

PART XV

FORFEITURE AND SEIZURE OF GOODS

Detention, seizure and condemnation of goods.

192. (1) A customs officer or a police officer may seize and detain any goods liable to forfeiture under this Act or any other customs enactment.

(2) Subject to subsection (3), where a customs officer or a police officer seizes or detains, in any place, any goods liable to forfeiture, the officer shall, immediately, deliver the goods to the Comptroller.

(3) Where—

- (a) a police officer seizes or detains any goods liable to forfeiture under a customs enactment; and
- (b) the goods are required for use in connection with proceedings which may be brought under a law other than a customs enactment,

the police officer may, subject to subsection (4), retain the article in the custody of the police until the proceedings are completed or it is decided that proceedings are not to be brought.

(4) Where any goods are retained in the custody of the police under subsection—

- (a) the police officer shall immediately give the Comptroller a notice, in writing, containing full particulars of the seizure or detention of the goods; and
- (b) a customs officer is authorised to examine the seized goods and take account of the goods while such goods remain in the custody of the police.

Forfeiture of vessels, etc. used in connection with goods liable to forfeiture.

193. (1) Where an article is a tainted article—

- (a) any vessel, aircraft, vehicle, animal, container or any other article which has been used for the carriage, handling, deposit or concealment of the tainted article is liable to forfeiture; and
- (b) any other article mixed, packaged or found with the tainted article is liable to forfeiture.

(2) Where—

- (a) an illegally fitted vessel is or has been within the territorial sea or contiguous zone of Saint Christopher and Nevis; or
- (b) an illegally fitted aircraft is or has been at any airport in Saint Christopher and Nevis,

the illegally fitted vessel or aircraft is liable to forfeiture.

(3) If, at any time while a vessel is within the territorial sea or contiguous zone of Saint Christopher and Nevis, any part of its cargo or any article carried on board is thrown overboard or is staved or destroyed to prevent seizure, that vessel is liable to forfeiture.

(4) Where—

- (a) any vessel or aircraft in Saint Christopher and Nevis has imported cargo on board and a substantial part of that cargo is afterwards found to be missing; and
- (b) the master or commander of the vessel or aircraft or the relevant agent is unable to account for that missing cargo to the satisfaction of the Comptroller, the vessel or aircraft is liable to forfeiture.

(5) Where a vessel or an aircraft is liable to forfeiture, the tackle, apparel or furniture of the vessel or aircraft is liable to forfeiture.

(6) For the purposes of this section—

- (a) the reference in subsection (1)(a) to “container” shall be construed to include a reference to any article of the passenger’s baggage;
- (b) the reference in subsection (2) to “illegally fitted” shall be construed to mean a reference to constructed, adapted, altered or fitted in any manner for the purpose of concealing goods; and

- (c) the time of use of a vessel, aircraft, vehicle, animal, container under subsection (1)(a), in relation to a tainted article, includes the time of the commission of the offence for which the article later became liable to forfeiture or after it became liable to forfeiture.

Special provisions respecting forfeiture of larger vessels.

194. (1) Notwithstanding any other customs enactment, a vessel of two hundred and fifty tons burden or more is not liable to forfeiture by reason of the commission of an offence unless the offence in respect of or in connection with which the forfeiture is sought—

- (a) was the primary purpose of the voyage of the vessel during which the offence was committed; or
 - (b) was committed while the vessel was under chase after refusing to stop when required to do so.
- (2) Where—
- (a) any vessel of two hundred and fifty tons burden or more would, but for subsection (1), be liable to forfeiture for or in connection with an offence under a customs enactment; and
 - (b) in the opinion of the Comptroller, a responsible officer of the vessel, including the master, mate or engineer of the vessel or, in the case of a vessel carrying a passenger certificate, the purser or chief steward, is implicated by his or her own act or by neglect in the commission of the offence,

the Comptroller may, subject to subsections (3) and (4), impose on that vessel a fixed penalty of one hundred thousand dollars or such larger amount as may be prescribed.

- (3) Where—
- (a) a vessel is liable to a fixed penalty under subsection (2); and
 - (b) the Comptroller is not satisfied that the penalty is adequate in relation to the offence committed,

the Comptroller may bring proceedings in accordance with the forfeiture rules set out in the Third Schedule for the condemnation as forfeited of that vessel in a sum not exceeding three hundred thousand dollars or such larger amount as may be prescribed.

(4) Where condemnation proceedings are instituted under subsection (3), the Comptroller may require the master or any other responsible officer of the vessel to deposit with the Comptroller a sum equal to the amount claimed in the condemnation proceedings.

- (5) Where, in respect of a vessel, the Comptroller requires the payment of—
- (a) a fixed penalty under subsection (2); or
 - (b) a deposit under subsection (4),

the Comptroller may withhold clearance of the vessel until payment of the fixed penalty or the deposit.

(6) No claim shall be brought against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(7) The exemption from forfeiture of any vessel under this section does not affect the liability to forfeiture of any goods carried on board that vessel.

(8) For the purposes of this section, whenever goods are removed to a bonded area or bonded factory for examination—

- (a) the proper officer at the place of importation shall immediately send a copy of the import entry for goods free of duty to the proper officer at the bonded area or bonded factory;
- (b) the goods shall be removed directly from the place of importation to the bonded area and, if not sealed, shall be accompanied by a customs guard; and
- (c) the packages containing goods shall not be opened or otherwise dealt with except in the presence of, or by the authority of the proper officer at the bonded area or factory.

Sale of certain seized goods.

195. (1) This section applies to—

- (a) a living creature;
- (b) anything which is of a perishable nature;
- (c) anything which, in the opinion of the Comptroller, is likely to deteriorate or diminish in value during storage;
- (d) anything which, in the opinion of the Comptroller, it is desirable to sell immediately; or
- (e) anything which, in the opinion of the Comptroller, is likely to create a health or safety risk if stored in or on the premises by the Customs Department.

(2) Where a living creature or any other article to which this section applies has been seized as being liable to forfeiture—

- (a) the Comptroller may sell or destroy the living creature or other article seized before its condemnation; and
- (b) the net proceeds of sale are deemed substituted for the article sold, and this Part, so far as it is applicable, extends and applies to such proceeds.

Sale of goods condemned as forfeited.

196. (1) The Comptroller shall sell by public auction any goods—

- (a) condemned as forfeited; or
- (b) deemed to have been condemned as forfeited, in accordance with the forfeiture rules set out in the Third Schedule unless the goods are prohibited or restricted goods.

(2) An auction under this section shall be advertised, not less than seven days before the auction is due to take place, in the *Gazette* and in such other manner as the Comptroller thinks fit.

(3) The Comptroller shall, in writing, authorise a person to act as auctioneer at an auction under this section.

(4) A person is disqualified from bidding for anything at an auction under this section, if the person—

- (a) is a customs officer; or
- (b) has or had an interest in the article being auctioned.

(5) A person who makes a bid in contravention of subsection (4) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(6) The proceeds of the sale of any goods at an auction under this section shall be applied as follows—

- (a) first, to pay any duty payable in respect of the goods;
- (b) secondly, to pay all the charges incidental to the sale, warehousing and carriage of the goods;
- (c) thirdly, to pay all the charges incidental to the seizure of the goods or to any condemnation proceedings respecting the goods; and
- (d) lastly, if any excess remains after the payments referred to in paragraphs (a), (b) and (c) have been made, such excess shall be paid by the Comptroller into the Consolidated Fund.

(7) The value for duty of any goods sold at auction under this section is the price realised less the included duty, if any.

(8) The Comptroller shall destroy or otherwise dispose of or cause to be destroyed—

- (a) any goods not sold at an auction under this section; and
- (b) all prohibited or restricted goods condemned or deemed to be condemned as forfeited.

(9) Nothing in this section prevents the Comptroller from authorising—

- (a) the withholding from sale of any goods condemned or deemed to be condemned as forfeited; and
- (b) the use by a customs officer of any goods withheld under paragraph (a),

where such retention or use is likely to assist the customs officer in the performance of his or her duty.

Sale of articles not condemned as forfeited.

197. (1) Where any article which is not condemned or deemed not to be condemned as forfeited is required by or under this Act or any other customs enactment to be sold, the article shall, unless it is of a perishable nature, be sold at a public auction.

(2) An auction under this section shall be advertised in the *Gazette* not less than seven days before the auction is due to take place.

(3) The Comptroller shall appoint a person, who may be a customs officer, to act as auctioneer at any auction under this section.

(4) The proceeds of the sale of any article at an auction under this section shall be applied as follows—

- (a) first, to pay any duty payable on the article; and

- (b) secondly, to pay all the charges incidental to the sale, warehousing and carriage of the article; and
- (c) lastly, if any excess remains after the payments in paragraphs (a) and (b) have been made, such excess shall, where an application is made within six months of the sale, be paid over to any person who satisfies the Comptroller that he or she was the owner of the article at the time of its sale or into the Consolidated Fund if no application is made.

(5) The value for duty of any article sold under this section is the price realised less the included duty.

(6) The Comptroller shall sell any article which is of a perishable nature in such manner as appears to him or her most likely to realise the largest sum.

(7) Where an article or item to which this section applies cannot be sold—

- (a) at an auction under this section; or
- (b) by the Comptroller under subsection (6),

the article or item may be destroyed or otherwise disposed of in such manner as the Comptroller directs.

(8) A sale under this section may be held at the same time and place as a sale under section 196.

Notice of seizure.

198. (1) Where any goods have been seized, the customs officer shall, as soon as practicable but not later than two working days from the date of seizure, give notice in writing of the seizure and the reasons for the seizure, in the prescribed form—

- (a) subject to paragraph (b), to any person known or believed to have an interest in the goods; or
- (b) where the person referred to in paragraph (a) is overseas, to his or her agent in Saint Christopher and Nevis.

(2) Notwithstanding subsection (1), a seizure is not invalidated or rendered illegal by reason of any failure to give the notice if the customs officer proves that reasonable steps were taken to give the notice.

Delivery of goods seized on deposit of value.

199. (1) Subject to subsection (2), where any goods have been seized as being liable to forfeiture—

- (a) the Comptroller may, at any time before condemnation of the goods, deliver the goods to the owner or other person from whom they were seized, on the deposit with the Comptroller of a sum of money equal to the aggregate value of the goods and the duty payable;
- (b) the sum of money deposited is deemed substituted for the goods seized; and
- (c) this Part, so far as it is applicable, applies to the money accordingly.

(2) Subsection (1) does not apply to goods which have been seized as being liable to forfeiture if such goods are prohibited goods.

Protection of officers seizing and detaining goods.

200. (1) Where, in any proceedings against the State or the Comptroller for the condemnation of any goods seized as being liable to forfeiture under this Act or any other customs enactment, judgment is given for the claimant, the court may, if it sees fit, certify that there were reasonable grounds for the seizure of the goods.

(2) Where, in any proceedings described in subsection (1), judgment is given for the claimant or prosecutor—

- (a) the claimant or prosecutor is not entitled to recover any damages or costs; and
- (b) the defendant is not liable to any punishment,

if a certificate relating to the seizure has been granted under subsection (1) or the court is satisfied that there were reasonable grounds for the seizure or detention of the goods.

(3) Nothing in subsection (2) affects the right of any person—

- (a) to the return of the goods seized or detained; or
- (b) to compensation for any damage to the goods during the detention or destruction of such goods.

(4) A certificate under subsection (1) may be proved by the production of the original certificate or a certified copy of the certificate, purporting to be signed by an officer of the court by which it was granted.

Application for order disallowing seizure.

201. A person claiming an interest in goods seized as being liable to forfeiture may, within twenty working days after the date on which a notice is given to that person under section 198 or within such further time as the court may allow, apply to the court for an order—

- (a) disallowing the seizure on the grounds that no reasonable cause for the seizure or the continued detention of the goods exists under this Act;
- (b) for the return of the goods or for the return of the goods otherwise to be made available to the claimant; and
- (c) for payment of compensation by the State to the claimant such sum as the court thinks fit—
 - (i) for any depreciation in the value of the goods resulting from the seizure or detention; or
 - (ii) for any transport and storage costs respecting the seized or detained article.

Court may disallow seizure.

202. (1) Subject to this section, where an application is made under section 201, the court may issue an order dismissing the application or disallowing the seizure.

(2) Where the court issues an order disallowing the seizure, the court may, upon and subject to such terms and conditions as the court thinks fit, order that—

- (a) the seizure is disallowed, in whole or in part;
- (b) the goods are to be returned, in whole or in part; and

- (c) the State pays to the applicant such sum as compensation, as the court thinks fit—
 - (i) for any depreciation in the value of the goods resulting from the seizure or detention; and
 - (ii) for any transport and storage costs.
- (3) Where the court issues an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State unless the goods have already been condemned in proceedings brought under section 194(3).
- (4) The court shall not issue an order disallowing the seizure of the goods if the court is of the opinion that—
 - (a) the goods are required, in whole or in part, to be produced in evidence in any proceedings pending under this Act; or
 - (b) there are proceedings pending which may result in condemnation of the goods.
- (5) The court shall not issue an order for the payment of compensation except—
 - (a) in respect of goods which, in the opinion of the court, were seized or detained without reasonable cause; and
 - (b) to the extent that the court disallows the seizure or detention.
- (6) Where the court issues an order for the payment of any sum as compensation to any person under this section, the sum awarded is recoverable by that person as a civil debt due from the State.

Application for order disallowing seizure where notice not received.

- 203.** (1) Except where the goods have already been condemned to the State, a person claiming an interest in goods seized as being liable to forfeiture under this Act who did not receive a notice under section 198, may, within two months after the date on which the goods were seized, apply to the court for an order—
- (a) for the return of the goods, if the goods seized have not been sold, destroyed or otherwise disposed of; or
 - (b) for payment of compensation by the State for the whole or part of any loss suffered by the applicant by reason of the sale, destruction or disposal otherwise of the goods seized.
- (2) The court may—
- (a) dismiss the application made under subsection (1); or
 - (b) issue an order directing—
 - (i) the goods to be returned, if the goods seized have not been sold, destroyed or otherwise disposed of; or
 - (ii) the State to pay to the applicant such sum of money, as the court thinks fit, as compensation for the whole or any part of any loss suffered by the applicant by reason of the sale, destruction or disposal otherwise of the goods seized.
- (3) The court shall not issue an order respecting the payment of compensation except—

- (a) in respect of goods which, in the opinion of the court, were seized or detained without reasonable cause; and
- (b) to the extent that the court disallows the seizure or detention.

(4) Where the court issues an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State unless the goods have already been condemned in proceedings brought under section 194(3).

(5) Without limiting the generality of subsection (2)(a), the Court may dismiss an application under subsection (1) if the application was not made as soon as reasonably practicable after the applicant became aware of the seizure of the goods.

Condemnation if no appeal against seizure.

204. Where no application is made under section 200 within the time specified in that section, the goods are deemed condemned to the State as if an application were made and dismissed.

Condemnation if application discontinued.

205. Where an application under section 201 or 202 is not completed, the goods are condemned to the State as if the application were dismissed.

Condemnation of seized goods on conviction.

206. (1) Subject to subsection (2), where this Act provides that on the commission of any offence any goods are liable to forfeiture, the conviction of any person for that offence has effect as a condemnation, without suit or judgment, of any goods which—

- (a) have been seized in accordance with this Act and in respect of which the offence was committed; or
- (b) were otherwise liable to forfeiture under this Act.

(2) Subject to subsection (4), where the court imposes a sentence on any person on the conviction of that person for an offence to which subsection (1) applies—

- (a) the court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized; and
- (b) where such an order is issued, the conviction does not have effect as a condemnation of such goods.

(3) The Court may, in issuing an order under subsection (2), impose such conditions as it thinks fit.

(4) Subsection (2) does not apply if, before the conviction of the person for the offence, the goods have been—

- (a) sold at public auction;
- (b) restored to the person from whom they were seized; or
- (c) otherwise disposed of by the Comptroller under any other provision of this Act.

Disposal of forfeited goods.

207. (1) The State has the property rights to forfeited goods or to the proceeds of sale under section 195, 196 or 197.

(2) Where goods have been condemned, such goods may be sold by public auction, used, destroyed, or otherwise disposed of in such manner as the Comptroller may direct.

Application of forfeiture provisions.

208. Except where this Act expressly provides otherwise, the provisions of this Act with respect to the forfeiture of goods extend and apply to any vessel, aircraft or other article forfeited under this Act.