

## APPEALS

### **SECTION 35. Appeals to Commissioner (Appeals).—**

Any person aggrieved by any decision (1) or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise , may appeal to the Commissioner

of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order :

**Provided** that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) 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 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.

Every appeal under this section shall be in the (2) prescribed form and shall be verified in the prescribed manner.

#### **SECTION 35A. Procedure in appeal. —**

The Commissioner (Appeals) shall give an opportunity to (1) the appellant to be heard, if he so desires.

The Commissioner (Appeals) may, at the hearing of an (2) appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the [Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

The Commissioner (Appeals) shall, after making such (3) further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against :

**Provided** that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :

**Provided** further that where the Commissioner (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 11A to show cause against the proposed order.

The order of the Commissioner (Appeals) disposing of the (4) appeal shall be in

writing and shall state the points for determination, the decision thereon and the reasons for the decision.

The Commissioner (Appeals) shall, where it is possible to (4A) do so, hear and decide every appeal within a period of six months from the date on which it is filed.

On the disposal of the appeal, the Commissioner (Appeals) (5) shall communicate the order passed by him to the appellant, the adjudicating authority, the Chief Commissioner of Central Excise and the Commissioner of Central Excise .

### **SECTION 35B. Appeals to the Appellate Tribunal. —**

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

- (a) a decision or order passed by the [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 [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 case of loss of goods, where the loss occurs in transit from (a) 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;

a rebate of duty of excise on goods exported to any country or (b) territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

goods exported outside (c) 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 —

in any disputed case, other than a case where the determination (i) 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 the amount of fine or penalty determined by such order, (ii) does not exceed [fifty thousand rupees ;

Every appeal against any order of the nature (1A) 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.

The Central Board of Excise and Customs constituted under the (1B) (i) Central Boards of Revenue Act, 1963 (54 of 1963) may, by notification in the Official Gazette, 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 Central Excise or two Commissioners of Central Excise, as the case may be.

The Committee of Commissioners of Central Excise (2) 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.

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

On receipt of notice that an appeal has been preferred (4) 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).

The Appellate Tribunal may admit an appeal or permit the (5) 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 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 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).

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

(a) in an appeal for grant of stay or 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 an application filed by or on behalf of the Commissioner of Central Excise under this sub-section.

### **SECTION 35C. 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.

The Appellate Tribunal may, if sufficient cause is shown, (1A) 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 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.

The Appellate Tribunal may, at (2) 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 [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 :

**Provided** that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order :

**Provided** further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated. .

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

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

### **SECTION 35D. Procedure of Appellate Tribunal. —**

The provisions of sub-se (1)ctions (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.

The President or any other member of (3) 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 [ten lakh rupees .

**SECTION 35E. Powers of Committee of Chief Commissioners of Central Excise or Commissioner of Central Excise to pass certain orders. —**

(The Committee 1) of Chief Commissioners of Central Excise may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner [or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners of Central Excise in its order.

The Commissioner of Central (2) Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(3) The Committee of Chief Commissioners of Central Excise or the Commissioner of Central Excise, as the case may be, shall make order under sub-section (1) or sub-section (2) within a period of three months from the date of communication of the decision or order of the adjudicating authority.

Where in pursuance of an order under (4) sub-section (1) or sub-section (2) the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of [one month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals) , as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section

(4) of section 35B shall, so far as may be, apply to such application.

**SECTION 35EE. Revision by Central Government. —**

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub- section (1) of section 35B, annul or modify such order :

**Provided** that the Central Government may in its discretion, refuse to admit an

application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

**Explanation.** — For the purposes of this sub-section, “order passed under section 35A” includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

An application under sub-section (1) shall be made within (2) three months from the date of the communication to the applicant of the order against which the application is being made :

**Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

An application under sub-section (1) shall be in such form (3) and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, - two hundred rupees, where the amount of duty and interest demanded, (a) fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;

one thousand rupees, where the amount of duty and interest demanded, (b) fine or penalty levied by any Central Excise officer in the case to which the application relates is more than one lakh rupees :

**Provided** that no such fee shall be payable in the case of an application referred to in sub- section (1A).

The Central Government may, of its own motion, annul or (4) modify any order referred to in sub- section (1).

No order enhancing any penalty or fine in lieu of (5) confiscation or confiscating goods of greater value shall be passed under this section, — in any case in which an order passed under section 35A has enhanced (a) any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

in any other case, unless the person affected by the proposed order (b) has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

Where the Central Government is of opinion that any duty (6) of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time-limit specified in section 11A.

## **SECTION 35F. Deposit, pending appeal, of duty demanded or penalty levied. —**

Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order

shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied :

**Provided** that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

**Provided** further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.

**Explanation.** — For the purposes of this section “duty demanded” shall include, —

- (i) amount determined under section 11D;
- (ii) amount of erroneous Cenvat credit taken;
- (iii) amount payable under rule 57CC of Central Excise Rules, 1944;
- (iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004;
- (v) interest payable under the provisions of this Act or the rules made thereunder.

### **SECTION 35G. Appeal to High Court. -**

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to 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), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -

- (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;
- (b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;
- (c) in the form of a memorandum of appeal precisely stating therein the

substantial question of law involved.

Where the High Court is satisfied that a substantial question of law (3) is involved in any case, it shall formulate that question.

The appeal shall be heard only on the question so formulated, and the (4) respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

**Provided** that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court shall decide the question of law so formulated and (5) deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

The High Court may determine any issue which - (6)  
(a) has not been determined by the Appellate Tribunal; or  
(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

When an appeal has been filed before the High Court, it shall be (7) heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

Where there is no such majority, the Judges shall state the point of (8) law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Save as otherwise provided in this Act, the provisions of the Code of (9) Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

#### **SECTION 35H. Application to High Court. —**

(1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed [before the 1st day of July, 2003 (not being an order relating, among other things, to 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), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

The Commissioner of Central Excise (2) or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

On receipt of notice that an (3) application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, 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 in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

If, on an application made under (4) sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.

**SECTION 35-I. Power of High Court or Supreme Court to require statement to be amended.**

—

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

**SECTION 35J. Case before High Court to be heard by not less than two judges. —**

When any case has been (1) referred to the High Court [under section 35G or section 35H , it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

Where there is no such majority, the judges shall state (2) the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

**SECTION 35K. Decision of High Court or Supreme Court on the case stated. —**

The High Court or the (1) Supreme Court hearing any such case shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

Where the High Court delivers a judgment in an appeal (1A) filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned Central Excise Officer on the basis of a certified copy of the judgment.

The costs of any [reference to [the High Court or an (2) appeal to [the High Court or the Supreme Court, [as the case may be which shall not include the fee for making the reference, shall be in the discretion of the Court.

Appeal to the Supreme Court SECTION 35L. — An appeal shall lie to the Supreme Court from —

- (a) any judgment of the High Court delivered -
  - (i) in an appeal made under section 35G; or
  - (ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;
  - (iii) on a reference made under section 35H,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the

judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

any order passed [before the establishment of the National Tax (b) Tribunal by the Appellate Tribunal relating, among other things, to 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.

### **SECTION 35M. Hearing before Supreme Court. —**

The provisions of the Code of Civil (1) Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 35L as they apply in the case of appeals from decrees of a High Court :

**Provided** that nothing in this sub-section shall be deemed to affect the provisions of sub-section

(1) of section 35K or section 35N.

The costs of the appeal shall be in the discretion of the (2) Supreme Court.

Where the judgment of the High Court is varied or reversed (3) in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

### **SECTION 35N. Sums due to be paid notwithstanding reference, etc. —**

Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005 sums due to the Government as a result of an order passed under sub-section (1) of section 35C shall be payable in accordance with the order so passed.

### **SECTION 35-O. Exclusion of time taken for copy. —**

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

**SECTION 35P. Transfer of certain pending proceedings and transitional provisions. —**

Every appeal which is pending (1) immediately before the appointed day before the Board under section 35, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day :

**Provided** that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

Every proceeding which is pending immediately before the (2) appointed day before the Central Government under section 36, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it :

**Provided** that if any such proceeding or matter relates to an order where —

in any disputed case, other than a case where the determination of (a) 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

the amount of fine or penalty determined by such order, (b) does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 36 had not been substituted :

**Provided** further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

Every proceeding which is pending immediately before the (3) appointed day before the Board or the [Commissioner of Central Excise under section 35A, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Central Excise , as the

case may be, as if the said section had not been substituted.

Any person who immediately before the appointed day was (4) authorised to appear in any appeal or proceeding transferred under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in section 35Q, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

### **SECTION 35Q. Appearance by authorised representative. —**

(1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

For the purposes of this section, “authorised (2) representative” means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

his relative or regular employee; or (a)

any legal practitioner who is entitled to practise in any civil court (b) in India; or any person who has acquired such qualifications as the Central (c) Government may prescribe for this purpose.

Notwithstanding anything contained in this section, no (3) person who was a member of the Indian Customs and Central Excise Service — Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

No person, — (4)

who has been dismissed or removed from Government service; (a) or

who is convicted of an offence connected with any proceeding under (b) this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or

who has become an insolvent, shall be qualified to represent any (c) person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Commissioner of Central Excise or the competent authority under the Customs Act, 1962 or the Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

If any person, — (5)

who is a legal practitioner, is found guilty of mis-conduct in his (a) professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;

who is not a legal practitioner, is found guilty of mis-conduct in (b) connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

Any order or direction under clause (b) of sub-section (4) (6) or clause (b) of sub-section (5) shall be subject to the following conditions, namely :—

no such order or direction shall be made in respect of any person (a) unless he has been given a reasonable opportunity of being heard;

any person against whom any such order or direction is made may, (b) within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

no such order or direction shall take effect until the expiration of (c) one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

### **SECTION 36. Definitions. — In this Chapter —**

“appointed day” means the date of coming into force of the amendments (a) to this Act specified in Part II of the Fifth Schedule to the Finance (No. 2) Act, 1980;

“High Court” means, — (b)  
in relation to any State, the High Court for that State;

(i) in relation to a

(ii) Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

in relation to the

(iii) Union Territories of Dadra and Nagar Haveli and [Daman and Diu, the High Court at Bombay;

in relation to any other Union Territory, the highest

(iv) court of civil appeal for that territory other than the Supreme Court of India;

“President” means the President of the Appellate (c) Tribunal.