

ADJUDICATION PROCEEDINGS AND APPEAL RULES, 1974

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ADJUDICATION PROCEEDINGS AND APPEAL RULES, 1974

In exercise of the powers conferred by section 79 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and in supersession of the Adjudication Proceedings and Appeal Rules, 1957, 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 and commencement :-

(1) These rules may be called the Adjudication Proceedings and Appeal Rules, 1974.

(2) They shall come into force on the 1st day of January, 1974.

2. Definitions :-

In these rules, unless the context otherwise requires,-

(a) "Act" means the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(b) "Adjudicating Officer" means the Director of Enforcement or any other officer of Enforcement empowered to adjudicate cases under section 50;

(c) "Appellate Board" means the Foreign Exchange Regulation Appellate Board constituted under section 52;

(d) "section" means a section of the Act.

3. Adjudication proceedings :-

(1) In holding an inquiry under section 51 for the purpose of adjudging under section 50 whether any person has committed contravention as specified in section 50, the Adjudicating Officer 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 offence alleged to have been committed by him.

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

(4) On the date fixed, the Adjudicating Officer 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 Adjudicating Officer 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 Adjudicating Officer shall not be bound to observe the provisions of the Evidence Act, 1872.

(6) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, the Adjudicating Officer 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 Adjudicating Officer, the Adjudicating Officer 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 50:

Provided that the notice referred to in sub-rule (1), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

4. Contents of the order of the Adjudicating Officer :-

(1) Every order made 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 Adjudicating Officer.

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 Adjudicating Officer is situated.

(2) The copying fee referred to in sub-rule (1) shall be paid in cash.

6. Form of appeal :-

¹[(1) Every appeal presented to the Appellate Board under section 52 shall be in the form of a memorandum signed by the appellant. The memorandum shall be sent in triplicate and accompanied by three copies of the order appealed against. On every appeal the amount of fee as given in the table below shall be paid in the form of demand draft payable in favour of the Registrar, Foreign Exchange Regulation Appellate Board, New Delhi.

(2) The memorandum-

(a) shall set forth concisely and under distinct heads the grounds of objection to the order appealed against without any argument or narrative and such grounds shall be numbered consecutively; and

(b) shall specify-

(i) the address for service at which notices or other processes may be served on the appellant;

(ii) the date on which the order appealed against was served on the appellant; and

² [(iii) whether the sum imposed by way of penalty under section 50 and the amount of fee prescribed in sub-rule (1) had been deposited.]

(3) Where the memorandum is presented after the expiry of the period of forty-five days referred to in sub-section (2) of section 52, it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the appellant, showing cause how the appellant had been prevented from preferring the appeal within the said period of forty-five days.

(4) Any notice required to be served on the appellant shall be served on him, in the manner prescribed in rule 10, at the address for service specified in the memorandum.

1. Substituted by the Adjudication Proceedings and Appeal (Amendment) Rules, 1994, w.e.f. 28-11-1994.

2. Substituted by the Adjudication Proceedings and Appeal (Amendment) Rules, 1994, w.e.f. 28-11-1994.

6A. Application when penalty has not been deposited :-

(1) Where the memorandum referred to in rule 6 is presented without depositing in full the sum imposed by way of penalty under section 50, it shall be accompanied by-

(a) a petition, duly verified by the appellant, in triplicate, specifying his financial position, including particulars regarding his annual income, the value of property (movable and immovable) held by him, cash on hand and cash balances in any bank;

(b) three copies of completed orders relating to income-tax and wealth-tax assessments in respect of the three years preceding the date of presentation of the memorandum; and where the assessment orders have not been completed for the said period, by three copies of the returns in respect of the period for which the income-tax and wealth-tax assessments have not been completed.

(2) Where the memorandum is presented by a company, firm or an

association of persons or a body of individuals, whether incorporated or not, it shall also be accompanied by copies, in triplicate, of the balance-sheet and profit and loss account in respect of the three years preceding the date of presentation of the memorandum and of any other document which may be relevant for the purpose of ascertaining the financial position of such company, firm or association of persons or body of individuals.

7. Procedure before Appellate Board :-

(1) On receipt of an appeal under rule 6, the Appellate Board shall send a copy of the memorandum of appeal, together with a copy of the order appealed against, to the Director of Enforcement.

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

(3) On the date fixed for the hearing of the appeal, or any other day to which the hearing of the appeal may be adjourned, the appellant as well as the representative 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 appellant fails to appear when the appeal is called on for hearing, the Appellate Board may decide the appeal on the basis of records of the case.

8. Contents of the order in appeal :-

(1) The order of the Appellate Board 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 member or members of the Appellate Board hearing the appeal.

9. Representation of party :-

Any person who has been proceeded against under section 51, read with section 50, or who has filed an appeal before the Appellate Board under section 52, may appoint a pleader, advocate, or any other person to appear and plead and act on his behalf before the Adjudicating Officer or the Appellate Board in any inquiry or appeal under the Act.

10. Service of notices and orders :-

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

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

(c) if the notice or order 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 that written report thereof should be witnessed by two persons.