

## Central Excise Act, 1944

### Section 35E - Powers of Board or Commissioner of Central Excise to Pass Certain Orders

#### 35E. Powers of Board or<sup>1</sup>[Commissioner of Central Excise] to pass certain orders

(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a<sup>2</sup>

[Commissioner of Central Excise] as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such<sup>4</sup>[Commissioner ]<sup>3</sup>[or any other Commissioner] to apply to the Appellate Tribunal<sup>4</sup>[or,

as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986)] for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief<sup>5</sup>[Commissioners of Central Excise] in its order.

<sup>13</sup>[Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion

as to the legality or propriety of the decision or order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the decision or order, if is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.]

(2) The<sup>2</sup>[Commissioner of Central Excise] may, of his own motion, call for and examine the record of any

proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct<sup>10</sup>[such authority or any Central Excise Officer subordinate to him] to apply to the<sup>6</sup>

[Commissioner (Appeals)] for the determination of such points arising out of the decision or order as may be specified by the<sup>2</sup>[Commissioner of Central Excise in his order.

<sup>14</sup>(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.]

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal<sup>4</sup>[or as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986)] or the<sup>6</sup>[Commissioner (Appeals)] within a period of <sup>12</sup>[one month] from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal<sup>4</sup>[or as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] or the<sup>6</sup>[Commissioner (Appeals)], as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 35B,<sup>4</sup>[or as the case may be, the Provisions of Customs and Excise Revenues Appellate Tribunal Act, 1986] shall, so far as may be, apply to such application.

<sup>8</sup>(5) The provisions of this section shall not apply to any decision or order in which the determination of any

question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation : For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question --

( a) relating to the rate of duty of excise for the time being in force, whether under the Central Excise Tariff Act, 1985 (5 of 1986) or under any other Central Act providing for the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of February, 1986; or

( b) relating to the value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of February, 1986; or

( c) whether any goods are excisable goods or whether the rate of duty of excise on any goods is nil; or

(d) whether any goods fall under a particular heading or sub-heading of 9[the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986), or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), or that any goods are or not covered by a particular notification or order issued by the Central Government or the Board, as the case may be, granting total or partial exemption from duty; or

( e) whether the value of any goods for the purposes of assessment of duty of excise shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.]

2. Substituted by Act 22 of 1995, section 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).
3. Inserted by Act 14 of 2001, section 129 (w.e.f. 11-5-2001).
4. Inserted by Act 62 of 1986, section 34.
5. Substituted by the Finance Act, 2005, section 80, for "Board".
6. Substituted by Act 22 of 1995, section 70, for "Collector (Appeals)" (w.e.f. 26-5-1995).
7. Substituted by Act 20 of 2002, section 141, for sub-section (3).
8. Inserted by Act 29 of 1988, section 11 (w.e.f. 16-8-1988).
9. Substituted by Act 27 of 1999, section 119, for "the Schedule" (w.e.f. 11-5-1999).
10. Substituted for "such authority" by the Taxation Laws (Amendment) Act, 2006.
11. Substituted by the Finance Act, 2007. Prior to substitution, it read as under:-

<sup>7</sup>(3) The Board or 5[Commissioner of Central Excise, as the case may be, shall, where it is possible to do so, make order under sub-section (1) or sub-section (2), within a period of six months, but not beyond a period of one year, from the date of the decision or order of the adjudicating authority."

12. Substituted for the words "three months" by the Finance Act, 2007.
13. Inserted by the Finance Act, 2008.
14. Substituted by the Finance Act, 2008 for the following :-

<sup>1</sup>[(3) The Committee of Chief Commissioners of Central Excise or the Commissioner of Central Excise, as the case may be, shall make order under sub-section (1) or sub-section (2) within a period of three months from the date of communication of the decision or order of the adjudicating authority.]

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