

## Central Excise Act, 1944

### Section 35B - Appeals to the Appellate Tribunal

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(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order : --

( a ) a decision or order passed by the<sup>3</sup>[Commissioner of Central Excise] as an adjudicating authority;

( b ) an order passed by the<sup>1</sup>[Commissioner (Appeals)] under section 35A;

( c ) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the<sup>4</sup>[Appellate

Commissioner of Central Excise] under section 35, as it stood immediately before the appointed day;

( d ) an order passed by the Board or the<sup>2</sup>[Commissioner of Central Excise], either before or after the

appointed day, under section 35A, as it stood immediately before that day:

<sup>5</sup>[ Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have

jurisdiction to decide any appeal in respect of any order referred to in clause ( b ) if such order relates to,--

( a ) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

( b ) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

( c ) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

<sup>6</sup>[( d ) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:]

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause ( b ) or clause ( c ) or clause ( d ) where-

( i ) in any disputed case, other than a case where the determination of any question having relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

( ii ) the amount of fine or penalty determined by such order,

does not exceed<sup>7</sup>[fifty thousand rupees].

8[(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which

is pending immediately before the commencement of section 47 of the Finance Act, 1984 before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.]

9[(1B) (i) The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act,

1963 (54 of 1963) may by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Act.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.]

10[(2)11[The Committee of Commissioner of Central Excise may, if it is] of opinion that an order passed by the4[Appellate Commissioner of Central Excise] under section 35, as it stood immediately before the

appointed day, or the1[Commissioner (Appeals)] under section 35A, is not legal or proper, direct any Central

Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal12[on his behalf] to the Appellate Tribunal against such order.

14[Provided that where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Central Excise who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against such order.

Explanation.--For the purposes of this sub-section, jurisdictional Chief Commissioner means the Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter.]

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the3[Commissioner of Central Excise], or, as the case

may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

13[(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the

prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,--

(a) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in subsection (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal,--

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub-section.]

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1. Substituted by Act 22 of 1995, section 70, for "Collector (Appeals)" (w.e.f. 26-5-1995)..

2. Substituted by the Finance Act, 2005, section 78, for "and of the Commissioner of Central Excise".

3. Substituted by Act 22 of 1995, section 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

4. Substituted by Act 22 of 1995, section 70, for "Appellate Collector of Central Excise" (w.e.f. 26-5-1995).

5. Substituted by Act 21 of 1984, section 47, for "Provided that" (w.e.f. 11-5-1984).

6. Inserted by Act 21 of 1998, section 109 (w.e.f. 1-8-1998).

7. Substituted by Act 38 of 1993, section 45, for "ten thousand rupees" (w.e.f. 13-5-1993).

8. Inserted by Act 21 of 1984, section 47 (w.e.f. 11-5-1984).

9. Inserted by the Finance Act, 2005, section 79.

10. Sub-section (2) shall stand substituted by Act 62 of 1986, section 34 as follows:--

"(2) The Collector of Central Excise may, if he is of opinion that an order passed by--

(a) the Appellate Collector of Central Excise under section 35, as it stood immediately before the appointed day, or

(b) the Collector (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of 62 of 1986 the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order".

11. Substituted by the Finance Act, 2005, section 79, for "The Commissioner of Central Excise may, if he is".

12. Substituted by the Finance Act, 2005, section 79, for "on his behalf".

**13.** Substituted by Act 23 of 2004, section 83, for "(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made on or after the 1st day of June, 1993, irrespective of the date of demand of duty or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,--

(a) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;

(b) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than one lakh rupees, one thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4)." (w.e.f. 10-9-2004)

**14.** Inserted by the Finance Act, 2008.