

## **Chapter 13**

### **CUSTOMS DEBT**

#### **Article 137 (Form of Security)**

- (1) Unless otherwise provided by the relevant procedures, security required under this law for payment of a customs debt shall be provided at the choice of the customs debtor by the means of cash deposit or a guarantee by a reliable person or institution.
- (2) If the customs are not sure that the customs debt mentioned in paragraph 1 is to be paid within the prescribed period, they may submit an appropriate proposal to the relevant authority justifying the provision of a security.
- (3) The mentioned authority of paragraph 2 may order a customs debtor to provide security necessary for satisfying the customs debt.

#### **Article 138 (Single Security for Several Actions)**

The customs may allow a single security to be provided to guaranty customs debt for two or more operations.

#### **Article 139 (Securities Levels)**

- (1) Customs can fix the amount of security as following:
  - 1- Unless otherwise provided in customs legislation, according to the precise amount of the customs debt in question where that amount may be established with certainty at the time when the security is required
  - 2- Where no precise or other fixed amount can be determined, according to the maximum amount of the customs debt estimated by Customs.
- (2) If the security provided for in article 138 is required for customs debts which may vary in amount over time, it shall be set at a level sufficient to enable the customs debts in question to be covered at all times.

## **Article 140 (Cash Deposits)**

A cash deposit shall be made in Afghan currency. The following shall also be deemed a cash deposit:

- 1- Submission of a check, the payment of which is guaranteed by the institution on which it is drawn which is approved by relevant rule.
- 2- Submission of any other financial instrument accepted by the customs as a means of payment.

## **Article 141 (Guarantor)**

Any person who meets the following criteria may be accepted as a guarantor:

- 1- Must be a person established in Afghanistan, unless provided otherwise in the international agreements to which Afghanistan is a party.
- 2- Shall provide a guarantee, to pay the unpaid secured amount of a customs debt in a form satisfactory to customs.
- 3- Shall provide a guarantee that will be maintained until a specific time, as may be determined by customs.

## **Article 142 (Other kinds of Security)**

Customs may accept other kinds of security, provided that they can provide equivalent assurance that the customs debt will be paid.

## **Article 143 (Additional Securities)**

When Customs establishes that the security provided is not certain or sufficient to ensure payment of the customs debt within the prescribed period, they shall require the customs debtor to either provide additional security, or at the customs debtor's option, to replace the original security.

## **Article 144 (Release of Security)**

- (1) When the customs debt has been extinguished in part, unless the amount is insufficient to justify such action, a part of the cash deposit shall be repaid to the customs debtor upon a request by the debtor.
- (2) When a secured customs debt is extinguished, the non cash security shall be released and the cash deposit returned without delay.

## **Article 145 (Lawful Activities Which Cause Customs Debts)**

- (1) A customs duty on lawful importation or exportation of goods may be incurred when goods have been released for free circulation in accordance with this law or by the filing of an accepted customs declaration for:
  - 1- the release for free circulation of goods liable to import duty in accordance with Article 65(2);
  - 2- the placing of goods under the temporary importation process with partial relief from import duty.
  - 3- the placing of goods in conditional release of goods under customs supervision;
  - 4- the placing of goods in the export process;
  - 5- placing of goods in any other customs process or designation involving payment of duty (*tarifa*), charges (*haq ul zamat*), dues (*awarez*), penalties (*jerima*), or other monetary obligations (*eltezamat e puli*)
- (2) A customs debt shall be incurred after customs notifies the customs debtor, whether upon acceptance of the declaration, or assessment of penalties in accordance with this law.

## **Article 146 (Unlawful Activities Causing a Customs Debt)**

A customs debt with respect to unlawful activities shall be incurred by violation of Articles 166 (2) and 170.

## **Article 147 (Customs Debt on Removal of Goods from Supervision Without Permission)**

A customs debt shall also be incurred on goods removed from customs supervision without permission. And, the customs debtor shall be:

- 1- the person who removed the goods from customs supervision without permission,
- 2- any persons who participated in such removal and who had prior awareness that the goods were being removed from customs supervision.
- 3- any persons who acquired or held the goods subject to customs supervision or control and who were aware at the time of acquiring or receiving the goods that they had been removed from customs supervision.

#### **Article 148 (Non Occurrence of Debt)**

No customs debt shall be deemed to be incurred in respect of goods under customs supervision that were:

- 1- lost due to *force majeure*;
- 2- placed in a destruction or abandonment designation under Article 134;
- 3- lost to evaporation or other natural process; or
- 4- were out of the control of the person when they were the subject of Article 146 and 147, and that person proves it.

#### **Article 149 (responsibility of Partnerships)**

Where a partnership has guaranteed a customs debt, the general partners shall be jointly and severally liable for such debt. The penalty portion of the debt shall be an exception from this rule.

#### **Article 150 (Date of Determining Customs Debt)**

Where it is not possible to determine precisely when the customs debt is incurred due to the fault of the declarant, the highest rate of customs duty applicable during the period in question shall be applied.

#### **Article 151 (Entry of Debt Into Accounts)**

- (1) The Customs duty shall be calculated by Customs simultaneously with the acceptance of a customs declaration which entails payment of duty. If additional information is required by Customs to determine the

valuation of goods, Customs shall calculate the customs duty no later than 48 hours after the customs declarations is accepted, or for such other period of time as may be fixed in the Procedure (*tarzulamal*) for Customs Valuation. The amount of the customs duty shall be entered into the accounts without delay after it has been calculated,

- (2) Unless other wise provided for in this law and its procedures, the customs duty must be calculated and entered prior to the release of the goods for free circulation, or for another process that entails payment of customs duty, in accordance with Article 62.
- (3) A customs debt incurred after the goods have been placed under a customs process shall be entered in the accounts within 48 hours after customs has information sufficient to calculate the customs debt, and determine the debtor.
- (4) The customs officials shall adequately explain any delays in making the entry of a customs debt.

#### **Article 152 (Differences in Account Entries)**

When a customs debt entered in the accounts is less than the amount legally owed, the customs are obliged to enter the correct amount in accordance with article 151, within 48 hours of the time Customs become aware of the situation.

#### **Article 153 (Notification about Debt Entry)**

- (1) Customs officials are obliged to notify the amount of customs duty to the customs debtor at the time it has been entered in the accounts in accordance with the relevant procedures. The notification shall take place only where the

amount stated in the customs declaration is different from the amount determined by customs.

- (2) Re- determining the amount of customs debt shall not be valid after a period of 3 years.

#### **Article 154 (Situations for Settling and Extinguishing Customs Debts)**

A customs debt shall be settled or extinguished by the following means:

- 1- by payment in full in accordance with this articles 154 to 158;
- 2- by remission or refund in accordance with article 159 to 163;
- 3- by withdrawal or invalidation of a customs declaration entailing the obligation to pay duty, in accordance with Article 57 or 64;
- 4- if the goods are confiscated, or destroyed on the instructions of the customs; and
- 5- In circumstances described by Article 148 (1, 2 or 3).

## **Article 155 (Payment Term for Customs Debt)**

- (1) A customs debt notified in accordance with Article 153 shall be paid by the customs debtor in accordance with the following term:
  - 1- Within the term prescribed in the notification. Article 156 shall be an exception to this provision.
  - 2- An extension shall be granted automatically where the customs debtor does not receive the notification in the prescribed period.
- (2) The customs at the request of the customs debtor may also grant an extension taking into account Article 152. The extended time limit in any case shall not exceed 10 days;

## **Article 156 (Deferral of Debt Payment)**

- (1) The Ministry of Finance may provide in a separate procedure to allow deferral of payment of all or part of a customs debt, on condition that the customs debtor provides security and the period of deferral without charge shall not exceed 30 days. Where several customs debts are aggregated over a specified time period the delay in payment shall not exceed an average of 30 days.
- (2) Customs may collect a charge (*haq ul zamat*) for providing the service of postponement of payment of .01% of the deferred amount per day, or such other amount as is fixed by the relevant procedures.
- (3) The amount of charge (*haq ul zamat*) referred to in paragraph 2 shall be determined by the Ministry of Finance so as to be comparable to similar charges in the domestic money or financial market.

## **Article 157 (Manner of Payment)**

- (1) A person other than the customs debtor may pay the customs debt.
- (2) Payment shall be made by bank transfer, or by other instrument provided (*darj*) in customs legislation and procedures, or in cash if the payer is a person described in Article 45 or identified by customs.

### **Article 158 (Non Payment of Debt within the Prescribed Term)**

- (1) Customs shall be obliged to take all actions permitted by law to secure the payment of a customs debt that is overdue.
- (2) The registered movable and immovable property of a customs debtor who fails to make timely payment of the customs debt shall be under security (*that e tazmin*) of customs. Information on the security may be provided to any registry of property, or banks by Customs. The security shall remain in effect until the customs debt is paid.
- (3) Customs may, in accordance with law, collect a customs debt as a preferred creditor from a third party that has obligations to the customs debtor.
- (4) Interest shall be charged on overdue customs debts in accordance with Article 156.

### **Article 159 ( Refund or Remission of an Erroneous Entry)**

- (1) A customs debt shall be refunded or remitted if the amount paid or entered into the accounts is proved to be in excess of the amount legally owed by the customs debtor.
- (2) Refunding or remittance mentioned in paragraph 1 may take place upon withdrawal or submission of an amended custom declaration pursuant to Article 57 within a period of three years from the date on which the amount of the duty was notified.
- (3) Customs shall be obliged to refund or remit the customs debt in the situations mentioned in paragraph 1 and 2.

## **Article 160 (Remission or Refund for Defective Goods)**

- (1) Import duty paid on defective goods, which have been damaged prior to release or are not compatible with the importation contract, and have been rejected by the importer, shall be refunded or remitted if:
  - 1- the goods have not been used, except for such initial use as may have been necessary to establish that they are defective; and
  - 2- The goods are exported, or placed in a process or designation that does not entail payment of customs duty.
- (2) Goods mentioned in paragraph 1 may be exported as non-Afghan goods from the customs territory of the country.
- (3) Import duty shall be refunded or remitted for the reasons set out in paragraph 1 upon submission of an application by the debtor within 12 months from the date of notification.
- (4) Customs duty may be refunded in accordance with Article 104.

## **Article 161 (Limit of the Amounts to be Refunded)**

Customs duties, except those collected under Article 45, shall be refunded only if the amount to be refunded exceeds Afghani 1000 or other amount fixed in the relevant procedures.

## **Article 162 (Interest on Refunds)**

No refund under articles 159, 163, shall include payment of interest for the period prior to the refund decision. Interest, in accordance with Article 156, shall be paid to the customs debtor if the decision to grant a refund is not implemented within one month from the date of the refund decision.

## **Article 163 (Erroneous Refunds)**

Customs debt refunded in error shall be re-paid by the customs debtor after notification of the error. Any interest related to the amount of refund under Article 162 shall also be included in this provision.