

## Finance Act 1994

### Section 86 - Appeals to Appellate Tribunal

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(1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under 1[section 73 or section 83A 13[\*\*\*]], or an order passed by a Commissioner of Central Excise (Appeals) under section 85 , may appeal to the Appellate Tribunal against such order.

8[(1A) (i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Chapter.

(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.]

2[(2) The 9[Committee of Chief Commissioners of Central Excise] may, if it objects to any order passed by the Commissioner of Central Excise under 1[section 73 or section 83A 13[\*\*\*]], direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

12[Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the 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 shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.]

10[(2A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order.]

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

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

(3) Every appeal under sub -section (1) 4[or sub -section (2) or sub -section (2A)] shall be filed within three months of the date on which the order sought to be appealed against is received by the assessee,

the 11[Committee of Chief Commissioners or the Committee of Commissioners] , as the case may be.

5[(4) The Commissioner of Central Excise or 6[any Central Excise Officer subordinate to him] or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub -section (2A)] by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), 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.

7[(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 service tax 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 service tax 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 service tax 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 service tax 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 fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

(6A) 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 the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, under this sub-section]

(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

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**1.** Substituted by the Finance Act, 2005 w.e.f 13.05.2005 for the words "section 84".

**2.** Sub-sections (2) and (2A) substituted for sub-section (2) by the Finance Act, 2001, w.e.f. 16-7-2001. Prior to its substitution, sub-section (2) read as under :

"(2) The Board may, if it objects to any order passed by the Commissioner of Central Excise under section 84, or the Commissioner of Central Excise may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct the Central Excise Officer to appeal to the Appellate Tribunal against the order."

**3.** Substituted by the Finance Act, 2005 w.e.f 13.05.2005 for the following:-

"the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise to appeal"

**4.** Substituted for "or sub-section (2)" by the Finance Act, 2001, w.e.f. 16-7-2001.

**5.** Substituted for the portion beginning with the words "The Central Excise Officer" and ending with the words "or sub-section (2)", the Finance Act, 2001, w.e.f. 16-7-2001, w.e.f. 16-7-2001. Prior to its substitution, the quoted portion read as under :

"The Central Excise Officer or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2)"

**6.** Substituted by the Finance Act, 2005 w.e.f 13.05.2005 for the following:-

"Assistant Commissioner of Central-Excise or Deputy Commissioner of Central Excise".

**7.** Substituted by the Finance (No. 2) Act, 2004 w.e.f. 10.09.2004 for the following sub section:-

"(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to [in sub-section (2) or sub-section (2A)] or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of two hundred rupees."

**8.** Inserted by the Finance Act, 2007.

**9.** Substituted for "Board" by the Finance Act, 2007.

**10.** Substituted by the Finance Act, 2007. Prior to substitution, it read as under:-

"( 2 A) The Commissioner of Central Excise may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85 , direct 3[any Central Excise Officer to appeal on his behalf] to the Appellate Tribunal against the order.]"

**11.** Substituted for " Board or by the Commissioner of Central Excise" by the Finance Act, 2007.

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

**13.** Omitted by the Finance (No. 2) Act, 2009 for the following : -

"or section 84"