

Finance Act, 2003

Section 144 - Substitution of New Section for Section 35g

For section 35G of the Central Excise Act, the following section shall be substituted, narnely:-

"35G. Appeal to High Court.--

(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 the 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.

(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."
