

**CHAPTER IV**

## INSTRUMENTS NOT DULY STAMPED

**33.**(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

Examination  
and  
impounding of  
instruments

(2) For that purpose every such person shall examine every instruments so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in Bangladesh when such instrument was executed or first executed:

Provided that,—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
- (b) in the case of a Judge of the High Court Division the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—

- (a) the Government may determine what offices shall be deemed to be public offices; and
- (b) the Government may determine who shall be deemed to be persons in charge of public offices.

Special provision as to unstamped receipts

**34.** Where any receipt chargeable with a duty of <sup>1</sup>[thirty poisha] is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

Instruments not duly stamped inadmissible in evidence, etc.

**35.** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that,—

- (a) any such instrument not being an instrument chargeable with a duty of ten poisha or five poisha only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five Taka, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five Taka, or a sum equal to ten times such duty or portion;
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one Taka by the person tendering it;
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

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<sup>1</sup> The words "thirty poisha" were substituted, for the words "fifteen paisa" by section 3 of the Finance Act, 1974 (Act No. XLIV of 1974).

- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

**36.** Where an instrument has been admitted in evidence, such admission shall not except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of instrument where not to be questioned

**37.** The Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

Admission of improperly stamped instruments

**38.(1)** When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

Instruments impounded how dealt with

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

**39.(1)** When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five Taka which has been paid in respect of such instrument.

Collector's power to refund penalty paid under section 38, sub-section (1)

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

Collector's  
power to stamp  
instruments  
impounded

**40.**(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of ten poisha or five poisha only or a bill of exchange or promissory note, he shall adopt the following procedure:—

- (a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be:
- (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five Taka or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five Taka:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

Instruments  
unduly  
stamped by  
accident

**41.** If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of ten poisha or five poisha only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector

the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

**42.**(1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Endorsement of instruments on which duty has been paid under sections 35, 40 or 41

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

- (a) no instrument which has been admitted in evidence upon payment of duty, and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;
- (b) nothing in this section shall affect the Order XIII, rule 9 of Schedule I to the Code of Civil Procedure, 1908.

**43.** The taking of proceedings or the payment of a penalty under this chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument:

Prosecution for offence against Stamp-law

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Persons paying duty or penalty may recover same in certain cases

**44.**(1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

Power to Revenue-authority to refund penalty or excess duty in certain cases

**45.**(1) Where any penalty is paid under section 35 or section 40, the Chief Revenue authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

Non-liability for loss of instruments sent under section 38

**46.**(1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

47. When any bill of exchange or promissory note chargeable with the duty of five poisha is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon canceling the same in manner hereinbefore provided, may pay the sum payable upon such bill, or note, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as foresaid, and such bill, or note shall, so far as respects the duty, be deemed good and valid:

Power of payer to stamp bills and promissory notes received by him unstamped

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, or note.

48. All duties, penalties and other sums required to be paid under this chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

Recovery of duties and penalties

48A. [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).]

## CHAPTER V

### ALLOWANCES FOR STAMPS IN CERTAIN CASES

49. Subject to such rules as may be made by the Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the case hereinafter mentioned, namely:—

Allowance for spoiled stamps