



वित्त मंत्रालय / Ministry of Finance  
राजस्व विभाग / Department of Revenue  
सीमा शुल्क आयुक्त के कार्यालय / Office of the Commissioner of Customs  
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PUBLIC NOTICE NO. 17/2013

The following Circular and instruction issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs is enclosed for guidance of the officers / Exporters / Importers/ Clearing Agents and Trading Public.

Received from	File No. & Date	Subject
CBEC (Anti-Smuggling), New Delhi	F. No. 394/68/2013- Cus(AS) dated 17.09.2013	Circular No. 38/2013- Customs (Guidelines for Arrest and Bail in relation to offences punishable under CA, 1962)

Dated: 17.12.2013  
Custom House, Tuticorin

  
(D.RANJITHKUMAR)  
ASSISTANT COMMISSIONER

(Issued from file C. No. VIII / 48/ 353 /2013-Cus.Pol Vol. II)

To  
As per Mailing List I & II

Copy submitted to the Chief Commissioner of Customs (Preventive), Trichy



ICNO-1406/13

Circular No. 38/2013-Customs

F.No.394/68/2013-Cus (AS)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Anti-Smuggling)  
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New Delhi, dated 17<sup>th</sup> September 2013



To

All Chief Commissioners of Customs  
All Chief Commissioners of Customs (Preventive)  
All Chief Commissioners of Customs & Central Excise  
All Chief Commissioners of Central Excise  
All Directors Generals  
Web Master

Sir/Madam,

**Subject – Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962- reg.**

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Attention of the field formations is invited to the amendments to section 104 of the Customs Act, 1962 vide Finance Act, 2013 (with effect from 10.05.2013) whereby all offences are bailable other than the categories of offences punishable under section 135 of the Act *ibid*, which are classified as non-bailable. These are offences relating to:

- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
- (b) prohibited goods notified under section 11 of the Customs Act, 1962 (as amended) which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135 of the Customs Act, 1962 (as amended); or
- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees.

2.1 The existing guidelines on the subject have been re-examined in the light of the above legislative amendments. As afore-stated, offences under the Customs Act, 1962 are placed in two categories i.e. (i) bailable; or (ii) non-bailable. Since arrest takes away the liberty of an individual, the power must be exercised with utmost care and caution in cases where a Commissioner of Customs or Additional Director General has reason to believe on basis of information or suspicion that such person has committed an offence under the Act punishable under the sections 132 or 133 or 135 or 135A or 136 of the Customs Act, 1962.

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It is emphasised that arrest of persons in terms of section 104 (1) of Customs Act, 1962 should be resorted to only where the facts and situations of a particular case demand such action. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest. These situations may include circumstances:

- (i) to ensure proper investigation of the offence;
- (ii) to prevent such person from absconding;
- (iii) cases involving organised smuggling of goods or evasion of customs duty by way of concealment;
- (iv) masterminds or key operators effecting proxy/benami imports/exports in the name of dummy or non-existent persons/IECs, etc.

2.2 The decision to arrest should be taken in cases which fulfil the requirement of the provisions of Section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.

2.3 While the Act does not specify any value limits for exercising the powers of arrest, it is clarified that arrest in respect of an offence, categorized as bailable offence, should be effected only in exceptional situations which may include:

- (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds Rs. 20 lakh.
- (b) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds Rs. 50 lakh.

2.4 There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in "*D.K Basu vs. State of W.B.*" reported as 1997 (1) SCC 416 (see para 35). The arrest memo should include:

- (a) brief facts of the case;
- (b) details of the person arrested;
- (c) list of evidence against the person;
- (d) relevant Section (s) of the Customs Act, 1962 or other laws attracted to the case and to the arrestee;
- (e) the grounds of arrest must be explained to arrestee and this fact noted in the arrest memo;
- (f) a nominated person (as per details provided by arrestee) of the arrestee should be informed immediately and this fact also may be mentioned in the arrest memo;
- (g) the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to person arrested under proper acknowledgement;
- (h) a separate arrest memo has to be made and provided to each individual/arrestee.

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Further, there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following:

- (i) Female offender should be arrested by or in the presence of woman Customs officers.
- (ii) Medical examination of an arrestee should be conducted by a medical officer in the service of Central or State Government and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case such female medical officer is not available, by a female registered medical practitioner.
- (iii) It shall be the duty of the person having the custody of an arrestee to take reasonable care of the health and safety of the arrestee.

2.6 Further, in every case of arrest effected in accordance with the provisions of section 104 (1) of the Customs Act, 1962, there should be immediate intimation to the jurisdictional Chief Commissioner or DGRI, as the case may be.

3.1 In regard to the grant of bail and terms of bail, a person arrested for a non-bailable offence should be produced before concerned Magistrate without unnecessary delay in terms of provisions of Section 104 (2) of the Act.

3.2 Under sub-section (3) of section 104 an officer of Customs (arresting officer) has the same powers as an officer in charge of a Police Station under the Cr.PC. Thus, a Customs officer (arresting officer) is bound to release a person on bail for offences categorized as bailable under the Customs Act, 1962. Thus, release on bail must be offered to a person arrested in respect of bailable offence and bail bond accepted for bailable offence. The amount of bail bond/ surety for bailable offences should not be excessive and the bail conditions should be informed by the arresting officer in writing to the arrestee and also informed on telephone to the nominated person (as per details provided by the arrestee) and the arrestee should be also allowed to talk to nominated person. If the conditions of the bail are fulfilled by the arrestee, he shall be released by the officer concerned on bail forthwith. The arresting officer may, and shall if such a person is indigent and unable to furnish surety, instead of taking bail from such person, discharge him or her executing a bond without sureties for his appearance as provided under Section 436 of Cr.PC. However, only in cases where the conditions for granting bail are not fulfilled, the arrestee shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four (24) hours of arrest.

3.3 Only in the event of circumstances preventing the production of the arrestee before a Magistrate without unnecessary delay, the arrestee may be handed over to nearest Police Station for his safe custody during night, under proper Challan, and produced before the Magistrate on the next day, and the nominated person of the arrestee may be also informed accordingly.

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4. The guidelines issued vide F.No. 394/71/97-Cus (AS) dated 22.6.1999 (including the limit specified at para 2.3) stand modified to the above extent.
5. Chief Commissioners/DGRI shall send a report on every arrest to the concerned Member within twenty-four (24) hours of the arrest. To maintain an all India record of arrests made under the Customs Act, 1962, a monthly report of all persons arrested in the Zone shall be sent by the Chief Commissioner to DRI (Hqrs) in the *format* prescribed and enclosed, by the 5<sup>th</sup> of the succeeding month and the same would be compiled and sent to Anti-Smuggling Unit, CBEC by 10<sup>th</sup> of every month zone wise.
6. The Chief Commissioners/Director Generals are hereby directed to circulate the present guidelines to all the formations under their charge. Difficulties, if any, in implementation of the aforesaid guidelines may be brought to the notice of the Board.

*A.C. Mallick*  
(A.C. Mallick)

Under Secretary to the Government of India

**Encls: As above**