

The Customs and Excise Revenues Appellate Tribunal Act, 1986

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The Customs and Excise Revenues Appellate Tribunal Act, 1986¹

[Act 62 of 1986]

[Repealed by Act 25 of 2004, S. 2 and Sch.]

[23rd December, 1986]

An Act to provide for the adjudication, by an appellate tribunal, of disputes with respect to the determination of the rates of duties and customs and central excise on goods and to the valuation of goods for the purposes of assessment of such duties, in pursuance of Article 323-B of the Constitution and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

Statement of Objects and Reasons.—Article 323-B of the Constitution stipulates that the appropriate legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) of that article with respect to which such Legislature has power to make laws. One of the matters enumerated in the said clause is the levy, assessment, collection and enforcement of any tax including any matter incidental thereto.

2. The Bill seeks to give effect to the aforesaid constitutional provision by the establishment of an Appellate Tribunal to provide for the adjudication of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties. The Bill also provides for—

- (a) the jurisdiction, powers and authority which may be exercised by the Appellate Tribunal;
- (b) the procedure (including provision as to limitation and rules of evidence) to be followed by the Appellate Tribunal;
- (c) exclusion of the jurisdiction of all courts, except that of the Supreme Court, relating to matters falling within the jurisdiction of the Appellate Tribunal;
- (d) the transfer to the Appellate Tribunal of any suit, appeal or other proceedings pending before any court, etc., immediately before the establishment of the Tribunal which would have been within the jurisdiction of the Tribunal if such suit, appeal or other proceedings had arisen after such establishment.

3. The establishment of the Appellate Tribunal under the aforesaid provision of the Constitution has become necessary as in recent years there had been an enormous increase in litigation relating to customs and excise cases. Many of these cases relate to disputes pertaining to the determination of the rate of duty and value of goods for purposes of levy of customs and excise duties. It is expected that the establishment of the Appellate Tribunal will reduce litigation and will also impart greater certainty in the administration of the said duties.

1. Received the assent of the President on December 23, 1986 and published in the Gaz. of India, Extra., Pt. II, S. 1, dt. 23rd December, 1986, pp. 1-14.

Note.—In view of the changes in the designation of different posts in the present Act, the corresponding changes may be read in this Act.

4. The Notes on clauses explain in detail the various provisions of the Bill.

5. The Bill seeks to achieve the above objects.

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Customs and Excise Revenues Appellate Tribunal Act, 1986.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “Appellate Tribunal” means the Customs and Excise Revenues Appellate Tribunal constituted under Section 3;
- (b) “appointed day” means the date with effect from which the Appellate Tribunal is established, by notification, under Section 3;
- (c) “Bench” means a Bench of the Appellate Tribunal;
- (d) “Board” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
- (e) “Central Excises Act” means the Central Excises and Salt Act, 1944 (1 of 1944);
- (f) “Central Excise Tariff Act” means the Central Excise Tariff Act, 1985 (5 of 1986);
- (g) “Customs Act” means the Customs Act, 1962 (52 of 1962);
- (h) “Customs, Excise and Gold (Control) Appellate Tribunal” means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under Section 129 of the Customs Act;
- (i) “Customs Tariff Act” means the Customs Tariff Act, 1975 (51 of 1975);
- (j) “Judicial Member” means a Member of the Appellate Tribunal appointed as such under this Act, and includes the President who possesses any of the qualifications specified in sub-section (2) of Section 5;
- (k) “Member” means a Member (whether Judicial or Technical) of the Appellate Tribunal and includes the President;
- (l) “notification” means a notification published in the Official Gazette;
- (m) “President” means the President of the Appellate Tribunal;
- (n) “Prescribed” means prescribed by rules;
- (o) “Rules” means rules made under this Act;
- (p) “Supreme Court” means the Supreme Court of India;
- (q) “Technical Member” means a Member of the Appellate Tribunal who is not a Judicial Member within the meaning of clause (j);
- (r) words and expressions used in this Act but not defined herein and defined in the Central Excises Act, Central Excise Tariff Act, Customs Act or Customs Tariff Act, or the rules made thereunder, shall have the

meanings respectively assigned to them by such Act or the rules made thereunder.

CHAPTER II

ESTABLISHMENT OF THE APPELLATE TRIBUNAL AND BENCHES THEREOF

3. Establishment of the Appellate Tribunal.—The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Customs and Excise Duties Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Appellate Tribunal by or under this Act.

4. Composition of the Appellate Tribunal and Benches thereof.—(1) The Appellate Tribunal shall consist of a President and such number of Judicial and Technical Members as the Central Government may deem fit, and subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Tribunal may be exercised by Benches thereof.

(2) A Bench shall consist of one Judicial Member and one Technical Member.

(3) Notwithstanding anything contained in sub-section (1), the President—

- (a) may, in addition to discharging the functions of the Judicial Member or the Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;
- (b) may transfer a Member from one Bench to another Bench; and
- (c) may authorise the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(4) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the President or any other Member authorised by the President in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Appellate Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the President may by general or special order specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the President or Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President or, as the case may be, referred to him for transfer to, such Bench as the President may deem fit.

(5) Subject to the other provisions of this Act, the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the President may deem fit.

5. Qualifications for appointment as President or Member.—(1) A person shall not be qualified for appointment as the President unless he—

- (a) is, or has been, a Judge of a High Court;

- (b) has, for at least two years, held the office of a Judicial Member or a Technical Member.

(2) A person shall not be qualified for appointment as a Judicial Member unless he—

- (a) is, or has been, or is qualified to be, a Judge of a High Court; or
(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any equivalent or higher post for at least five years.

(3) A person shall not be qualified for appointment as a Technical Member unless he has been a member of the Indian Customs and Central Excise Service, Group 'A', for a period of at least thirty years, and has held during this period the post of Collector of Customs or Central Excise or any equivalent or higher post for at least ten years.

²[*Explanation.*—For the purposes of sub-section (3), in computing the period during which a person has been a member of the Indian Customs and Central Excise Service, Group 'A', there shall be included any period during which the person has been a member of the Indian Customs Service Class I, or the Central Excise Service Class I, as the case may be, of the Indian Revenue Service immediately before the Constitution of the Indian Custom and Central Excise Service Group 'A'.]

6. Appointment of President and Members.—(1) Subject to the provisions of sub-section (2), the President and every Member shall be appointed by the President of India.

(2) Appointment of a person as the President or a Member shall be made in consultation with a Selection Committee consisting of—

- (a) a Chairman who shall be nominated by the Chief Justice of India; and
(b) such other members as may be nominated by the Central Government.

7. Member to act as President or to discharge his functions to certain circumstances.—(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the President until the date on which the President resumes his duties.

8. Term of office.—The President or other Member shall hold office as such for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

2. Added by Act 11 of 1987, S. 107 (w.e.f. 1-4-1987).

9. Resignation or removal.—(1) The President or other Member may, by notice in writing under his hand addressed to the President of India, resign his office:

Provided that the President or other Member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The President or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such President or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the President or other Member referred to in sub-section (2).

10. Salaries and allowances and other terms and conditions of service of President and other Members.—The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the President and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the President or other Member shall be varied to his disadvantage after his appointment.

11. Provision as to the holding of offices by President and Members on ceasing to be such President or Member.—On ceasing to hold office,—

- (a) the President shall be ineligible for further employment either under the Government of India or under the Government of a State;
- (b) a Member (other than the President) shall, subject to the other provisions of this Act, be eligible for appointment as the President, but not for any employment either under the Government of India or under the Government of a State;
- (c) the President or other Member shall not appear, act or plead before the Appellate Tribunal or the Customs, Excise and Gold (Control) Appellate Tribunal.

Explanation.—For the purposes of this section, employment under the Government of India or under the Government of a State includes employment under any local or other authority within the territory of India or under the control of the Government of India or under any corporation or society owned or controlled by the Government.

12. Financial and administrative powers of the President.—The President shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules:

Provided that the President shall have authority to delegate such of his financial and administrative powers as he may think fit to any Member or officer of the Appellate Tribunal, subject to the condition that the Member or such officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

13. Staff of the Appellate Tribunal.—(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Tribunal in the discharge of its functions and provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be specified by rules.

CHAPTER III JURISDICTION, POWERS AND AUTHORITY OF THE APPELLATE TRIBUNAL

14. Jurisdiction, powers and authority of the Appellate Tribunal.—(1) Save as otherwise expressly provided in this Act, the Appellate Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable in relation to an appeal against—

- (a) a decision or order passed by the Collector Central Excise as an adjudicating authority;
- (b) an order passed by the Collector (Appeals) under Section 35-A or Section 35-E of the Central Excises Act;
- ³[(b) a decision or order passed by the Board or the Collector or Central Excise under Section 35-EA of the Central Excise Act;]
- (c) a decision or order passed by the Collector of Customs as an adjudicating authority;
- (d) an order passed by the Collector (Appeals) under Section 128-A or Section 129-D of the Customs Act;
- ⁴[(e) a decision or order passed by the Board or the Collector of Customs under Section 129-DA of the Customs Act,]

in which the determination of any question having a relation to—

- (i) the rate of duty of excise for the time being in force, whether under the Central Excise Tariff Act or under any other Central Act providing for

3. Ins. by Act 29 of 1988, S. 16 (w.e.f. 1-7-1988).

4. Ins. by Act 29 of 1988, S. 16 (w.e.f. 1-7-1988).

- the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of February, 1986; or
- (ii) the rate of duty of customs for the time being in force, whether under the Customs Tariff Act or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or
 - (iii) the value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of February, 1986; or
 - (iv) the value of goods for the purposes of assessment of any duty of customs in cases where the assessment is made on or after the 28th day of February, 1986,

is in issue or is one of the points in issue.

Explanation.—For purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question—

- (a) whether any goods are excisable goods or whether the rate of duty on any goods is nil;
- (b) whether any goods fall under a particular heading or sub-heading of the Schedule to the Central Excise Tariff Act or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978) or fall under the First Schedule or the Second Schedule to the Customs Tariff Act, as the case may be, or that any goods are or not covered by a particular notification or order issued by the Central Government or the Board, granting total or partial exemption from a duty of excise or customs, as the case may be;
- (c) whether the value of any goods for the purposes of assessment of a duty of excise or customs shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in the Central Excises Act or the Customs Act.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall preclude the entertainment of an appeal in relation to any of the matters dealt with in sub-section (1) by the Customs, Excise and Gold (Control) Appellate Tribunal or the disposal thereof during the period commencing on and from the 28th day of February, 1986 and ending with the appointed day and any order passed by the said Tribunal on such appeal during that period shall, for all purposes, have effect as an order of the Appellate Tribunal constituted under this Act and all the provisions of this Act shall apply to such order.

15. Bar of jurisdiction of the Appellate Tribunal in certain cases.—Notwithstanding anything contained in Section 14, no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to

decide any appeal in respect of any decision or order referred to in Section 14 if such decision or order relates only 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) any goods imported or exported as baggage or by post;
- (e) any goods loaded, or deemed to have been loaded in accordance with an import manifest or import report, 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 or any goods which have been lost or destroyed after being unloaded at any such destination;
- (f) payment of drawback as provided in Chapter X of the Customs Act and the rules made thereunder.

16. Power to punish for contempt.—The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have effect subject to the modifications that—

- (a) the references therein to a High Court shall be construed as including a reference to the Appellate Tribunal;
- (b) the references to the Advocate-General in Section 15 of the said Act shall be construed, in relation to the Appellate Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General.

17. Distribution of business amongst the Appellate Tribunal and its Benches.—(1) Where any Benches of the Appellate Tribunal are constituted, the President may, from time to time, by order, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of the Appellate Tribunal, the decision of the President thereon shall be final.

CHAPTER IV PROCEDURE

18. Appeals to the Appellate Tribunal.—(1) Subject to the other provisions of this Act, every appeal to the Appellate Tribunal under this Act shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the person aggrieved by the decision or order or to the Collector of Central Excise or the Collector of Customs, as the case may be.

(2) 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 decision or 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 (1).

(3) 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 (2), if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) Every 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, except in the case of an appeal preferred by the proper officer or a memorandum of cross-objections referred to in sub-section (2), be accompanied by a fee of two hundred rupees.

CASE LAW ► Principles for condoning delay.—In dealing with question of condoning the delay under Section 5 of the Limitation Act the party seeking relief has to satisfy the Court that it had sufficient cause for not preferring the appeal or making the application within the prescribed time and this has always been understood to mean that the explanation has to cover the whole period of delay. It is not possible to lay down precisely as to what facts or matters would constitute sufficient cause under the section but those words should be liberally construed so as to advance substantial justice where no negligence or any inaction or want of bona fides is imputable to the party; that is, the delay in filing the appeal should not have been for reasons which indicated the party's negligence in not taking necessary steps which he would have or should have taken. Discretion is conferred on the High Court before which an application for condoning the delay is made and if the Court after keeping in view relevant principles exercises its discretion granting relief, unless it is shown to be manifestly unjust or perverse, the Supreme Court would be loathe to interfere with it, *Sandhya Rani Sarkar v. Sudha Rani Debi*, (1978) 2 SCC 116 : AIR 1978 SC 537.

19. Procedure and powers of the Appellate Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central

Government, the Appellate Tribunal shall have power to regulate its own procedure, including the fixing of places and times of its hearing.

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery, inspection and production of books of account and other documents;
- (c) reviewing its decisions;
- (d) dismissing an appeal for default or deciding it ex-parte; and
- (e) any other matter which may be prescribed.

20. Deposit, pending appeal, of duty demanded or penalty levied.—Where in any appeal under this Act, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the Central Excise authorities or the Customs authorities, as the case may be, or any penalty levied under the Central Excises Act or the Customs Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty demanded or the penalty levied:

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

21. Right of applicant to take assistance of legal practitioner and Government to appoint representing officers.—(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal.

(2) The Central Government may authorise one or more legal practitioners or any of its officers to act as presenting officer and any person so authorised by it may present its case with respect to any appeal before the Appellate Tribunal.

22. Conditions as to making of interim orders.—Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an appeal under this Act unless—

- (a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is preferred; and
- (b) opportunity is given to such party to be heard in the matter:

Provided that the Appellate Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an

exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the appellant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Appellate Tribunal has continued the operation of the interim order.

23. Power of President to transfer cases from one Bench to another.—On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the President may transfer any case pending before one Bench, for disposal, to any other Bench.

24. Procedure for deciding the case where the Members of a Bench differ in opinion.—If the Members of a Bench differ in opinion on any point, 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 and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

25. 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.

(2) The Appellate Tribunal may, at any time within four years 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 Collector of Central Excise or the Collector of Customs, as the case may be, 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.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Collector of Central Excise or the Collector of Customs, as the case may be, and the other party to the appeal.

CHAPTER V
MISCELLANEOUS

26. Exclusion of jurisdiction of courts except the Supreme Court.—On and from the appointed day, no court (except the Supreme Court) or the Customs, Excise and Gold (Control) Appellate Tribunal shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to matters in respect of which appeals would lie to the Appellate Tribunal under Section 14.

27. Transfer of pending cases.—(1) Every suit, appeal or other proceedings pending before any court or other authority or the Customs, Excise and Gold (Control) Appellate Tribunal, immediately before the appointed day, being a suit, appeal or other proceedings which would have been within the jurisdiction of the Appellate Tribunal, if it had arisen after such day, shall stand transferred on that day to the Appellate Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

(2) Where any suit, appeal or other proceeding stands transferred from any court, tribunal or other authority to the Appellate Tribunal under sub-section (1),—

- (a) the court or other authority or the Customs, Excise and Gold (Control) Appellate Tribunal shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Appellate Tribunal; and
- (b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an appeal under Section 18 from the stage which was reached before such transfer or from any earlier stage or de novo as the Appellate Tribunal may deem fit.

(3) Any person, who immediately before the appointed day, is an advocate or authorised representative entitled to practice in any court or other authority or the Customs, Excise and Gold (Control) Appellate Tribunal and was authorised to appear or to act in any proceedings transferred from the said court, other authority or Tribunal to the Appellate Tribunal under this section shall have the right to appear or to act, as the case may be, before the Appellate Tribunal in relation to the said suit, appeal or other proceeding.

28. Proceedings before the Appellate Tribunal to be judicial proceedings.—All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).

NOTES ▶ Sections 193 and 228 of the Indian Penal Code, 1860, are given below:—

"193. *Punishment for false evidence.*—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

228. *Intentional insult or interruption to public servant sitting in judicial proceeding.*—Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

29. Members and staff of the Appellate Tribunal to be public servants.—The President and other Members and the officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

30. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Central Government or against the President or other Member, or any other person authorised by such President or other Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

CASE LAW ► Good Faith.—The term 'good faith' has been defined differently in different enactment. In Section 3(22) of the General Clauses Act, 1897 'good faith' is defined thus: "A thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not". In Section 52 IPC, "good faith" is defined thus: "Nothing is said to be done or believed in good faith which is done or believed without due care and attention."

31. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

32. Power to make rules.—(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the salaries and allowances and other terms and conditions of service of President and other Members under Section 10;
- (b) the financial and administrative powers which the President may exercise over the Benches under Section 12;
- (c) the salaries and allowances and conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of Section 13;
- (d) the form in which every appeal to the Appellate Tribunal shall be filed and the manner in which such appeal shall be verified under sub-section (4) of Section 18;
- (e) the rules subject to which the Appellate Tribunal shall have power to regulate its own procedure under sub-section (1) of Section 19 and the additional matters in respect of which the Appellate Tribunal may

exercise the powers of a civil court under clause (e) of sub-section (2) of that section; and

- (f) any other matter which has to be, or may be, prescribed by rules under this Act.

(3) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be without prejudice to the validity of anything previously done under that rule.

33. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

34. Consequential amendments in the Central Excises Act and the Customs Act.—On and from the appointed day, the following amendments (being amendments of a consequential nature) shall be made in the Central Excise Act and the Customs Act, namely:—

(a) in the Central Excise Act,—

- (i) for sub-section (2) of Section 35-B, the following sub-section shall be substituted, namely:—

“(2) The Collector of Central Excise may, if he is of opinion that an order passed by—

- (a) the Appellate Collector of Central Excise under Section 35, as it stood immediately before the appointed day, or
(b) the Collector (Appeals) under Section 35-A; 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 his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order.”;

(ii) in Section 35-E,—

- (a) after the words "Appellate Tribunal", wherever they occur, the words and figures "or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted;
 - (b) in sub-section (4), after the word, figures and letter "Section 35-B", the words and figures "or, as the case may be, the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted;
- (b) in the Customs Act,—
- (i) for sub-section (2) of Section 129-A, the following sub-section shall be substituted, namely:—

"(2) The Collector of Customs may, if he is of opinion that an order passed by—

 - (a) the Appellate Collector of Customs under Section 128, as it stood immediately before the appointed day, or
 - (b) the Collector (Appeals) under Section 128-A,

is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order.";
 - (ii) in Section 129-D,—
- (a) after the words "Appellate Tribunal", wherever they occur, the words and figures "or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted;
 - (b) in sub-section (4), after the word, figures and letter "Section 129-A", the words and figures "or, as the case may be, the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted.
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