it to any other process, or (vi) makes, manufactures, prepares, repairs, polishes or processes, or places any order for the making, manufacturing, preparing, repairing, polishing or processing of, any article or ornament, or (vii) buys or otherwise acquires, or accepts or otherwise receives, or agrees to buy or otherwise acquire or to accept or otherwise receive, or sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or other disposal, any article or ornament, or (viii) owns or has in his possession, custody or control any article or ornament, or (ix) carries on any business or transaction in gold for which a licence or certificate is required to be obtained by or under this Act, or (x) carries on business as a banker or money-lender; [shall, without prejudice to any other action that may be taken under this Act, be punishable - (a) if the offence is under clause (i), (ii), (iii), (iv) or (viii) the offence under clause (viii) being a contravention of sub-section (3) of Section 55] and the value of the gold involved therein exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for a term of less than six months; (b) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both. (2) [If any person convicted of an offence under this section, or under sub-section (2) of Section 95, is again convicted of an offence under this section, then, he shall be punishable to for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine: Provided that in the absence of special adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for a term of less than six months. (3) For the purposes of sub-sections (1) and (2), the

following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-(i)the fact that the accused has been convicted for the first time for an offence under this Act;(ii)the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;(iii)the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;(iv)the age of the accused.]

86. Failure to make a declaration.

- Wherever fails or omits to make a declaration [including a declaration referred to in sub-section (12) of Section 16] without any reasonable cause or makes a declaration which is either false or which he knows or has reason to believe to be incorrect, shall without prejudice to any other action that may be taken under this Act, be punished with imprisonment for a term which may extend to two years and also with fine.

87. Failure to submit returns or to maintain accounts.

- Whoever omits without any reasonable cause to maintain accounts or to submit any return in accordance with the provisions of this Act or any rule or order made thereunder or who keeps any accounts or makes any statement in any return which is false or which he knows or has reason to believe to be incorrect shall, without prejudice to any other action that may be taken under this Act be punished with imprisonment for a term which may extend to two years and also with fine, and in the event of a second or subsequent offence, with imprisonment for a term which shall to be less than six months but not more than three years and also with fine.

88. [Dealers, etc., when to be deemed to have abetted an offence.

[Substituted by Act 26 of 1969, Section 12, for Section 88 (w.e.f. 3-7-1969).]

(1)A dealer or refiner who knows or has reason to believe, that any person employed by him has, in the course of such employment, contravened any provisions of this Act or any rule or order made thereunder, shall be deemed to have abetted an offence against this Act:Provided that no such abatement shall be deemed to have taken place if such dealer or refiner has, as expeditiously as possible, and in any case before the expiry of two days from the date on which he comes to know of the contravention or has reason to believe that such contravention has been made, intimated in writing to the Gold Control Officer the name of the person by whom such contravention was made and the date and other particulars of such contravention.(2)Whoever is deemed under sub-section (1), to have abetted an offence against this Act shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.] [Inserted by Act 36 of 1973.]

89. Punishment for the use of counterfeit stamp, etc.

- Whoever, - (i) counterfeits any stamp intending that the same shall be used for stamping any standard gold bar, article or ornament, or use any counterfeit stamp knowing it to be counterfeit, or (ii) falsely stamps any primary gold, article or ornament with the intention of causing it to be believed that such primary gold, article or ornament is of such purity as is mentioned in such stamp, or (iii) sells, delivers, transfers or otherwise disposes of, or agree to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer, or disposal, falsely stamped primary gold, article ornament knowing or having reason to believe it to be so, or (iv) unlawfully as in his possession, custody or control any implement, instrument, apparatus, appliance, machinery or other equipment or any chemical, mould, stamp or any other material which he either knows or has reason to believe to be intended for refining or assaying any primary gold or for counterfeiting any mark on any standard gold bar, article or ornament, shall be punished with imprisonment for a term which shall not be less than six months but not more than three years and shall also be liable to fine: Provided that the court may, if it is satisfied that the special circumstances of the case so require, impose a sentence of imprisonment for a term which may be less than six months.

90. Punishment for allowing premises to be used as refinery.

- Whoever knowingly allows any person to use any premises or any part thereof as a refinery in contravention of the provisions of Section 104 shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

91. Punishment for offences for which no punishment is provided.

- Whoever contravenes any provisions of this Act or any rule or order made thereunder for which no punishment is separately provided in this Chapter, shall be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

92. Power of court to order forfeiture.

- A Court trying an offence against this Act may order the forfeiture of any implement, instrument, apparatus, appliance, machinery or other material which the court is satisfied has been used in or in connection with the making or manufacturing of any standard gold bar, primary gold, article or ornament in contravention of the provisions of this Act or of any rule or order made thereunder.

93. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence

was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.(2)Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation. - For the purposes of this section,-(a)"company" means any body corporate and includes a firm or other association of individuals; and(b)"director" , in relation to a firm, means a partner in the firm.

94. Wrongful search, seizure, etc., by Gold Control Officer.

- Any officer exercising powers under this Act or any rule or order made thereunder, who knows that there are no reasonable grounds for suspicion for so doing, and yet-(a)searches or causes to be searched any house, conveyance or place,(b)searches or arrests any person, or(c)seizes any movable property, shall, for every such offence, be punished with fine which may extend to two thousand rupees.

95. Failure of Gold Control Officer in duty or his connivance at the contravention of the provisions of this Act.

(1)Any Gold Control Officer who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of the Collector of Central Excise or of Customs, as the case may be, or has other lawful excuse for so doing, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.(2)Any Gold Control Officer who wilfully aids in or connives at the contravention of any provision of this Act or of any rule or order made thereunder shall, for every such offence, be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

96. Punishment for giving false information.

- Any person who wilfully or maliciously gives any false information which leads to any arrest, search or seizure under this Act shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

96A. [Certain offences to be non-cognisable. [Inserted by Act 36 of 1973.]

- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under Section 85 or Section 87 or Section 88 or Section 89 or sub-section (2) of Section 95 shall be deemed to be non-cognisable within the meaning of that Code.] [Substituted by Act 36 of 1973.]

97. Cognizance of offence.

(1) Save as otherwise provided in sub-section (2), no court shall take cognizance of any offence against this Act except on a complaint in writing made by a Gold Control Officer, not below the rank of a Collector of Central Excise or of Customs, having jurisdiction over the area in which the offence is committed or any person authorised by him in writing in this behalf. (2) No court shall take cognizance of any offence against this Act committed by a Gold Control Officer, except on a complaint in writing made with the previous sanction of the Central Government.

98. Offences to be tried summarily.

- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898)-(i) no magistrate, other than a presidency magistrate or a magistrate of the first class shall try an offence against this Act, (ii) [every offence against this Act, other than an offence punishable under clause (a) of sub-section (1), or under sub-section (2), of Section 85, may be tried summarily by a magistrate.] [Substituted by Act 36 of 1973.]

98A. [Power of court to publish name, place of business, etc., of persons convicted under the Act. [Inserted by Act 36 of 1973.]

(1) Where any person is convicted under this Act for contravention of any or the provisions thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct. (2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of. (3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted persons as if it were a fine imposed by the court.]

98B. [Presumption of culpable mental state. [Inserted by Act 36 of 1973.]

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be open to the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation. - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. (2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]

98C. [Relevancy of statements under certain circumstances. [Inserted by Act 36 of 1973.]

(1) A statement made and signed by a person before any Gold Control Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth or the facts which it contains, - (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice. (2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court as they apply in relation to a proceeding before a court.]

98D. [Application of Section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958. [Inserted by Act 36 of 1973.]

(1) Nothing contained in Section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age. (2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of Section 85.]

Chapter 16

Miscellaneous

99. Presumption as to ownership of gold.

- Any person who has in his possession, custody or control any primary gold, article or ornament shall be presumed, unless the contrary is proved, to be the owner thereof.

100. [Precautions to be taken by a licensed dealer, refiner or certified goldsmith before acquiring any gold. [Substituted by Act 26 of 1969, Section 13, for Section 100 (w.e.f. 3-7-1969).] - (1) Every licensed dealer or refiner or certified goldsmith, as the case may be, shall, before accepting, buying or otherwise receiving any gold from any person, take such steps as are specified by the Central Government by rules made in this behalf, to satisfy himself as to the identity of the person from whom such gold is proposed to be accepted, bought or otherwise received by him.

(2) If on an inquiry made by a Gold Control Officer the person from whom a licensed dealer or refiner or certified goldsmith is purported to have accepted, bought or otherwise received any gold is not found at the address mentioned by the licensed dealer, refiner or certified goldsmith or at any other address ascertained from the first-mentioned address, the Gold Control Officer may call upon such dealer, refiner or certified goldsmith, as the case may be, to establish that he had taken the steps specified by the rules made under sub-section (1). (3) If such dealer, refiner or certified goldsmith, as the case may be, omits or fails, when called upon so to do, to establish that he had taken the steps specified by rules made under sub-section (1) it shall be presumed, until the contrary is proved, that such gold was accepted, bought or otherwise received by such dealer, refiner or certified goldsmith, as the case may be, in contravention of the provisions of this Act. (4) [Nothing in this section shall apply to the acceptance, purchase or other receipt, by way of petty transactions, in the course of a day, of gold up to a quantity of one hundred grammes by a licensed dealer or refiner or certified goldsmith, as the case may be.] Explanation. - In this section, "petty transaction" means a transaction in which the total weight of any primary gold, article or ornament which is accepted, bought or otherwise received from the same person in the course of a day, does not exceed twenty-five grammes.]

101. Power to take samples.

(1) A Gold Control Officer authorised in this behalf may- (a) take samples of gold from an dealer, refiner or other person; (b) send such samples for assay or analysis to such authority as may be prescribed and require such authority to send to him a report as to the result of the assay or analysis. (2) Where any sample had been taken under sub-section (1), - (a) such sample shall be restored to the person from whom it was taken after the purpose for which it was taken has been carried out but if such person fails to take delivery of the sample within three months from the date on which it was proposed to be returned to him, it may be disposed of in such manner as the Administrator may direct; (b) no compensation shall be payable for any reduction in the weight of such sample by reason of any test, assay or analysis.

101A. [Appearance by authorised representative. [Inserted by Act 44 of 1980, Section 50 and Fifth Schedule (w.e.f. 11-10-1982).]

(1) Any person who is entitled or required to appear before a Gold Control Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative. (2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being- (a) his relative or regular employee; or (b) any legal practitioner who is entitled to practise in any civil court in India; or (c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose. (3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service-Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service shall be entitled to appear as an authorised representative in any proceedings before a Gold Control Officer for a period of two years from the

date of his retirement or resignation, as the case may be.(4)No person,-(a)who has been dismissed or removed from Government service; or(b)who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962), or the Central Excises and Salt Act, 1944 (1 of 1944), or(c)who has become an insolvent, shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Collector or Central Excise or of Customs or the competent authority under the Customs Act, 1962 (52 of 1962) or the Central Excises and Salt Act, 1944 (1 of 1944) as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).(5)If any person,-(a)who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Gold Control Officer or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;(b)who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).(6)Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:-(a)no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;(b)any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Administrator to have the order or direction cancelled; and(c)no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.]

102. Power to delegate.

- The Central Government may, by notification, direct that all or any of the powers which may be exercised by it under this Act, except those conferred by Section 114, shall, in such circumstances and under such conditions, if any, as may be specified in the notification be exercise also by such person or authority as may be specified therein.

103. Transfer or transmission of business.

(1)Where the business of a licensed dealer or refiner is transmitted by succession, intestate or testamentary, the heir or legatee, as the case may be shall not carry on such business or run such refinery either in his own name or in some other name unless the heir or legatee has, before the expiry of sixty days after the date of such transmission, made to the Administrator an application for the issue of a licence in accordance with the provisions of this Act:Provided that nothing in this section shall be deemed to prohibit the heir or legatee from carrying on business as a dealer or refiner for the aforesaid period of sixty days, and, if he has applied for such licence, until he is granted the licence or is, by a notice in writing, informed by the Administrator that such licence cannot be granted to him.(2)Where the business of a licensed dealer or refiner is transferred by sale, gift, lease or otherwise, the transferee or lessee, as the case may be, shall not carry on such business or run such refinery either in his own name or in some other name unless he has obtained a licence in accordance with this Act to carry on such business or to run refinery.(3)The provisions of Section

53 shall apply to the gold in the possession, custody or control of an heir, legatee, transferee or lessee referred to in sub-section (1) or sub-section (2) who does not intend to carry on business as a licensed dealer or refiner or whose application for the issue of a licence has been rejected, as they apply to the gold in the possession, custody or control of a licensed dealer or refiner whose application for the renewal of a licence has been rejected, or the period of validity of whose licence has expired, or whose licence has been cancelled.

104. Prohibition of use of buildings, for carrying on unlicensed refinery.

- No persons, -(a) being the owner, lessor or landlord of any premises or the agent of such owner lessor or landlord, shall let the same or any part thereof with the knowledge that the same or part thereof is intended to be used as a refinery or wilfully allow any person to use such premises or any part thereof as a refinery unless the refiner has been licensed under this Act; or (b) being the tenant, lessee or occupier or any person in charge of any premises, shall use, or allow any person to use, such premises or any part thereof as a refinery unless the refiner has been licensed under this Act.

105. Officers required to assist Gold Control Officer.

- All officer of police and all officers of Government engaged in the collection or prevention of evasion, of revenue are hereby required and empowered to assist the Gold Control Officers in the execution of the provisions of this Act or of any rule or order made thereunder.

106. Recovery of sums due to Government.

- In respect of any penalty imposed under this Act and any other sum of any kind payable to the Control Government under any of the provisions of this Act or of any rule or order made thereunder, the Gold Control Officer, who is empowered to impose such penalty or to require the payment of such sum, may deduct the amount of the penalty or such sum from any money owing to the person from whom such penalty or such sum may be recoverable or due, or may recover such amount or sum by attachment and sale of the goods belonging to such person; and if the amount of the penalty or other sum is not so recovered, the Gold Control Officer may prepare a certificate signed by him specifying the amount or other sum due from the person liable to pay the amount or sum and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the said person the amount or sum specified therein as if it were an arrears of land revenue.

107. Secrecy and fidelity.

(1) All particulars contained in any return or declaration made or accounts, registers or other documents produced in accordance with this Act shall, save as otherwise provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) no court shall be entitled to require the Administrator or any person authorised by the Administrator under this Act or any officer or other employee of Government to produce before

it any such return, declaration, accounts, registers or other documents or any part thereof or to give evidence before it in respect thereof.(2)The Administrator or any person exercising any powers or performing any functions under this Act shall not divulge-(i)any information contained in any return or declaration made to, or any account, register or other document produced before, or inspected by him, or(ii)any other fact or information which comes to his knowledge by virtue of his office or in the course of his duty.(3)The Administrator or any gazetted officer authorised by him in this behalf may request any officer of Government or the Reserve Bank of India to furnish any information relating to any particulars contained in any return or declaration made to, or any accounts, registers or other documents produced before or inspected by such officer under the provisions of any law if, in the opinion of the Administrator or the gazetted officer aforesaid, such information is necessary for the implementation of any provisions of this Act; and when such request is made, the officer of Government or Reserve Bank of India, as the case may be, shall comply with such request notwithstanding the provisions of any such law forbidding the furnishing of such information.(4)Nothing in this section shall apply to, and in relation to the disclosure of any information referred to in sub-section (1) or sub-section (2)-(a)for the purposes of any prosecution for any offence against this Act, or(b)to any officer of Government where it is necessary to make such disclosure to such officer for the purposes of this Act or of any other law.

108. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall against the Central Government, the administrator, any Gold Control Officer or any person authorised by the Central Government or the Administrator for performing any functions under this Act, for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

109. Power to exempt.

- Where, on the recommendation of the Administrator or otherwise, the Central Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by order and subject to such conditions if any, as it may specify in the order exempt any dealer or any refiner or any other person from the operation of all or any of the provisions of this Act and may, as often as may be, revoke or modify such order.

110. Procedure in respect of gold seized by police officers.

(1)Where any police officer seizes any gold which is alleged or suspected to have been stolen or which is found under circumstances which create suspicion of the commission of an offence, such police shall forthwith report the seizure of such gold to the nearest Gold Control Officer of or above the rank of a Superintendent of Central Excise.(2)Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), in every case referred to in sub-section (1), the police officer shall immediately after the dismissal of the complaint or the conclusion of the inquiry or trial, as the case may be, cause such gold to be conveyed and delivered to the nearest Gold Control Officer of or above the rank of a Superintendent of Central Excise.

111. Effect of Act and rules etc., inconsistent with other enactments.

- The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

112. Presumption as to orders.

- Where an order purports to have been signed by the Administrator or any person authorised in this behalf in exercise of any power conferred by or under this Act, a court shall presume, within the meaning of the Indian Evidence Act, 1872 (1 of 1872), that such order was so made by that person.

113. Service of order, decision etc.

- Any order or decision passed or any summons or notice issued under this Act, shall be served-(a)by tendering the order, decision, summons or notice, or sending it by registered post, to the person for whom it is intended or to his agent; or(b)if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the office of the Gold Control Officer.

114. Power to make rules.

(1)The Central Government may, by notification, make rule for carrying out the purposes of this Act.(2)In particular, and without prejudice to the foregoing power, such rules may provide for all or any of the following matters, namely:-(a)fineness, dimensions, weight and description of a standard gold bar;(b)particulars to be stamped on a standard gold bare article or ornament;(c)form of-(i)monthly accounts to be submitted by public religious institution;(ii)declarations;(iii)licences and applications for the issue or renewal thereof;(iv)certificates and applications for the issue or renewal thereof;(v)declarations to be made as to recovery of gold by a silver refiner;(vi)accounts and returns to be submitted by a person acquiring gold under any permit or other authority;(vii)permits to be granted under this Act;(viii)returns to be submitted by a licensed dealer or refiner;(ix)identity card of an artisan;(x)register of artisan;(xi)accounts, to be maintained by a licensed dealer or refiner or a certified goldsmith;(d)conditions, limitations and restrictions subject to which-(i)a dealer may sell, deliver, transfer or otherwise dispose of any gold on the hypothecation, pledge, mortgage or charge of which he had advanced any loan;(ii)a refiner may refine gold;(iii)a licensed refiner may buy, acquire, accept or receive, gold, or melt, assay, refine, extract or alloy gold or subject it to any other process, or sell, deliver, transfer or otherwise dispose of any gold;(iv)a licensed dealer may buy, acquire, accept or receive or sell, deliver, transfer or dispose of gold;(e)fees or charges to be paid-(i)in respect of applications for the issue or renewal of licences or certificates;(ii)for exercising supervision over the making, manufacturing or preparing any article or thing made of, or containing, gold of any purity;[* * *] [Omitted by Act 44 of 1980, Section 50 and Fifth Schedule (w.e.f. 11-10-1982).](f)period-(i)of validity of a licence, certificate or permit;(ii)within which returns and declarations as to gold should be submitted by dealers, refiners and other persons;(g)manner in

which samples of gold may be taken from any dealer, refine or other person and the person to whom such samples may be sent for assay or analysis;(h)manner-(i)in which accounts are to be submitted by public religious institutions;(ii)of endorsement on a declaration, when any gold is acquired or parted with;(iii)of publication of notices and orders,(i)regulating the use and consumption of gold by industrial users and other persons;(j)[the types or classes of cases in which any authorisation may be made by the Administrator;] [Inserted by Act 26 of 1969, Section 14 (w.e.f. 3-7-1969).](jj)[the applications, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules made thereunder.] [Inserted by Act 36 of 1973, Section 19.](k)[any other matter which is required to be, or may be, prescribed.] [Relettered by Act 26 of 1969, Section 14 (w.e.f. 3-7-1969).](3)Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament, while it is in sessions, for a total period of thirty days which may be comprised in one session or ["in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] [Substituted by Act 20 of 1983, Section 2 and Schedule, for certain words (w.e.f. 15-3-1984).], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

115. Power of Central Government and Administrator to empower or authorise by general or special order.

(1)Where, by this Act, a power has been conferred on the Central Government, or the Administrator to make any authorisation or exemption or to make any order or direction then, such power may be exercised by a general or special order.(2)Where, by this Act, a power has been conferred on the Central Government or the Administrator to empower or authorise any officer, then, such officer may be empowered or authorised, as the case may be, by name or by virtue of office.

116. Repeal and savings.

(1)The Gold (Control) Act, 1965 (18 of 1965), and the Gold (Control) Ordinance, 1968 (6 of 1968), are hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken, including any notification, order or appointment made, direction given, notice, licence or certificate issued, permission authorisation or exemption granted, confiscation adjudged penalty or fine imposed, or forfeiture ordered, whether under the Gold (Control) Ordinance, 1968 (6 of 1968), or Part XII-A of the Defence of India Rules, 1962 shall, in so far as it is not in consistent with the provisions of this Act, be deemed to have been done, taken, made, given, issued, granted, adjudged, imposed or ordered, as the case may be, under the corresponding provision of this Act, as if this Act had commenced, on the 29th day of June, 1968.

117. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order do anything (not inconsistent with the provisions of this Act) which appears to it to be necessary for the purpose of removing the difficulty: Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.