

PART XVII
COURT PROCEEDINGS

226. Appeals to High Court.

(1) A party who is dissatisfied with a decision of the Commission under this Act, may appeal to the High Court against any decision of the Commission which involves a question of law, including a question of mixed fact and law.

(2) Every appeal under this section shall be made by filing a notice of appeal within thirty working days after the date of the decision appealed against or within such further time as the High Court may allow.

(3) Where a notice of appeal is filed in accordance with subsection (2), the appellant shall -

(a) within the time specified in that subsection, serve a copy of the notice on the Commission; and

(b) except in the case of an appeal by the Comptroller, give security for the costs of the appeal of the amount and in the form fixed by the High Court.

227. Stating case for High Court.

(1) The Commission may, on the application of the appellant or the Comptroller or of its own motion, state a case for the opinion of the High Court on any question of law arising in respect of any appeal which was heard before the Commission.

(2) The Commission shall give notice to the Comptroller and the appellant of the Commission's intention to state a case under this section.

228. Appeals to Court of Appeal

The High Court shall be the final entity of arbitration.

229. Payment of duty after appeal.

(1) Where the Commission or the High Court determines that the amount of duty should be -

(a) increased, the appellant shall pay the amount of the increase to the Comptroller; or

(b) decreased, the Comptroller shall pay the amount of the decrease to the appellant,

within thirty days of the decision unless the decision has been further appealed.

(2) Where the amount due under subsection (1) is not paid within thirty days of the decision, it shall bear interest at a rate of one per cent per month or part of a month during which it remains unpaid.

230. Prosecution for customs offences.

(1) After exhaustion of all appeal proceedings available before the Comptroller and Commission, and subject to any express provisions to the contrary in any customs enactment, a disputed matter involving a customs enactment may be prosecuted in the High Court.

(2) Subject to the powers of the Director of Public Prosecutions under the Constitution and to subsection (4), proceedings for an offence under any customs enactment, or for condemnation, shall not be commenced except –

- (a) by order of the Comptroller in writing; and
- (b) in the name of a proper officer.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced by virtue of subsection (2)(b), those proceedings may be continued by any officer authorised to act on his or her behalf by the Comptroller.

(4) Where a person has been arrested for an offence under any customs enactment, any court before which he or she is brought may deal preliminarily with the case against the person.

231. Place of offence.

(1) An offence under this Act or any other customs enactment shall be regarded as having been committed—

- (a) in the place in which the offence arose or was actually committed; or
- (b) in any place on land where the offender or person prosecuted may be or may be brought.

(2) Every cause of complaint in respect of an offence under this Act or any other customs enactment shall be regarded as having arisen—

- (a) in the place in which it actually was committed or arose; or
- (b) in any place on land where the offender or person prosecuted may be or may be brought.

232. Place of trial.

Proceedings for an offence under any customs enactment may be

commenced – (a) in any court having jurisdiction in the place – (i) where the offence was committed,

(ii) subject to subparagraph (iii), where the person charged with the offence resides or is found, or

(iii) if the person charged with the offence is a corporate body, where that corporate body has its registered or principal office; or

(b) if any goods were—

(i) detained or seized or found in connection with the offence, or

(ii) condemned as forfeited,

in any court having jurisdiction in the place where the goods were detained, seized, found or condemned as forfeited.

233. Time limit on proceedings

Unless otherwise provided in this Act and notwithstanding any other enactment, proceedings in respect of an offence committed under this Act or any other customs enactment may be commenced at any time within seven years after the date of commission of the offence.

234. Limitation as to pleadings.

The fact that customs duties have been secured by a bond or otherwise shall not be pleaded or made use of in answer to or in stay of proceedings under this Act or any other customs enactment.

235. Officers may prosecute.

An officer or other person authorized by the Comptroller, although not an attorney, may conduct proceedings before a magistrate's Court in relation to an assigned matter.

236. Alternative prison sentence.

Notwithstanding anything contained in any other enactment to the contrary, where a fine imposed by a court in respect of an offence against this Act or any other customs enactment is not paid within one month of the date of its imposition, the court may order the defendant in default who was convicted of the offence to be imprisoned for –

(a) a term not exceeding three years; if such fine is fifty thousand dollars or less; or

(b) a term of five years, if such fine exceeds fifty thousand dollars.

237. Imprisonment for second and subsequent offence.

Subject to this Act and any other enactment imposing a sentence of imprisonment for an offence, where—

(a) a defendant is liable on summary conviction to a fine of twenty five thousand dollars or more for an offence under this Act or any other customs enactment; and

(b) such defendant has previously incurred a fine or forfeiture under this Act or any other customs enactment which has been enforced in any court,

the court may, if it thinks fit, in lieu of ordering payment of the fine referred to in paragraph (a), order the defendant to be imprisoned for a period not exceeding five years.

238. Incidental provisions as to legal proceedings for offences.

(1) In proceedings for an offence under this Act or any other customs enactment, the court in which the matter is considered may mitigate any pecuniary penalty as it sees fit.

(2) It is not a defence, in any proceedings for an offence or for the condemnation of an article as being forfeited under this Act or any other customs enactment, that security has been given by a bond or otherwise for the payment of any duty or compliance with any condition.

239. Institution of civil proceedings.

(1) Notwithstanding anything to the contrary in the Magistrate's Code of Procedure Act Cap. 3.17, proceedings for the recovery of rents, charges, expenses, duties, penalties and all other sums of money payable under a customs enactment may be instituted, determined, enforced and recovered by suit or other appropriate civil proceedings in a Magistrate's Court, in the name of the Comptroller as nominal plaintiff.

(2) The Magistrate's Court is vested with the necessary jurisdiction for the purpose of subsection (1), and, except as provided in this Act, the ordinary civil procedure of the Magistrate's Courts applies to proceedings under that subsection.

(3) For the avoidance of doubt—

- (a) civil proceedings brought in the name of the Comptroller are not invalidated or do not lapse by reason of any change in the person holding the office of Comptroller; and
- (b) where any such change occurs, the civil proceedings may be continued in the name of the person who, for the time being, is the holder of or is acting in the office of Comptroller.

(4) Nothing in this section shall be construed so as to prejudice or affect the right of the Attorney-General to institute civil proceedings on behalf of the State.

240. Service of process.

(1) A summons or other process issued for the purpose of proceedings under a customs enactment is deemed to have been duly served if it was –

- (a) delivered personally to the person to whom it is addressed;
- (b) subject to paragraph (c), left at the last known place of abode or business of the person to whom it is addressed; or
- (c) in the case of a corporate body, left at its registered or principal office.

(2) A summons, notice, order or other document issued for the purposes of—

- (a) any proceedings under this Act or any other customs enactment; or

(b) an appeal from the decision of the court in the proceedings, may be served by a proper officer.

(3) For the purposes of this section, the expression “appeal” includes an appeal by way of case stated.

241. Costs.

In proceedings under this Act or any other customs enactment, the same rules as to costs shall be observed as in proceedings between private persons.