

Foreign Exchange Management(Adjudication Proceedings and Appeal) Rules, 2000

CONTENTS

1. Short title and commencement
2. Definitions
3. Appointment of Adjudicating Authority
4. Holding of inquiry
5. Form of appeal
6. Procedure before Special Director (Appeals)
7. Contents of the Order in appeal
8. Representation of party
9. Service of notices, requisitions or orders
10. Form of Appeal
11. Procedure before Appellate Tribunal
12. Contents of the Order in appeal
13. Representation of party
14. Service of notices, requisitions or orders

Foreign Exchange Management(Adjudication Proceedings and Appeal) Rules, 2000

In exercise of the powers conferred by Section 46 read with sub-section (1) of Section 16, sub-section (3) of Section 17 and sub-section (2) of Section 19 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules for holding enquiry for the purpose of imposing penalty and appeals under Chapter V of the said Act, namely

1. Short title and commencement :-

(1) These rules may be called the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000.

(2) They shall come into force on the 1st day of June, 2000.

2. Definitions :-

In these rules, unless the context otherwise requires,

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "Adjudicating Authority" means an officer appointed by the

Central Government under sub-section (1) of Section 16 of the Act;

(c) "applicant" means an aggrieved person who makes an appeal before Special Director (Appeals) or Appellate Tribunal, as the case may be;

(d) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under Section 18 of the Act;

(e) "Form" means form appended to these rules;

(f) "Section" means a section of the Act;

(g) "Special Director (Appeals)" means Special Director (Appeals) appointed by the Central Government under sub-section (1) of Section 17 of the Act;

(h) all other words and expressions used in these rules and not defined but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. Appointment of Adjudicating Authority :-

The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding inquiry under the provisions of Chapter IV of the Act.

4. Holding of inquiry :-

(1) For the purpose of adjudicating under Section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.

(3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.

(4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.

(5) The Adjudicating Authority shall, then, given an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).

(6) While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.

(8) If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of Section 13 of the Act.

(9) Every order made under sub-rule (8) of the Rule 4 shall specify the provisions of the Act or of the rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention has taken place and shall contain brief reasons for such decisions.

(10) Every order made under sub-rule (8) shall be dated and signed by the Adjudicating Authority.

(11) A copy of the order made under sub-rule (8) of Rule 4 shall be

supplied free of charge to the person against whom the order is made and all other copies of proceedings shall be supplied to him on payment of copying fee @ Rs 2 per page.

(12) The copying fee referred to in sub-rule (11) shall be paid in cash or in the form of demand draft in favour of the Adjudicating Authority.

5. Form of appeal :-

(1) Every appeal presented to the Special Director (Appeals) under Section 17 of the Act shall be in the Form I signed by the applicant. The appeal shall be filed in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of Rupees Five thousand in the form of cash or demand draft payable in favour of the Special Director (Appeal).

(2) The appeal shall set forth concisely and under distinct heads the grounds of objection to the order appealed against without any argument of narrative and such grounds shall be numbered consecutively, and shall specify the address for service at which notice or other processes may be served on the applicant, the date on which the order appealed against was served on the applicant.

(3) Where the appeal is presented after the expiry of the period of forty-five days referred to in sub-section (3) of Section 17, it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the applicant, showing cause how the applicant had been prevented from preferring the appeal within the said period of forty-five days.

(4) Any notice required to be served on the applicant shall be served on him in the manner specified in Rule 9 at the address for service specified in the appeal.

6. Procedure before Special Director (Appeals) :-

(1) On receipt of an appeal under Rule 5, the Special Director (Appeals) shall send a copy of the appeal, together with a copy of the order appealed against, to the Director of Enforcement.

(2) The Special Director (Appeals) shall, then, issue notices to the applicant and the Director of Enforcement fixing a date for hearing of the appeal.

(3) On the date fixed for hearing of the appeal or any other day to

which the hearing of the appeal may be adjourned, the applicant as well as the presenting officer of the Directorate of Enforcement shall be heard.

(4) Where on the date fixed, or any other day to which the hearing of the appeal may be adjourned, the applicant or the presenting officer fail to appear when the appeal is called for hearing, the Special Director (Appeals) may decide the appeal on the merits of the case.

7. Contents of the Order in appeal :-

(1) The order of Special Director (Appeals) shall be in writing and shall state briefly the grounds for the decision.

(2) The order referred to in sub-rule (1) shall be signed by the Special Director (Appeal) hearing the appeal.

8. Representation of party :-

Any applicant who has filed an appeal before the Special Director (Appeals) under Section 17 of the Act, may appoint a legal practitioner or a chartered accountant to appear and plead and act on his behalf before the Special Director (Appeal) under the Act.

9. Service of notices, requisitions or orders :-

A notice, requisition or an order issued under these rules shall be served on any person in the following manner, that is to say,

(a) by delivering or tendering the notice or requisition or order to that person or his duly authorised person;

(b) by sending the notice or requisition or order to him by registered post with acknowledgment due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works or last worked for gain; or

(c) by affixing it on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or

(d) if the notice or requisition or order cannot be served under clause (a) or clause (b) or clause (c), by publishing in a leading newspaper (both in vernacular and in English) having wide

circulation of area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain.

10. Form of Appeal :-

(1) Every appeal presented to the Appellate Tribunal under Section 19 of the Act shall be in the Form II signed by the applicant. The appeal shall be sent in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of Rupees ten thousand in the form of cash or demand draft payable in favour of the Registrar, Appellate Tribunal for Foreign Exchange, New Delhi: Provided that the applicant shall deposit the amount of penalty imposed by the Adjudicating Authority or the Special Director (Appeals) as the case may be, to such authority as may be notified under the first proviso to Section 19 of the Act: Provided further that where in a particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) The appeal shall set forth concisely and under distinct heads the grounds of objection to the order appealed against without any argument of narrative and such grounds shall be numbered consecutively, and shall specify the address for service at which notice or other processes may be served on the applicant, the date on which the order appealed against was served on the applicant; and the sum imposed by way of penalty under Section 13 and the amount of fee prescribed in sub-rule (1) had been deposited or not.

(3) Where the appeal is presented after the expiry of the period of forty-five days referred to in sub-section (2) of Section 19, it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the applicant, showing cause how the applicant had been prevented from preferring the appeal within the said period of forty-five days.

(4) Any notice required to be served on the applicant shall be served on him in the manner prescribed in Rule 14 at the address for service specified in the appeal.

11. Procedure before Appellate Tribunal :-

(1) On receipt of an appeal under Rule 10, the Appellate Tribunal shall send a copy of the appeal, together with a copy of the order appealed against, to the Director of Enforcement.

(2) The Appellate Tribunal shall, then, issue notices to the applicant and the Director of Enforcement fixing a date for hearing of the appeal.

(3) On the date fixed for hearing of the appeal, or any other day to which the hearing of the appeal may be adjourned, the applicant as well as the presenting officer of the Directorate of Enforcement shall be heard.

(4) Where on the date fixed, or any other day to which the hearing of the appeal may be adjourned, the applicant or the presenting officer fail to appear when the appeal is called on for hearing, the Appellate Tribunal may decide the appeal on the merits of the case.

12. Contents of the Order in appeal :-

(1) The order of Appellate Tribunal shall be in writing and shall state briefly the grounds for the decision.

(2) The order referred to in sub-rule (1) shall be signed by the Chairman or Member of the Appellate Tribunal hearing the appeal.

13. Representation of party :-

Any applicant who has filed an appeal before the Appellate Tribunal under Section 19 of the Act may appoint a legal practitioner or a chartered accountant to appear and plead and act on his behalf before the Special Director (Appeal) under the Act.

14. Service of notices, requisitions or orders :-

A notice, requisition or an order issued under these rules shall be served on any person in the following manner, that is to say,

(a) by delivering or tendering the notice or requisition or order to that person or his duly authorised person;

(b) by sending the notice or requisition or order to him by registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works or last worked for gain; or

(c) by affixing it on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last

resided or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or

(d) if the notice or requisition or order cannot be served under clause (a) or clause (b) or clause (c), by publishing in a leading newspaper (both in vernacular and in English) having wide circulation of area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain.