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[Training Material for Departmental Use]

E-BOOK

On

Filing of Appeal before
CESTAT

- PART II -

Note:

1. In this E-book, attempts have been made to explain about the *[Filing of Appeal before CESTAT](#)*. It is expected that it will help departmental officers in their day-to-day work.
2. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACIN, ZC, Kanpur on the Email address: nacin.kanpur@gov.in. This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
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4. This e-book has been prepared with the assistance of **Shri S. K. Agarwal, Superintendent (Retd.)**.
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Sd/-

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1. Introduction:

In this e-book, for the convenience of readers, text of relevant Sections of Customs Act, 1962, Central Excise Act, 1944 and the Finance Act, 1994 and appeals rules framed thereunder, relating to subject matter of filing of Appeal before CESTAT has been given.

2. Relevant Legal Provisions at a Glance

Summary of the important legal provisions relating to filing appeals before CESTAT are given in the Table-1 below: -

Table-I

Sr. No.	Section /Rules /notification/Circular /Instructions	Subject
A. Customs		
1.	Section 129 of the CA, 1962	Provides for constitution of Appellate Tribunal
2.	Section 129 A of CA, 1962	Provides mechanism for filing appeal against the Order passed by the Principal Commissioner/ Commissioner/ ADG (Adjudication) DRI or Commissioner (Appeals)
3.	Section 129B of CA, 1962	Provides for the Principles of natural justice to be followed before passing order, lays down timeline for deciding appeals, procedure to be followed for rectification of mistakes etc.
4.	Section 129C of CA, 1962	Provides various procedures to be followed at CESTAT.
B. Central Excise		
5.	Section 35 B of the CEA Act, 1944	Provides mechanism for filing appeal against the Order passed by the Principal Commissioner/ Commissioner/ ADG (Adjudication), DGCEI or Commissioner (Appeals)
6.	Section 35C of the CEA, 1944	Provides for the Principles of natural justice to be followed before passing order, lays down timeline for deciding appeals, procedure to be followed for rectification of mistakes etc.
7.	Section 35D of the CEA, 1944	Provides various procedures to be followed at CESTAT.
C. Service Tax		
8.	Section 86 of FA, 1994	Provides for filing of Appeal before CESTAT in Service Tax matters
D. Rules		
9.	Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982	Provide various procedures to be followed at CESTAT

10.	CEGAT (Countervailing duty and anti-dumping duty) Procedure Rules, 1996	Provide various procedures to be followed at CESTAT in respect of matters related to Anti-Dumping duty and Countervailing duty.
11.	Central Excise (Appeals) Rules, 2001	Provide various procedures to be followed at Appellate stages and the Forms in which appeals/ Memorandum of Cross Objections to be filed.
12.	Customs (Appeals) Rules, 1982	
13.	Rule 9 of Service Tax Rules, 1994	

3. *Text of the Relevant Sections of the Customs Act, 1962, the Central Excise Act, 1944 & the Finance Act, 1994 and Rules framed there under.*

A. CUSTOMS ACT, 1962

3.1 Text of Section 129 of the Customs Act, 1962

Section-129: Appellate Tribunal

(1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Service Tax Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A **judicial member** shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Central Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

Explanation - For the purposes of this sub-Section, -

- (i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;
- (ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

(3) The Central Government shall appoint —
(a) a person who is or has been a Judge of a High Court; or
(b) one of the members of the Appellate Tribunal, to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.

(4A) * Omitted

(5) A Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

(6) On ceasing to hold office, the President, Vice-President or other Member shall not be entitled to appear, act or plead before the Appellate Tribunal.

3.2 Text of Section 129A of the Customs Act, 1962

Section-129 A: Appeals to the Appellate Tribunal

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

- (a) a decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority;
- (b) an order passed by the Commissioner (Appeals) under Section 128A;
- (c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;
- (d) an order passed by the Board or the Principal Commissioner of Customs or Commissioner of Customs, either before or after the appointed day, under Section 130, as it stood immediately before that day :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

- (a) any goods imported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- (c) payment of drawback as provided in Chapter X, and the rules made thereunder :

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -

- (i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or

- (ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (iii) the amount of fine or penalty determined by such order, does not exceed two lakh rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub-Section (1), which is pending immediately before the commencement of Section 40 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central Government shall deal with such appeal or matter under Section 129DD as if such appeal or matter were an application or a matter arising out of an application made to it under that Section.

- (1B) (i) The Board may, by order, constitute such Committees as may be necessary for the purposes of this Act.
- (ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Customs or two Commissioners of Customs, as the case may be.

(2) The Committee of Chief Commissioners of Customs may, if it is of opinion that an order passed by the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under Section 128A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner of Customs or Chief Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

Explanation - For the purposes of this sub-Section, “jurisdictional Chief Commissioner” means the Principal Chief Commissioner of Customs or Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter.

- (3) Every appeal under this Section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, or the other party preferring the appeal.
- (4) On receipt of notice that an appeal has been preferred under this Section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall

be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-Section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-Section (3) or sub-Section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, -

- (a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
- (b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupee, **five thousand rupees** ;
- (c) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than fifty lakh rupees, **ten thousand rupees**:-

Provided that no such fee shall be payable in the case of an appeal referred to in sub-Section (2) or a memorandum of cross-objections referred to in sub-Section (4).

(7) Every application made before the Appellate Tribunal,-

- (a) in an appeal for rectification of mistake or for any other purpose; or
- (b) for restoration of an appeal or an application, shall be accompanied by a **fees of five hundred rupees**.

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Customs under this sub-Section.

3.3 Text of Section 129B of the Customs Act, 1962

Section-129 B: Orders of Appellate Tribunal -

(1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(1A) The appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted **more than three times to** a party during hearing of the appeal.

(2) The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-Section (1) and shall make such amendments if the mistake is brought to its notice by the Principal Commissioner of Customs or Commissioner of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-Section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

(3) The Appellate Tribunal shall send a copy of every order passed under this Section to the Principal Commissioner of Customs or Commissioner of Customs and the other party to the appeal.

(4) Save as otherwise provided in Section 130 or Section 130E, orders passed by the Appellate Tribunal on appeal shall be final.

3.4 Text of Section 129C of the Customs Act, 1962

Section-129 C: Procedure of Appellate Tribunal -

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in sub-Section (4), a Bench shall consist of one judicial member and one technical member.

(3) Omitted

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where -

- (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or
- (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (c) the amount of fine or penalty involved,
does not exceed fifty lakh rupees.

(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point

or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

B. CENTRAL EXCISE ACT, 1944

3.5 Text of Section 35B of the Central Excise Act, 1944

Section-35 B: Appeals to the Appellate Tribunal.-

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

- (a) a decision or order passed by the Principal Commissioner of Central Excise or Commissioner of Central Excise as an adjudicating authority;
- (b) an order passed by the (Commissioner (Appeals) under Section 35A;
- (c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;
- (d) an order passed by the Board or the Principal Commissioner of Central Excise or Commissioner of Central Excise, either before or after the appointed day, under Section 35A, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—

- (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse, or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No. 2) Act, 1998:

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

- (i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (ii) the amount of fine or penalty determined by such order,
does not exceed two lakh rupees:

(1A) Every appeal against any order of the nature referred to in the first proviso to sub-Section (1), which is pending immediately before the commencement of Section 47 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under Section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that Section.

- (1B) (i) The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963(54 of 1963) may, **by order**, constitute such Committees as may be necessary for the purpose of this Act.
- (ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) The Committee of Chief Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise] under Section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under Section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against such order.

Explanation - For the purposes of this sub-Section, “jurisdictional Chief Commissioner” means the Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter.

(3) Every appeal under this Section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Principal Commissioner of Central Excise or Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this Section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-Section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-Section (3) or sub-Section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An Appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made be accompanied by a fee of, –

- (a) where the amount of duty and interest demand and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
- (b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;
- (c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-Section (2) or a memorandum of cross-objections referred to in sub-Section (4).

(7) Every application made before the Appellate Tribunal, -

- (a) in an appeal for reification of mistake or for any other purpose; or
- (b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Principal Commissioner of Central Excise or Commissioner of Central Excise under this sub-Section.

3.6 Text of Section 35C of the Central Excise Act, 1944

Section-35 C: Orders of Appellate Tribunal-

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision

or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reason to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-Section (1) and shall make such amendments if the mistake is brought to its notice by the Principal Commissioner of Central Excise or Commissioner of Central Excise or the other party to the appeal:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-Section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed :

(3) The Appellate Tribunal shall send a copy of every order passed under this Section to the Principal Commissioner of Central Excise or Commissioner of Central Excise and the other party to the appeal.

(4) Save as provided in Section 35G or Section 35L, orders passed by the Appellate Tribunal on appeal shall be final.

3.7 Text of Section 35D of the Central Excise Act, 1944

Section-35 D: Procedure of Appellate Tribunal-

(1) The provisions of Sub-Sections (1), (2), (5) and (6) of Section 129C of the Customs Act, 1962(52 of 1962), shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962.

(2) Omitted

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where-

- (a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (b) the amount of fine or penalty involved, does not exceed fifty lakh rupees.

C. SERVICE TAX (FINANCE ACT, 1994)

3.8 Text of Section 86 of the Finance Act, 1994

Section-86: Appeals to Appellate Tribunal:

(1) Save as otherwise provided herein, an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under Section 73 or Section 83A, or an order passed by a Commissioner of Central Excise (Appeals) under Section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.

Provided that where an order, relating to a service which is exported, has been passed under Section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of Section 35EE of the Central Excise Act, 1944:

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012, and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of Section 35EE of the Central Excise Act, 1944.

(1A) (i) The Board may, by order, constitute such Committees as may be necessary for the purposes of this Chapter.

(ii) Every Committee constituted under clause (i) shall consist of two Principal Chief Commissioner of Central Excise or Chief Commissioners of Central Excise or two Principal Commissioner of Central Excise or Commissioners of Central Excise, as the case may be.

(2) The Committee of Principal Chief Commissioner of Central Excise or Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under Section 73 or Section 83A, direct the Principal Commissioner of Central Excise or Commissioner of Central Excise to appeal to the Appellate Tribunal against the order :

Provided that where the Committee of Principal Chief Commissioner of Central Excise or Chief Commissioners of Central Excise differs in its opinion against the order of the Principal Commissioner of Central Excise or Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Principal Commissioner of Central Excise or Commissioner of Central Excise is not legal or proper, direct the Principal Commissioner of Central Excise or Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

(2A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under Section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order.

Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner or Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

Explanation - For the purposes of this sub-Section, “jurisdictional Chief Commissioner” means the Principal Chief Commissioner or Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.

(3) Every appeal under sub-Section (2) or sub-Section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Principal Chief Commissioners or Chief Commissioners or, as the case may be, the Committee of Commissioners.;

(4) The Principal Commissioner of Central Excise or Commissioner of Central Excise or any Central Excise Officer subordinate to him or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Principal Commissioner of Central Excise or Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-Section (1) or sub-Section (2) or sub-Section (2A) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Principal Commissioner of Central Excise or Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-Section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-Section (1) or sub-Section (3) or sub-Section (4) if it is satisfied that there was sufficient use for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of-

- a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
- (b) where the amount of service tax and interest demanded and penalty levied by any Central Excise officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;
- (c) where the amount of service tax and interest demanded and penalty levied by any Central Excise officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no fee shall be payable in the case of an appeal referred to in sub-Section (2) or sub-Section (2A) or a memorandum of cross objections referred to in sub-Section (4).

(6A) Every application made before the Appellate Tribunal,-

- (a) in an appeal for rectification of mistake or for any other purpose; or
- (b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees.

Provided that no such fee shall be payable in the case of application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-Section.

(7) Subject to the provisions of this Chapter, in hearing the appeal and making orders under this Section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

D. TEXT OF RELEVANT RULES

3.9 Text of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

The Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 were notified vide CEGAT Notification No. 1/CEGAT/82, dated 25-10-1982 and subsequently amended vide CEGAT notification Nos. 1/83, dated 03.02.1983; notification No. 2/CEGAT/84. Dated 23.05.1984; CEGAT Order Nos. 6/85 (Tech), dated 21.02.1986; Order No. 23/86 (Tech), dated 14.11.1986; 1/94, dated 27.9.1994; No. 1/95, dated 30.05.1995, 6/95, dated 4.9.1995; No. 10/95, dated 1.12.1995; Order dated 28.08.1996; notification No. 1/CEGAT/99, dated 13.05.1999; CESTAT notification No. 1/2003, dated 06.06.2003, as amended

In exercise of the powers conferred by sub-Section (6) of Section 129C of the Customs Act, 1962 (52 of 1962), read with sub-Section (1) of Section 35D of the Central Excises and Salt Act, 1944 (1 of 1944) and sub-Section (1) of Section 81B of the Gold (Control) Act, 1968 (45 of 1968), the [Customs, Excise and Service Tax Appellate Tribunal] hereby makes the following rules, namely:-

Rule 1. Short title and commencement:-

- (1) These rules may be called the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.
- (2) They shall come into force on the 25th October, 1982.

Rule 2. Definitions:-

In these rules, unless the context otherwise requires-

- (a) "Acts" means the Customs Act, the Central Excises Act and the Gold (Control) Act;
- (b) "Administrator" means the Administrator appointed under Section 4 of the Gold (Control) Act;
- (c) "authorised representative" in relation to any proceedings before the Tribunal means-
 - (i) a person authorised by the person referred to in sub-Section (1) of Section 146A of the Customs Act, or as the case may be, sub-Section (1) of Section 35Q of the Central Excises Act or sub-Section (1) of Section 101A of the Gold (Control) Act, to appear on his behalf in such proceedings; or
 - (ii) a person duly appointed [by the Central Government or by an officer duly authorised in this behalf] as authorised representative to appear, plead and act for

the Principal Commissioner or Commissioner or Administrator, in such proceedings;

- (d) (1) Bench means the Bench of the Tribunal and includes a Principal Bench and a Member sitting singly;
- (2) Principal Bench means a Bench constituted at the principal seat of the Tribunal (at Delhi) to which the cases arising anywhere in India may (also) be assigned.
- (3) Zonal Bench means a Bench (located at a place other than Delhi or at Delhi) but having jurisdiction over a specified Zone.
- (e) "Central Excises Act" means the Central Excise Act, 1944 (1 of 1944);
- (f) "Certified copy" means the original copy of the order received by the party or a copy (including a Photostat copy) thereof duly authenticated by the concerned department;
- (g) "Principal Commissioner or Commissioner" means the Principal Commissioner of Customs or Commissioner of Customs or the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be;
- (h) "Customs Act" means the Customs Act, 1962 (52 of 1962);
- (i) "Departmental Authorities" means the Customs authorities, Central Excise authorities or Gold (Control) authorities, as the case may be;
- (j) "Gold (Control) Act" means the Gold (Control) Act, 1968 (45 of 1968);
- (k) "member" means a member of the Tribunal and includes the President and a Vice-President;
- (l) "prescribed" means prescribed by or under these rules;
- (m) "President" means president of the Tribunal;
- (n) "Registrar" means the person who is for the time being discharging the functions of the Registrar of the Tribunal, and "Registry" means the office of the Tribunal;
- (o) Omitted by CEGAT Notification No. 1/95, dated 30-5-1995.
- (p) "Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under sub-Section (1) of Section 129 of the Customs Act, and includes where the context so requires, the Bench exercising and discharging the powers and functions of the Tribunal, and
- (q) "Vice-President" means a Vice-President of the Tribunal and includes a Senior Vice-President appointed by the Central Government.

Rule 3. Sittings of Bench.-

Subject to such general or special orders as may be made by the President, a Bench shall hold its sittings either at Headquarters or at such other place falling within its jurisdiction as it may consider expedient.

Rule 4. Powers of Bench.-

- (1) A Bench shall hear and determine such appeals and applications made under the Acts as the President may by general or special order direct.

(2) Where two or more Benches are functioning at any place, the President, or in his absence the senior amongst the Vice-Presidents present, or in their absence the senior-most Member present, may transfer an appeal or application from one Bench to another.

Rule 5. Language of the Tribunal-

(1) The language of the Tribunal shall be English:

Provided that the parties to a proceeding before the Tribunal may file documents drawn up in Hindi, if they so desire:

Provided further that a Bench may in its discretion, permit the use of Hindi in its proceedings; so however, the final order shall be in English.

(2) Notwithstanding anything contained in sub-rule (1), the Tribunal may pass such orders in Hindi, as and when it deems fit:

Provided that every such order shall be accompanied by a translation in English of the same, duly attested by the Bench concerned.

Rule 6. Procedure for filing appeals-

(1) A memorandum of appeal to the Tribunal shall be in the relevant form and shall be presented by the appellant in person or by an agent to the concerned officer, or sent by registered post addressed to the concerned officer:

Provided that the appellant may, in case of urgency or for other sufficient reason, present or send the appeal to the concerned officer of the Bench nearest to him, even though the matter relates to a different Bench; and in such a case the officer receiving the appeal shall, as soon as may be, forward it to the concerned officer of the appropriate Bench.

(2) A memorandum of appeal sent by post under sub-rule (1) shall be deemed to have been presented to the concerned officer on the date on which it is received in the office of the concerned officer.

Explanation:

(1) For purposes of this rule, "form" means a form prescribed for the purpose of presenting an appeal under the Customs (Appeals) Rules, 1982, or the Central Excise Rules, 1944, or as the case may be, the Gold (Control) Appeal Rules, 1982.

(2) In this rule, "concerned officer" in relation to a Bench means the Registrar, Assistant Registrar or any other officer authorised to receive appeals falling within the jurisdiction of that Bench as defined by the President from time to time.]

Rule 6A: The number of appeals to be filed:

Notwithstanding the number of show cause notices, price lists, classification lists, bills of entry, shipping bills, refund claims / demands, letters or declarations dealt with in the decision or order appealed against, it shall suffice for purposes of these rules that the appellant files one Memorandum of Appeal against the order or decision of the authority below, along with such number of copies thereof as provided in rule 9.

Explanation:

(1) In a case where the impugned order-in appeal has been passed with reference to more than one orders-in-original, the Memoranda of Appeal filed as per Rule 6 shall be as many as the number of the orders-in-original to which the case related in so far as the appellant is concerned.

(2) In case an impugned order is in respect of more than one persons, each aggrieved person will be required to file a separate appeal (and common appeals or joint appeals shall not be entertained).

Rule 7. Date of presentation of appeals-

The Registrar or, as the case may be the officer authorised by him under rule 6, shall endorse on every memorandum of appeal the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

Rule 8. Contents of a memorandum of appeal-

(1) Every Memorandum of Appeal shall set forth concisely and under distinct heads, the grounds of appeals and such grounds shall be numbered consecutively and shall be typed in double space of the paper.

(2) Every memorandum of appeal, cross-objection, reference applications, stay application or any other miscellaneous application shall be typed neatly in double spacing on the fool-scape paper and the same shall be duly paged, indexed and tagged firmly with each paper book put in a separate folder.

(3) Every memorandum of appeal / application / Cross-objection shall be signed and verified by the appellant/applicant/ respondent or the Principal Officer duly authorised to sign Memorandum of appeal / application / Cross-objection. The appellant /applicant /respondent or the Consultant or Advocate retained by them shall certify as true the documents produced before the Tribunal.

Rule 9. What to accompany memorandum of appeal?-

(1) Every Memorandum of appeal required to heard by a two-Member Bench shall be filed in quadruplicate and shall be accompanied by four copies, one of which shall be a certified copy of the order appealed against in the case of an appeal against the original order passed by the additional Commissioner or Principal Commissioner or Commissioner of Excise or Customs and where such an order has been passed in appeal or revision, four copies (one of which shall be a certified copy) of the order passed in appeal or in revision and four copies of the order of the original authority.

Explanation: "Copy for the purpose of this Rule shall mean a true copy certified by the appellant or appellant's representative to be a true copy.

(2) In an appeal filed under the direction of the Collector or the Administrator or the Central Board of Excise and Customs, one of the copies of the order appealed against shall be an attested copy instead of a certified copy.

(3) In the case of an appeal which can be heard by a single Member, Memorandum of appeal shall be filed in triplicate and number of copies of the order shall be three instead of four.

Note: As to which appeals are to be heard by single member shall be determined by the President by separate orders in the light of the relevant statutory provision.

(4) Where an appeal which can be heard by a single Member is referred to or placed before a tow-Member Bench or an appeal which can be heard by a two Member Bench is referred to a Larger Bench, the appellant shall immediately furnish an additional copy of the memorandum of appeal and of the order or orders of the lower authorities.

Rule 10. Grounds which may be taken in appeal-

The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any grounds not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or those taken by leave of the Tribunal under these rules:

Provided that the Tribunal shall not rest its decision on any other grounds unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

Rule 11. Rejection or amendment of memorandum of appeal-

(1) The Tribunal may, in its discretion, on sufficient cause being shown, accept a memorandum of appeal which is not accompanied by the documents referred to in rule 9 or is in any other way defective, and in such cases may require the appellant to file such documents or, as the case may be, make the necessary amendments within such time as it may allow.

(2) The Tribunal may reject the memorandum of appeal referred to in sub-rule (1), if the documents referred to therein are not produced, or the amendments are not made, within the time-limit allowed.

(3) On representation of any memorandum of appeal after making the necessary amendments referred to in sub-rule (1), the memorandum of appeal shall be signed and dated by the officer competent to make the endorsement under rule 7.

(4) The President may in his discretion authorise any officer of the Tribunal to return any memo of appeal, application or document(s) which is / are not in accordance with the Customs, Excise and Service Tax Appellate Tribunal (procedure) Rules, 1982. The Officer so authorised may, however, allow the documents to be refiled after removal of the defects in the specified time. On representation the Bench concerned may in its discretion either accept the memorandum in terms of 11(1) or reject the same in terms of 11(2) but the appeal / application may not be restored to its original number unless the Bench allows it to be so restored on sufficient cause being shown.

Rule 12. Who may be joined as respondents?-

(1) In an appeal or an application by a person other than the Commissioner or the Administrator, the Principal Commissioner or Commissioner concerned or the Administrator shall be made the respondent to the appeal or, as the case may be, the application.

(2) In an appeal or an application by the Principal Commissioner or Commissioner or the Administrator, the other party shall be made the respondent to the appeal or as the case may be, application.

(3) The provisions of sub-rules (1) and (2) shall apply to a proceeding transferred to the Tribunal under Section 131B of the Customs Act, Section 35P of the Central Excises Act or Section 82K of the Gold (Control) Act.

Rule 13. Document authorising representative to be attached to the memorandum of appeal-

Where the parties to an appeal or application are being represented in such appeal or application by authorised representatives, the documents authorising such representatives to appear on their behalf shall be appended to the memorandum of appeal, application or memorandum of cross-objection if they are signed by the authorised representatives and the said documents shall indicate clearly the status of the authorised representatives as to whether they

are relatives or regular employees of the parties and the details of the relationship of employment or, in cases where they are not relatives or regular employees, their qualifications to act as authorised representatives under the Acts or, in the case of a person referred to in rule 2(c)(ii), particulars of the notification by which he has been appointed:

Provided that where the authorised representative is a legal practitioner, such document of authorisation shall be a duly executed vakalatnama.

Rule 14. Filing of authorisation at a later stage:

(1) Subject to satisfaction of the Bench, in cases, where an authorised representative known to the Court has been engaged but is unable to file immediately the document authorising him to appear and plead along with the appeal or application for any reason, he may file memo of appearance along with an undertaking to file duly executed vakalatnama or document of authorisation during such time as the Bench may in its discretion allow.

(2) In case the direction of the Bench (including extended time, if any) is not followed, the Bench may in its discretion withhold the issue of the order or stay its operation till the compliance is duly made and/or refrain from extending the facility in future.

(3) Any mis-representation for the purpose of this Rule will be considered as a misconduct and may invite the same action in the same way as indicated in Section 35Q(5) of the Central Excise Act, 1944.

Rule 15. Filing of memorandum of cross-objection, application or replies to appeals /applications.-

Every memorandum of cross-objection filed, and every application made, under the provisions of the Acts, shall be registered and numbered, and the provisions of these rules, relating to appeals shall, so far as may be, apply to such memorandum or application.

Rule 15A. Reply to appeal:

After a copy of the appeal has been served the respondents may file a reply within one month and on the receipt thereof, the appellant may file a rejoinder within one month or within such time as may be specified / extended.

Rule 16. Preparation of paper book:

(1) The appellant shall, along with the appeal or within one month of filing of the appeal, submit in such number of copies as of the memorandum of appeal, a paper book containing copies of the documents, statements of witnesses and other papers on the file of, or referred to in the orders of, the departmental authorities, which he proposes to rely upon at the hearing of the appeal.

(2) The respondent may also file a paper book containing such documents as are referred to in sub-rule (1), which he proposes to rely upon at the time of hearing of the appeal, in such number of copies as of the memorandum of appeal, within one month of the service of the notice of the filing of the appeal on him, or within two weeks of the service of the paper book, whichever is later.

(3) The Tribunal may, in its discretion, allow the filing of any paper book referred to in sub-rule (1) or sub-rule (2) after the expiry of the period referred to therein.

(4) The Tribunal may on its own motion direct the preparation of as many copies as may be required of a paper book by and at the cost of the appellant or the respondent, containing copies

of such statements, papers or documents as it may consider necessary for the proper disposal of the appeal.

(5) The President may in his discretion direct by a general or special order that only such documents as may be specified by him in his order may be initially filed with the appeal; and the paper book as prescribed in sub-rules (1) and (2) may be filed subsequently on receipt of notice of hearing of the appeal by way of a general or specific notice for the case (s) or advance cause list.

The president may further direct that in case of non-filing of the documents as specified under this Rule, the Registrar/ Deputy Registrar or any other authorised officer would be competent to return the specified documents or sets of documents and to receive the same back only after rectification of the defects to the satisfaction of the proper officer or the Bench as the case may be and on the return the case may be assigned a new number.

(6) President may by a general or special order allow attestation of the documents filed along with appeal /application or as a part of paper book or otherwise by a gazetted officer or such other person as may be authorised by the President to attest or certify such documents or photo copies thereof.

(7) All paper books shall contain clearly legible documents duly paged, indexed and be tagged firmly.

Rule 17. Endorsing copies to the party:

A copy each of appeal and paper book shall be provided to the Departmental Representative as well as to the concerned Executive Principal Commissioner or Commissioner. In case of Departmental appeal, a copy of the same shall be served on the other party as soon as they are filled.

Rule 18. Date and place of hearing to be notified.-

(1) The Tribunal shall notify to the parties the date and place of hearing of the appeal or application.

(2) The issue of the notice referred to in sub-rule (1) shall not by itself be deemed to mean that the appeal or application has been admitted.

Rule 19. Hearing of appeal.-

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Tribunal shall then, if necessary, hear the respondent against the appeal and in such a case the appellant shall be entitled to reply.

Rule 20. Action on appeal for appellant's default:

Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits:

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal.

Rule 21. Hearing of appeals *ex parte*:

Where on the day fixed for the hearing of the appeal or on any other day to which the hearing is adjourned the appellant appears and the respondent does not appear when the appeal is called on for hearing, the Tribunal may hear and decide the appeal *ex parte*.

Rule 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application.-

Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be:

Provided that every such application shall be made within a period of sixty days of the occurrence of the event:

Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit.

Rule 23. Production of additional evidence.-

(1) The parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Tribunal, but if the Tribunal is of opinion that any documents should be produced or any witness should be examined or any affidavit should be filed to enable it to pass orders or for any sufficient cause, or if adjudicating authority or the appellate or revisional authority has decided the case without giving sufficient opportunity to any party to adduce evidence on the points specified by them or not specified by them, the Tribunal may, for reasons to be recorded, allow such documents to be produced or witnesses to be examined or affidavits to be filed or such evidence to be adduced.

(2) The production of any document or the examination of any witness or the adducing of any evidence under sub-rule (1) may be done either before the Tribunal or before such departmental authority as the Tribunal may direct.

(3) Where any direction has been made by the Tribunal to produce any documents or to examine any witnesses or to adduce any evidence before any departmental authority, the authority shall comply with the directions of the Tribunal and after such compliance send the documents, the record of the deposition of the witnesses or the record of evidence adduced, to the Tribunal.

(4) The Tribunal may, of its own motion, call for any documents or summon any witnesses on points at issue, if it considers necessary to meet the ends of justice.

Rule 24. Adjournment of appeal.-

The Tribunal may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the appeal.

Rule 25. Proceedings to be open to public:

The proceedings before the Tribunal shall be open to the public:

Provided that the Tribunal may, if it thinks fit, order at any stage of the proceedings of any particular case that the public generally or any particular person shall not have access to or be or remain in, the room or building used by the Tribunal.

Rule 26. Order to be signed and dated.-

Every order of the Tribunal shall be in writing and shall be signed and dated by the Members constituting the Bench concerned. Last date of hearing of the matter shall be typed on the first page of the order. If the order is dictated on the Bench, the date of dictation will be the date of the final order. If the order is reserved, the date of final order will be the date on which the order is pronounced.

In cases, where gist of the decision is pronounced without the detailed order, the last para of the detailed order shall specify the date on which the gist of the decision was pronounced. In such cases, the date of the final order shall be the date on which all the Members of the Bench sign the order. If they sign on different dates, the last of the dates will be the date of the order.

Rule 27. Publication or orders:

Such of the orders of the Tribunal as are deemed fit for publication in any authoritative report or the press, may be released for such publication on such terms and conditions as the Tribunal may lay down.

Rule 28A. Procedure for filing and disposal of stay petitions.-

(1) (a) Every application preferred under the provisions of the Acts for stay of the requirement of making deposit of any duty demanded or penalty levied shall be presented in triplicate by the appellant in person or by his duly authorised agent, or sent by registered post to the Registrar or any other office authorised to receive memoranda of appeals, as the case may be, at the Headquarters of the Bench having jurisdiction to hear the appeal in respect of which the application for stay arises:

[proviso omitted]

(b) One copy each of such application shall be served on the authorised representative of the Commissioner or, as the case may be, the Administrator simultaneously by the applicant.

(2) Every application for stay shall be neatly typed on one side of the paper and shall be in English and the provisions of rule 5 shall apply to such applications.

(3) An application for stay shall set forth concisely the following:

- (a) the facts regarding the demand of duty or penalty, the deposit whereof is sought to be stayed;
- (b) the exact amount of duty or penalty and the amount undisputed therefrom and the amount outstanding;
- (c) the date of filing of the appeal before the Tribunal and its number, if known;
- (d) whether the application for stay was made before any authority under the relevant Act or any civil court and, if so, the result thereof (copies of the correspondence, if any, with such authorities to be attached);
- (e) reasons in brief for seeking stay;
- (f) whether the applicant is prepared to offer security and, if so, in what form; and

(g) prayers to be mentioned clearly and concisely (state the exact amount sought to be stayed).

(4) The contents of the appeal / application / cross-objection shall be supported by a verification regarding their correctness by the appellant or respondent or the principal officer authorised to sign appeal / cross-objection. The Bench may, however, in a particular case direct filing of an affidavit by the appellant/respondent or any other person, if so considered necessary or desirable in the circumstances of a given case.

(5) Every application for stay shall be accompanied by three copies of the relevant orders of the authorities of the department concerned, including the appellate orders, if any, against which the appeal is filed to the Tribunal by the appellant and other documents, if any:

Provided that it shall not be necessary for the applicant to file copies of the documents which have already been filed with the related appeal.

(6) Any application which does not conform to the above requirements is liable to be summarily rejected.

(7) Subject to any general or special orders of the President in this behalf, an application for stay shall be decided by the Bench having jurisdiction to hear the appeal to which the application relates.

Rule 28B: Change of authorised representative.-

(1) In case an appellant / respondent changes the person authorised to represent him after the filing of the appeal or application then the fact of such a change may be indicated by way of a memorandum addressed to the tribunal or an endorsement or Vakalatanama or document of authorisation and upon such communication or endorsement the bench may not insist on filing of a no-objection certificate from the previous authorised representative except where in the opinion of the bench it was called for in a given case.

Rule 28C: Procedure for filing of and disposal of Miscellaneous Application.-

The provisions of the rules regarding the filing of stay applications shall, in so far as may be, apply to the filing of applications under this rule (mutatis mutandis).

Rule 29. Reference to High Court.-

(1) An application for reference to the High Court shall be filed **in quintuplicate** and shall be accompanied by a list of documents (particulars whereof shall be stated) which, in the opinion of the applicant, should form part of the case and a translation in English of any such documents, where necessary, and **five copies of the order passed by the Tribunal in the appeal concerned.**

(2) Where an application for reference is filed by any person other than the Principal Commissioner or Commissioner or the Administrator, the Principal Commissioner or Commissioner or the Administrator shall be made the respondent, and where the application for reference is filed by the Principal Commissioner or Commissioner or the Administrator, the other party shall be made the respondent.

(3) The provisions of the rules relating to the filing of Appeal shall, so far as may be, apply to the filing of an application under this rule.

Rule 30. Reference to Supreme Court in case of conflict in decisions of High Courts.-

Where, on an application for reference to a High Court, the Tribunal considers it expedient, on account of conflict in the decisions of High Courts in respect of any particular question of law, to make a reference direct to the Supreme Court, such reference shall inter alia set out concisely the decisions of the High Court and the points of conflict in the decisions.

Rule 31. Same Bench to hear reference applications.-

The same Bench which heard the appeal giving rise to the application for reference to the High Court or Supreme Court shall hear such application unless the President directs otherwise.

Rule 31A. Same Bench to hear applications for rectification of mistakes.-

An application for rectification of a mistake apparent from the record, under sub-Section (2) of Section 129B of the Customs Act, or sub-Section (2) of Section 35C of the Central Excise Act, 1944, or sub-Section (2) of Section 81A of the Gold (Control) Act, shall be heard by a Bench consisting of the Members who heard the appeal giving rise to the application, unless the President directs otherwise.

Rule 32. Submission of reply to reference application.-

The respondent may, if he so desires, within forty-five days from the date on which he was served with a copy of the application for reference, submit a reply in writing to the application.

Rule 33. Contents of reply.-

- (1) The reply referred to in rule 32 shall be filed in quintuplicate and shall specifically admit or deny whether any question of law as formulated by the applicant arises out of the order of the Tribunal.
- (2) If any question formulated by the applicant is defective, the reply shall state in what particulars the question is defective and what is the exact question of law which arises out of the said order.
- (3) The reply shall be accompanied by a list of documents (the particulars of which shall be stated) which in the opinion of the respondent, should form part of the case and a translation in English of any such documents, where necessary.

Rule 34. Statement of case.-

- (1) Where, after hearing the applicant, and the respondent if he appears before the Tribunal in response to the notice of hearing, the Tribunal is of the opinion that a question of law arises out of its order, it shall draw up a statement of the case.
- (2) The Tribunal shall append to the statement of the case a list of documents which, in its opinion, should form part of the reference.
- (3) Within such time after the statement of the case is drawn up as the Tribunal may direct, the applicant or respondent, as the case may be, at whose instance any such document is included in the list, shall file as many certified and uncertified copies of the documents which form part of the reference as are required to be forwarded to the High Court or Supreme Court:

Provided that the Tribunal may, at the request of the parties, in its discretion, allow further time to enable the parties to file copies of such documents.

Rule 35. Communication of orders to parties.-

Any order passed in an appeal or on an application shall be communication to the appellant or the applicant and to the respondent either in persons or by registered post.

Rule 36. Same Bench to deal with requisition from High Court or Supreme Court.-

Where a requisition to state the case from the High Court or where a direction to make any addition or alteration in a statement of the case from the High Court or the Supreme Court is received by the Tribunal under the Acts, it shall be dealt with by the same Bench referred to in rule 31, unless otherwise directed by the President.

Rule 37. Receipt of judgment of the High Court or Supreme Court.-

Where a copy of the judgment of the High Court or the Supreme Court is received by the Tribunal, it shall be sent to the Bench referred to in rule 31 or any other Bench as directed by the President for such orders as may be necessary.

Rule 38. Copying fees: Copies of documents relating to a case / order / cause list may be supplied on request, on payment of the prescribed fees:

- (1) Photocopies of whole or part of an order sheet may be supplied on payment of the prescribed fees to the appellant / respondent or their authorised representative.
- (2) In case of reported as well unreported orders, the copies may be supplied to journals on payment of an amount prescribed by the President for payment on annual or half yearly basis.
- (3) Photocopies of cause lists may be supplied to the authorised representative on payment of the prescribed fees and to the departmental representatives without fees, if so requested.
- (4) Copying fees shall be payable in cash in advance.
- (5) No fee is required to be paid by any departmental authority connected with the matter in question before the Tribunal.

Rule 39. No fees for inspection of records.-

No fees shall be charged for inspecting the records of a pending appeal or application by a party thereto.

Rule 40. Control over departmental authorities in certain matters.-

The Tribunal shall exercise control over the departmental authorities in relation to all matters arising out of the exercise of the powers or of the discharge of the functions of the Tribunal.

Rule 41. Orders and directions in certain cases.-

The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.

Rule 42. Working hours of offices of the Tribunal.-

Except on Saturdays, Sundays and other public holidays, the offices of the Tribunal shall, subject to any order made by the President, be open daily from 9.30 A.M. to 6.00 P.M.; but no work, unless of urgent nature, shall be admitted after 5.30 P.M.

Rule 43. Sittings of the Tribunal.-

- (1) The Tribunal shall not ordinarily hold sittings on Saturdays, nor on any Sundays and other public holidays.
- (2) The sitting hours of the Tribunal shall ordinarily be as under:

In New Delhi, Mumbai and Chennai. From 10.30A.M. to 1.30 P.M. and from 2.15 P.M. to 4.45 P.M.

In Kolkata. From 10.30A.M. to 1.15 P.M. and from 2.00 P.M. to 4.30 P.M.

Rule 44. Officers of the Tribunal and Their functions.-

- (1) The Registrar shall have the custody of the records of the Tribunal and shall exercise such other functions as are assigned to him under these rules or by the President by separate order.
- (2) The Registrar may, with the approval of the President, delegate to the Deputy Registrar or an Assistant Registrar any function required by these rules to be exercised by the Registrar.
- (3) In the absence of the Registrar, the Deputy Registrar or the Assistant Registrar may exercise all the functions of the Registrar.
- (4) The official Seal shall be kept in the custody of the Registrar or Deputy Registrar or Assistant Registrar.
- (5) Subject to any general or special directions given by the President, the Seal of the Tribunal shall not be affixed to any order, summons or other processes save under the authority in writing of the Registrar or Deputy Registrar or Assistant Registrar.
- (6) The Seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar or Deputy Registrar or Assistant Registrar.

Rule 45. Additional powers and duties of the Registrar:

In addition to the powers conferred by other rules, the Registrar shall have the following powers and duties subject to any general or special order of the President, namely: -

- (i) to require any memorandum of appeal, application, petition or other proceeding presented to the Tribunal to be amended in accordance with the practice and procedure of the Tribunal or to be represented after such requisition as the Registrar is empowered to make in relation thereto has been complied with;
- (ii) subject to the directions of the respective Benches, to fix the date for hearing appeals, applications, petitions or other proceedings and issue notices thereof;
- (iii) to settle the index in cases where the record is prepared in the Tribunal;
- (iv) to direct any formal amendment of record; and
- (v) to order the grant of copies of documents to parties to proceedings, and to grant leave to inspect the records of the Tribunal under rule 39.

Rule 46. Seal and Emblem:

The official Seal and Emblem of the Tribunal shall be such as the President may prescribe.

Rule 47. Dress for the Members.-

The dress for the Members shall be such as the President may prescribe.

Rule 48. Dress for the parties.-

Every authorised representative other than a relative or regular employee of a party shall appear before the Tribunal in his professional dress, if any, and, if there is no such dress, - (i) if a

male, in a close-collared black coat, or in an open-collared black coat, with white shirt and black tie; or (ii) if a female, in a black coat over a white sari or any other white dress:

Provided that during the summer season from 15th April to 31st August, the authorised representatives may, when appearing before a Bench of the Tribunal, dispense with the wearing of a black coat.

Explanation: For the purpose of this Rule, the expression 'regular employee of a party' shall not include an employee of the Customs or Central Excise Department who is appointed as an authorised representative in pursuance of sub-clause (ii) of sub-rule (c) of rule 2.]

[Source: website: www.cestat.gov.in]

3.10 The Text of CEGAT (Countervailing Duty and Anti-Dumping Duty (Procedure) Rules, 1996 as amended.

CEGAT (Countervailing Duty and Anti-Dumping Duty (Procedure) Rules, 1996

The CEGAT (Countervailing duty and Anti-dumping Duty (Procedure) Rules, 1996 were notified under Section 129 C (6) of the Customs Act, 1962 read with Section 9 C(4) of the Customs Tariff Act, 1975 vide CEGAT Notification No. 1/CEGAT/96, dated 2-2-1996 and was last amended vide CEGAT notification No. 2/98, dated 09.07.1998.

In exercise of the powers conferred by sub-Section (6) of Section 129C of the Custom Act, 1962 read with sub-Section (4) of Section 9C of the Customs Tariff Act, 1975 the Customs, Excise and Gold (Control) Appellate Tribunal makes the following rules, namely:-

Rule 1. Short title and commencement: -

(1) These rules may be called the CESTAT (Countervailing Duty and Anti-Dumping) Procedure Rules, 1996.

(2) They shall come into force with effect from the date of publication in the official gazette.

Rule 1(i). –

In these rules, unless the context otherwise requires-

- (a) "Acts" means the Customs Tariff Act, 1975.
- (b) "Anti-Dumping Duty Rules" shall mean the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on dumped Articles and for Determination of Injury) Rules 1995.
- (c) "Authorised representative" in relation to any proceedings before the Tribunal means, a person referred to in clauses (a), (c) and (d) of sub-Section (2) of Section 146A of Customs Act, 1962.
- (d) "Bench" means the Bench of the Tribunal referred to in sub-Section (5) of Section 9C of the Act.
- (e) "Concerned officer" means Registrar or an officer authorized as such by the Registrar.
- (f) "Countervailing Duty Rules" shall mean the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995.
- (g) "Department Representative" in relation to the proceedings before the Tribunal means a person appointed by the Central Government or by an officer duly authorised in this

behalf, as authorized representative to appear, plead and act for the designed authority in such proceedings.

- (h) "Designated Authority" means the person appointed by the Central Government under Rule 3 of the Countervailing Duty Rules or Rule 3 of the Anti-Dumping Duty Rules.
- (i) The expression "Customs Act", "Member", "President", "Registrar", "Registry", "Tribunal", and "Vice-President" shall have the same meaning attached to them as in the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

Rule 2. The expression "Domestic Industry" and "Interested Party" shall have the same meaning as ascribed to these expressions in Rule 2 (b) and Rule 2(c) respectively of the Countervailing Duty Rules and Rule 2 (b) and Rule 2(c) respectively of the Anti-Dumping Duty Rules.

Rule 3. Sittings of Bench.- Subject to general or special orders as may be made by the President, a Bench shall hold its sittings at New Delhi.

Rule 4. The language of the Tribunal shall be English:

Provided that if any of the parties files documents in a Hindi, the same shall be accompanied by translation in English duly attested by the party or the authorised representative of the party to be true translations.

Provided further that the Bench may in its discretion, permit the use of Hindi in its proceedings; so however, the final order shall be in English.

Rule 5. Procedure for filing appeals and who may be joined as respondents:-

(1) A memorandum of appeal shall be in the proforma appended to these Rules and shall be presented by the appellant in person or by any agent to the concerned officer or sent by Registered post addressed to the concerned officer. A memorandum of appeal sent by post shall be deemed to have presented to the concerned officer on the date on which it is received in the office of the concerned officer.

(2) The following persons shall be joined as respondents to the appeal, unless any person so required to be made respondent is himself the appellant:

- (a) The designated authority.
- (b) Representative of the domestic industry on whose application investigation was commenced by the designated authority.
- (c) Interested persons who submitted representations to the designated authority in the course of investigation.

Rule 6. On receiving notice of appeal, the designated authority shall transmit to the Tribunal the records and the procedure leading to the appeal, including confidential information, if any, under Rule 8 of the Countervailing Duty Rules or Rule 8 of Anti-Dumping Rules, as the case may be.

Rule 7. The provisions of Rules 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 38, 39, 40 and 41 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 shall be deemed to be a part of these Rules.

Note: *The Proforma of Memorandum of Appeal which is part of the notification has not been reproduced here. For it, the original notification alongwith amending notification may be referred.*

3.11 Text of the Central Excise (Appeals) Rules, 2001

Central Excise (Appeals) Rules, 2001

These rules were notified *vide* notification No. 32/2001-C.E. (N.T.), dated 21.06.2001 and were subsequently amended *vide* notification No. 6/2013-CE (NT), dated 10.04.2013. These rules were last amended *vide* notification No. 23/2014-CE (NT), dated 06.08.2014

In exercise of the powers conferred by Section 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 these Rules;
- (c) words and expressions used in these Rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

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

- (1) An appeal under sub-Section (1) of Section 35 of the Act to 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.

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

- (1) An application under sub-Section (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 induplicate 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 Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, 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 adduce evidence 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 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-Section (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-Section (4) of Section 35B of the Act shall be made in Form No. **E.A.-4**.

(3) Where an appeal under sub-Section (1) of Section 35B of the Act or a memorandum of cross-objections under sub-Section (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 appeal under sub-Section (2) of Section 35B or an application under sub-Section (4) of Section 35E of the Act to the Appellate Tribunal shall be made in Form No. E.A.- 5.

(2) The appeal or application, as the case may be in Form No. E.A.-5 shall be filed in quadruplicate accompanied by an equal number of copies of the decision or order (one of which at least shall be a certified copy) passed by:-

(a) the Appellate Commissioner of Central Excise under Section 35 of the Act, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under Section 35A of the Act and a copy of the order passed by the Committee of Principal Commissioner of Central Excise or Commissioners of Central Excise, as the case may be, under sub-Section (2) of Section 35B of the Act.

(b) the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, and a copy of the order passed by the Committee of Principal Chief Commissioner of Central Excise or Chief Commissioners of Central Excise, as the case may be, under sub-Section (1) of Section 35E of the Act.

8. Form of application to the High Court.-

(1) An application under sub-Section (1) of Section 35H 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-Section (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-Section (1) of Section 35H of the Act or a memorandum of cross-objections under sub-Section (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) or Rule 3.

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

(1) A revision application under sub-Section (3) of Section 35EE of the Act to 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-Section (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-110 001, 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 office 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 case may be, in the office of such officer.

12 . Qualifications for authorized representatives.-

For the purposes of clause (c) of sub-Section (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 Section 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*
Any Indian University incorporated under any law for the time being in force in India;
- II. Rangoon University
- III. English and Welsh Universities
The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales;
- IV. Scottish Universities
The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;

- V. Irish Universities
The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin;
- VI. Pakistan Universities
Any Pakistan University incorporated under any law for the time being in force;
- VII. Bangladesh Universities
Any Bangladesh University incorporated under any law for the time being in force.

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

The Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, 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-Section (5) of Section 35Q of the Act.

3.12 Text of the Customs (Appeals) Rules, 1982

Customs (Appeals) Rules, 1982

These rules were notified by the Central Government vide notification No. 212-Cus., dated 10.09.1982 as amended by notifications No. 248-Cus., dated 10.11.1982; No. 15/85-Cus., dated 30.01.1985; No. 252/86-Cus., dated 16.04.1986; No. 62/99-Customs (NT), dated 17.11.1999; No. 37/2013-Customs (NT), dated 10.04.2013; . This notification was last amended vide notification No. 56/2014-Customs (NT), dated 06.08.2014.

In exercise of the powers conferred by sub-Section (1) of Section 156 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely :

Chapter I: Preliminary

1. Short title and commencement.-

- (1) These rules may be called the Customs (Appeals) Rules, 1982.
- (2) They shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Note: *These rules were brought into force vide notification No. 222-Customs, dated 11.10.1982 with effect from 11.10.1982.*

2. Definitions.-

In these rules, unless the context otherwise requires, -

- (a) "Act" means the Customs Act, 1962 (52 of 1962);
- (b) "Form" means a form appended to these rules;
- (c) "Section" means a Section of the Act.

Chapter II : Appeals to Commissioner (Appeals)

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

(1) An appeal under sub-Section (1) of Section 128 to the Commissioner (Appeals) shall be made in Form No. C.A.-1.

(2) The grounds of appeal and the form of verification as contained in Form No. C.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 some 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 some person competent to act on his behalf.

(3) The form of appeal in Form No. C.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-Section (4) of Section 129D to the Commissioner (Appeals) shall be made in Form No. C.A.-2.

(2) The form of application in Form No. C.A.-2 shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified appeal copy) and a copy of the order passed by the Principal Commissioner of Customs or **Commissioner of Customs**, as the case may be, directing such authority to apply to the Commissioner (Appeals).

5. Production of additional evidence before the 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 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 that authority; or
- (c) where the appellant was prevented by sufficient cause from producing before the 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 adduce evidence 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 documents or to cross-examine any witness produced by the appellant; or
 - (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).
- (4) Nothing contained in this rule shall affect the powers 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.

Chapter III: Appeals to Appellate Tribunal

6. Form of Appeals, etc., to the Appellate Tribunal.-

- (1) An appeal under sub-Section (1) of Section 129A to the Appellate Tribunal shall be made in Form No. C.A.-3.
- (2) A memorandum of cross-objections to the Appellate Tribunal under sub-Section (4) of Section 129A shall be made in Form No. C.A.-4.
- (3) Where an appeal under sub-Section (1) of Section 129A or a memorandum of cross-objections under sub-Section (4) of that Section is made by any person other than the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos. C.A.-3 and C.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. C.A.-3 and the form of memorandum of cross-objections in Form No. C.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 appeal under sub-Section (2) of Section 129A or an application under sub-Section (4) of Section 129D of the Act to the Appellate Tribunal shall be made in Form No. C.A.- 5.
- (2) The appeal or application in Form No. C.A.-5 shall be filed in quadruplicate accompanied by an equal number of copies of the decision or order (one of which at least shall be a certified copy) passed by:-
- (a) the Appellate Commissioner of Customs under Section 128 of the Act, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under Section

128A of the Act and a copy of the order passed by the Committee of Commissioners of Customs under sub-Section (2) of the Section 129A of the Act.

- (b) the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, and a copy of the order passed by the Committee of Chief Commissioners of Customs under sub-Section (1) of Section 129D of the Act.

8. Form of application to the High Court.-

(1) An application under sub-Section (1) of Section 130A requiring the High Court to direct the Appellate Tribunal to refer to the High Court any question of law shall be made in Form No. C.A.-6 and such application shall be filed in quadruplicate.

(2) A memorandum of cross-objections under sub-Section (3) of Section 130A to the High Court shall be made in Form No. C.A.-7 and such memorandum shall be filed in quadruplicate.

(3) Where an application under sub-Section (1) of Section 130A or a memorandum of cross-objections under sub-Section (3) of that Section is made by any person other than the Commissioner of Customs, the application, the memorandum or form of verification, as the case may be, contained in Form No. C.A.-6 or Form No. C.A.-7 shall be signed by the person specified in sub-rule (2) of rule 3.]

Chapter IIIA : Revision by Central Government

8A. Form of revision application to the Central Government. -

1. (1) A revision application under sub-Section (1) of Section 129DD to the Central Government shall be in Form No. C.A.-8.

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

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

3. The revision application in Form No. C.A.-8 shall be filed in duplicate and shall be accompanied by an equal number of copies of the following documents, namely:-

- (i) order passed by the Commissioner of Customs (Appeals) under Section 128A; and
- (ii) decision or order passed by the Customs Officer which was the subject-matter of the order referred to in clause (i).

8B. Procedure for filing revision application.-

(1) The revision application in Form No. C.A.-8 shall be presented in person to the Under Secretary, Revision Applications, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-1, or sent by registered post addressed to said Under Secretary.

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

Chapter IV: Authorised Representatives

9. Qualifications for authorised representatives. -

For the purposes of Section 146A, an authorised representative shall include a person who has acquired any of the following qualifications, being the qualifications specified under clause (d) of sub-Section (2) of the said Section 146A, 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 Section 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 Departments of Customs or 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*

Any Indian University incorporated under any law for the time being in force in India;

II. Rangoon University

III. English and Welsh Universities

The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales;

IV. Scottish Universities

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;

V. Irish Universities

The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin;

VI. Pakistan Universities

Any Pakistan University incorporated under any law for the time being in force;

VII. Bangladesh Universities

Any Bangladesh University incorporated under any law for the time being in force.

10. Authority under Section 146A(5)(b).-

The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, 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-Section (5) of Section 146A.

Chapter V: Miscellaneous

[11 to 17: Omitted vide notification No. 248-Customs, dated 10.11.1982]

3.13 Text of Rule 9 of the Service Tax Rules, 1994

Rule 9 of the Service Tax Rules, 1994- Form of appeals to Appellate Tribunal.

(1) An appeal under sub-Section (1) of Section 86 of the Act to the Appellate Tribunal shall be made in Form ST -5 in quadruplicate and shall be accompanied by a copy of the order appealed against (one of which shall be a certified copy);

(2) An appeal under sub-Section (2) of Section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Principal Commissioner or Commissioner of Central Excise, as the case may be, (one of which shall be a certified copy) and a copy of the order passed by the Central Board of Excise and Customs directing the Principal Commissioner or Commissioner of Central Excise, as the case may be, to apply to the Appellate Tribunal.

(2A) An appeal under sub-Section (2A) of Section 86 of the Act to the Appellate Tribunal shall be made in Form ST - 7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (Appeals) (one of which shall be a certified copy) and a copy of the order passed by the Principal Commissioner or Commissioner of Central Excise, as the case may be, directing the Assistant Commissioner of Central Excise or as the case may be, the Deputy Commissioner of Central Excise to apply to the Appellate Tribunal; and

(3) A memorandum of cross-objections under sub-Section (4) of Section 86 of the Act, shall be made in Form ST-6 in quadruplicate.
