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Ph.d Thesis
On
CUSTOMS AND EXCISE LAWS AND PROBLEM
OF ENFORCEMENT IN INDIA

Any Government needs resources for sustaining its activities, development and social need. So tax is the source which is exploited by every Govt. The major revenue earned by the Government of India is from the In-direct taxes collected in the form of Central Excise duties and Customs duties. This share was as high as 79% of the Government revenue in 1971. Since then it has been reversed and the present ratio is almost 50%. These taxes are under the category of Regressive taxes since the burden of tax is not proportionate to this income of individuals. Since the stake of the Government is very high, the stringent provisions of search, seizure, arrest and prosecution have also found place in the Customs and Central Excise Acts to curb the menace of smuggling and evasion of duty. Moreover these are basic taxes. If evasion of excise duty or Customs duty is possible all subsequent taxes like Sales Tax, Income Tax etc. can automatically be avoided.

But sometimes the stringent provisions are misused because of over stepping by the officers empowered with such powers at the indication of their masters. But at the same time due to liberal Govt. policies and loopholes in our laws, the influential section of our society either manages to escape or delay the process of law. In a nutshell there are problems of enforcement of Customs and excise laws in India. This all prompted me to write thesis on this subject.

In this Thesis I have critically analysed the enforcement problems going deeply into the historical aspects of the taxes and the socio-economic aspects involved therein. The provisions of search, seizure, arrest and prosecution as provided in the Customs Act and Central Excise Acts has been critically analyzed in this paper in particular along with other mechanisms for enforcement of the said laws. Judicial approach and Constitutional safeguards protecting individual's rights against the action of search, seizure, arrest and prosecution has also been critically analysed. My study would be useful to not only those who administer the law, but also to those who make the laws and to academicians who examine the statutory provisions and the judicial decisions critically.

The origin of Excise levy can be traced to the days of Mauryan Empire in about the fourth Century BC. When the white traders of East India Company seized power in India and established their position after 1857, salt was found to be most alluring article for raising revenue from its manufacture for the purpose of Consolidating the British Rule in India and this necessitated the enactment of the Indian salt Act, 1882, the forerunner of which was the sea Customs Act, 1878, to provide, inter-alia, for levy of duty on salt "*manufactured in, or imported into, British India*". By the year 1943, there were ten separate enactments on Excise levy in

addition to five statutes dealing with salt. By consolidating a single Act was passed as "The Central Excise and Salt Act, 1944."

Customs Duty as we understand today has its origin in British period. British established its first Board of Revenue in 1786 at Calcutta. Article 246 read with entry 83 of list I of the seventh schedule to the Constitution confers exclusive power on Parliament to levy duties of Customs including export duties, both being indirect taxes (and entry 84 for the levy of Excise Duties).

The Central Board of Excise & Customs (CBEC/ Board) under the Ministry of Finance is responsible for administering indirect taxes, which consist of Central Excise, Customs and service tax. Service Tax is a new levy introduced in 1994 imposing tax liability on only three services. But the same is growing day by day. This subject has been kept out of the preview of the present research because of being new levy.

There are various enforcement provisions in the Customs and Excise Laws of which the most stringent provisions are the power of Summoning, Search, Seizure and Arrest.

Main tool for investigation is the summoning power of the Gazetted officers of Customs and Excise. Statements recorded are valid evidences, since they are not police officers. Searches and seizures, on reasonable belief, is permitted to unearth evasion of duties.

Arrest is the most deterrent and stringent action of which the public in general and evaders in particular are afraid of. To safe guard misuse of this power, written permission from the Head of the office not below the rank of Commissioner is to be obtained for arresting a person.

The suggestions made in this Thesis includes suggestion of speedy disposal of cases by the CESTAT/Courts, speedy and unbiased adjudication orders to be passed. The quality of investigation and issue of Show Cause Notice is to be upgraded for better success before the Tribunal/Courts. Mobilization of man and machinery in proper perspective is required. Indiscriminate filing of appeals by the department will help in minimizing pendency. To avoid allegation of corruption, discretionary power is to be reduced and judgements to be pronounced at the earliest after conclusion of hearing. To avoid misuse of Anticipatory Bail overriding provisions may be incorporated in the relevant section relating to arrest (sec. 104 in Customs and sec. 13 in Central Excise) to the effect that "no Anticipatory Bail can stand in the way of arrest unless notice of the same is given and heard the concerned Investigating Agency". Prosecution is to be launched only after adjudication of cases to avoid undue hardship. In the end, it may be stated that the enforcement mechanism for implementing Customs and Excise laws require some changes and revamping of machinery as suggested herein above.