

Foreign Exchange Regulation Act, 1957

7 of 1957

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S. R O. 23:-New Delhi, the 24th December 1957- In exercise of the powers conferred by S.27 of the Foreign Exchange Regulation Act, 1951, the Central Government hereby makes the following rules to govern the procedure to be followed in respect of adjudication proceedings and appeals under the said Act, namely :-

1. Short title :-

These rules may be called the Adjudication Proceedings and Appeal Rules, 1967.

2. Definitions :-

In these rules,-

(a) "Act" means Foreign Exchange Regulation Act, 1947;

(b) "Director" means the Director of Enforcement appointed under the Act.

3. Adjudicating proceedings :-

(1) In holding an inquiry under sub-section (1) of Section 23D of the Central Excise Act, 1944 of the Act for the purpose of adjudging under clause (a) of sub-section (1) of section 23 whether any person has committed contravention, the Director shall, in the first instance, 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 adjudication proceedings should not be held against him.

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

(3) If after considering the cause, if any, shown by such person, the Director is of opinion that adjudication proceedings should be held, he shall fix a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the Director shall explain to the person proceeded against or his lawyer or authorised representative, the offence alleged to have been committed by such person indicating the provisions of the Act or of the rules, directions or orders made thereunder in respect of which contravention is alleged to have taken place.

(5) The Director shall then give 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 Director shall not be bound to observe the provisions of Evidence Act, 1872 .

(6) If any, person fails, neglects or refuses to appear before the Director on any date fixed by the Director under this rule, the Director may proceed with the inquiry in the absence of such person after recording the reasons for doing so

(7) If, upon consideration of the evidence produced before the Director, the Director 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 clause (a) of sub-section (1) of section 23.

4. Contents of the order (if the Director :-

(1) Every order under sub. rule (7) of rule 3 shall specify the provisions of the Act or of the rules, directions or orders made thereunder in respect of which contravention has taken place and shall contain brief reasons for such decisions.

(2) Every such order shall be dated and signed by the Director.

5. Copy of the order :-

(1) A copy of the order made under sub-rule (7) of rule- 3 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 calculated according to the scale prevailing in the State in which the office of the Director of Enforcement is situated. The copying fee shall be paid in cash.

(2) Every copy of such order shall bear the following particulars, namely:-

(a) that the copy is supplied free of charge for the use of the person to whom it is issued ;

(b) that an appeal lies against the order to the Appellate Board under section 23E within thirty days of the date of the order.

6. Form of Appeal :-

(1) Every appeal presented to the Appellate Board under section 23E of the Act shall be in the form of a memorandum signed by the appellant and the memorandum shall be accompanied by a copy of the order appealed against.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the order appealed against without any arguments or narrative and such grounds shall be numbered consecutively.

7. Procedure before Appellate Board :-

(1) On receipt of an appeal under rule 6, and a report from the Director, the Board may fix a date for the hearing of the appeal.

(2) On the date fixed for the hearing of the appeal, the appellant shall be heard in support of the appeal.

(3) Where on the date fixed or any other day to which the hearing of the appeal may be adjourned, the appellant fails to appear when the appeal is called on for hearing, the Appellate Board may decide

the appeal on the perusal of the records of the case.

8. Contents of the order in appeal :-

The order of the Appellate Board shall be in writing and shall state briefly the grounds for the decision. The order shall be signed by the member of the Appellate Board.

9. Computation of period of limitation :-

In computing the period, of , limitation prescribed for appeal under section 23E, the period between the date on which the order is made by the Director and the date on which it is despatched to the party concerned shall be excluded.

10. Representation of party :-

Any person who has been proceeded against under section 23 may appoint a pleader, advocate or any other person to appear and plead and act on his behalf before the Director or the Appellate Board in any inquiry or appeal under the Act.

11. Service of notice :-

A notice 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 to that person or his duly authorised agent ; or .

(b) by sending the notice 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 carries on, or last carried on, business or personally works, or last worked, for gain ; or

(c) if the notice cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and the written report thereof should be witnessed by two persons.

12. Savings :-

Nothing in these rules shall be considered as preventing the Director from making a complaint in writing to the Court under the proviso to sub section (1) of Section 23D of the Central Excise Act, 1944 of the Act instead of imposing any penalty himself.