

## Central Excise Act, 1944

### Section 35G - Statement of Case to High Court

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<sup>1</sup>[(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be--

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

<sup>2</sup>[(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filling the same within that period.]

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which--

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section. ]

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1. Substituted by the Finance Act, 2003 Prior to the substitution it read as:

"35G. (1) The Commissioner of Central Excise or the other party may within sixty days of the date upon which he is served with notice of an order under section 35C (not being an order relating among other things to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment) by application in the prescribed form accompanied where the application is made by the other party by a fee of two hundred rupees require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and subject to the other provisions contained in this section the Appellate Tribunal shall within one hundred and twenty days of the receipt of such application draw up a statement of the case and refer it to the

High Court:

Provided that the Appellate Tribunal may if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified allow it to be presented within a further period not exceeding thirty days.

(2) On receipt of notice that an application has been made under sub-section (1) the person against whom such application has been made may notwithstanding that he may not have filed such an application 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 in relation to which an application for reference has been made and such memorandum shall be disposed of by the Appellate Tribunal as if it were an application presented within the time specified in sub-section (1).

(3) If on an application made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises the Commissioner of Central Excise or as the case may be the order party may within six months from the date on which he is served with notice of such refusal apply to the High Court and the High Court may if it is not satisfied with the correctness of the decision of the Appellate Tribunal require the Appellate Tribunal to state the case and to refer it and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(4) Where in the exercise of its powers under sub-section (3) the Appellate Tribunal refuses to state a case which it has been required by an applicant to state the applicant may within thirty days from the date on which he receives notice of such refusal withdraw his application and if he does so the fee if any paid by him shall be refunded."

2. Inserted by the Finance (No. 2) Act, 2009 w.e.f. 1st July, 2003.

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