

Central Excise (Appeals) Rules, 2001

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Central Excise (Appeals) Rules, 2001

Enforced w.e.f. 1.7.2001.G.S.R. 448(E). In exercise of the powers conferred by Sec. 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules, namely:-

1. Short title, extent and commencement :-

- (1) These rules may be called the Central Excise (Appeals) Rules, 2001 .
- (2) They extend to the whole of India.
- (3) They shall come into force on and from the 1st day of July, 2001.

2. Definitions :-

In these rules, unless the context otherwise requires,

- (a) " Act" means the Central Excise Act, 1944 (1 of 1944);
- (b) " Form" means a form appended to them rules;
- (c) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to these in the Act.

3. Form of appeal to Commissioner (Appeals) :-

(1) An appeal under sub-sec. (1) of Section 35 of the Commissioner (Appeals) shall be made in Form No. E.A.-1.

(2) The grounds of appeal and the form of verification as contained in Form No. E.A.-1. shall be signed,

(a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by any person duly authorised by him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided family, by the Karta and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or any person competent to act on his behalf.

(3) The form of appeal in Form No. E.A.-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

4. Form of application to the Commissioner (Appeals) :-

(1) An application under sub- sec. (4) of Section 35E of the Act to the Commissioner (Appeals) shall be made in Form No. E.A.-2.

(2) The form of application in Form No. E.A.-2 shall be filed in duplicate and shall be accompanied by a certified copy of the decision or order passed by the adjudicating authority and a copy of the order passed by the Commissioner of Central Excise directing such authority to apply to the Commissioner (Appeals).

5. Production of additional evidence before Commissioner (Appeals) :-

(1) The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority except in the following circumstances, namely:

(a) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to evidence adduce relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The Commissioner (Appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity,

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal in of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Commissioner(Appeals) to direct the production of any document, 'or the examination of any witness, to enable him to dispose of the appeal.

6. Form of appeal, etc., to the Appellate Tribunal :-

(1) An appeal under sub-sec. (1) of Section 35B of the Act to the Appellate Tribunal shall be made in Form No. E.A.-3.

(2) A memorandum of cross-objections to the Appellate Tribunal

under sub-sec. (4) of Section 35B of the Act shall be made in Form No. E.A.-4.

(3) Where an appeal under sub-sec. (1) of Section 35B of the Act or a memorandum of cross-objections under sub-sec. (4) of that section is made by any person other than the Commissioner of Central Excise, the grounds of appeal, the grounds of cross-objection and the forms of verification as contained in Form Nos. E.A-3 and E.A-4 , as the case may be, respectively shall be signed by the person specified in sub-rule (2) of Rule 3.

(4) The form of appeal in Form No. E.A.-3 and the form of memorandum of cross-objections in Form No. E.A.-4 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

7. Form of application to the Appellate Tribunal :-

(1) An application under sub-sec. (1) of Section 35E of the Act to the Appellate Tribunal shall be made in Form No. E.A.-6.

(2) The form of application in Form No. E.A.-5 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order passed by the Commissioner of Central Excise (one of which at least shall be a certified copy) and a copy of the order passed by the Board directing such Commissioner to apply to the Appellate Tribunal.

8. Form of application to the High Court :-

(1) An application under sub-sec. (1) of Sec. 35-H of the Act requiring the High Court to direct the Appellate Tribunal to the High Court any question of law shall be made in Form No. E.A.-6 and such application shall be filed in quadruplicate.

(2) A memorandum of cross-objections under sub-sec. (3) of Section 35H of the Act to the High Court shall be made in Form No. E.A.-7 and such memorandum shall be filed in quadruplicate.

(3) Where an application under sub-sec. (1) of Section 35H of the Act or a memorandum of cross-objections under sub-sec. (3) of that section is made by any person other than the Commissioner of Central Excise, the application, the memorandum or form of verification, as the case may be, contained in Form No. E.A.-6 or Form No. E.A.-7 shall be signed by the person specified in sub-rule

(2) of Rule 3.

9. Form of revision application to the Central Government :-

(1) A revision application under sub-sec. (3) of Section 35EE of the Act the Central Government shall be in Form No. E.A.-8.

(2) The grounds of revision application and the form of verification, as contained in Form E.A.-8, shall be signed by the person specified in sub-rule (2) of Rule 3.

(3) Where the revision application is signed by the authorised representative of the applicant, the document authorising the representative to sign and appear on behalf of the applicant shall be appended to such revision application.

(4) The form of revision application in Form No. E.A.-8 shall be filed in duplicate and shall be accompanied by two copies of the following documents, namely:

(i) order referred to in the first proviso to sub-sec. (1) of Section 35B of the Act; and

(ii) decision or order passed by the Central Excise Officer, which was the subject matter of the order referred to in clause (i) of this sub-rule.

10. Procedure for filing revision application :-

(1) The revision application in Form E.A.-8 shall be presented in person to the Under Secretary, Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Sansad Marg, New Delhi-110001, or sent by registered post to such officer.

(2) The revision application sent by registered post under sub-rule (1) shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the officer of such officer.

11. Procedure for filing appeals etc :-

(1) An appeal in Form No. E.A.-3 or a memorandum of cross-objections in Form No. E.A.-4 or Form No. E.A.-7 or an application in Form No. E.A.-5 or Form No. E.A.-6 shall be presented in person to the Registrar or an officer authorized in his behalf by the Registrar, or sent by registered post addressed to the Registrar or

such officer.

(2) An appeal or a memorandum of cross-objections or an application sent by post under sub-rule (1) shall be deemed to have been presented to the Registrar or to the officer authorized by the Registrar on the date on which it is received in the office of the Registrar, or, as the may be, in the office of such officer.

12. Qualifications for authorized representatives :-

For the purposes of clause (c) of sub- sec. (2) of Section 35Q of the Act, an authorized representative shall include a person who has acquired any of the following qualifications, namely:

(a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or

(c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980) who has obtained a certificate of practice under Sec. 6 of that Act; or

(d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any recognised university; or

(e) a person formerly employed in the Department of Customs and Central Excise or Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said departments for not less than ten years in the aggregate.

Explanation: In this rule "recognised University " means any of the Universities specified below, namely:

I. Indian Universities

II. Rangoon University;

III. English and Welsh Universities

IV. Scottish Universities

V. Irish Universities

VI. Pakistan Universities

VII. Bangladesh Universities

13. Authority under Sec. 35-Q (5)(b) of the Act :-

The Commissioner of Central Excise having jurisdiction in the proceedings in which a person who is not a legal practitioner is found guilty of misconduct in connection with that proceeding under the Act shall be the authority for the purposes of clause (b) of sub-sec. (5) of Section 35Q of the Act.