

**BACKGROUND MATERIAL  
FOR  
MOCK CESTAT - SERVICE TAX MATTERS**

**1. Introduction**

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), formerly known as Customs, Excise & Gold (Control) Appellate Tribunal (in short CEGAT), was constituted on 11th October 1982 in terms of the powers vested in Central Government under Section 129 of Customs Act, 1962. The Tribunal has been working for more than 25 years now.

CESTAT is the second level appellate authority; the first appellate authority being Commissioner (Appeals). CESTAT, as the name suggests, deals with matters arising from the Customs Act, 1962, Central Excise Act, 1944 and Finance Act 1994 (Service Tax).

Tribunal sits in Benches. Bench means the Bench of the Tribunal and even a member sitting singly is also referred to as a Bench. The Tribunal has one principal bench and other zonal benches. The Principal Bench is at the Principal seat of the Tribunal, Delhi, whereas Zonal Benches are at different zones e.g. the Western Zone Bench is at Mumbai. The Principal Bench could be assigned cases arising anywhere in India whereas the Zonal Benches are assigned matters falling in jurisdiction of the concerned zone. The Tribunal at present has benches in Delhi and Mumbai and one each at Kolkata, Chennai, Bangalore and Ahmedabad.

A Bench ordinarily consists of two members, a Judicial Member and a Technical Member. Special or Larger Benches are sometimes constituted (comprising three or five members) when there is difference of opinion between the two members. Small cases (currently of duty amount not exceeding Rs. 10 lakhs) are assigned to single member benches.

**2. Statutory Provisions**

The statutory provisions with regard to appeal to the Appellate Tribunal in relation to service tax matters are contained in Section 86 of the Finance Act, 1994 (32 of 1994) and are reproduced in Annexure I for ready reference. Further, the reference of form numbers and other procedures are contained in Rule 9 of Service Tax Rules, 1994 which is also reproduced in Annexure I.

The procedure to be followed in this regard is contained in Customs, Excise and Service tax Appellate Tribunal (Procedure) Rules, 1982. The Rules are reproduced in Annexure II for ready reference.

For hearing of the appeals and making orders, the Appellate Tribunal exercises the same powers and follows the same procedure as for making orders under the Central Excise Act, 1944.

### 3. Appealable Orders

Appeals to CESTAT can be filed by both the assessee and the Department.

#### *Appeals by Assessee*

Appeals to CESTAT lie against orders [referred to as appealable orders passed by the Commissioner of Central Excise or Commissioner of Central Excise (Appeals)]. The details with the section references of the orders against which appeals lie to CESTAT are listed in the table below.

Up to 12.05.2005	With effect from 13.05.2005
(i) An order passed by the Commissioner of Central Excise under Section 84 (revision order passed by Commissioner of Central Excise).	(i) An order passed by the Commissioner of Central Excise under Section 73 (recovery of service tax not levied or not paid or short levied or short paid or erroneously refunded) or under Section 83A (adjudication of penalty) or Section 84 (revision order passed by Commissioner of Central Excise). It is important to note here that erstwhile Section 84 dealing with revision has been substituted with new Section 84 with effect from 19.08.2009 where power of revision by Commissioner has been divested from the Commissioner and department is permitted to file first appeal before Commissioner (Appeal) against the order passed by an authority subordinate to the Commissioner.
(ii) An order passed by the Commissioner of Central Excise (Appeals) u/s 85	(ii) An order passed by the Commissioner of Central Excise (Appeals) u/s 85

### ***Appeals by Department***

Departments can also file appeal against orders passed by the Commissioner or Commissioner (Appeals). The circumstances and the person who files the appeal on behalf of the Department together with the section references are tabulated below.

For the period 01.07.1994 to 15.07.2001	<i>For the period</i> 16.7.2001 to 12.05.2005	For the period 13.05.2005 to 11.05.2007	With effect from 12.05.2007
The Board may, if it objects to any order passed by the Commissioner of Central Excise under Section 84, or the Commissioner of Central Excise may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under Section 85, direct the Central Excise Officer to appeal to the Appellate Tribunal against the order.	The Board may, if it objects to any order passed by the Commissioner of Central Excise under Section 84, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.	The Board may, if it objects to any order passed by the Commissioner of Central Excise under Section 73 or Section 83A or Section 84, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.	The Committee of 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 or Section 84, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.
	The Commissioner of Central Excise may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under Section 85, direct the Assistant Commissioner of Central Excise, or, as the case may be, Deputy Commissioner of Central Excise to appeal to the	The Commissioner of Central Excise may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under Section 85, direct any Central Excise Officer to appeal on his behalf to the Appellate Tribunal against the order.	The Committee of Commissioners may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under Section 85, direct any Central Excise Officer to appeal on his behalf to the Appellate Tribunal against the order.

	Appellate Tribunal against the order.		
--	--	--	--

#### **4. Procedure for Filing Appeal**

##### *Form for Appeal*

**Appeal before CESTAT is required to be in Form ST-5. The Form is given at Annexure III for ready reference.**

**Filling up the Form: The Form starts with Appeal No. This number is given by the Tribunal. Thereafter, the name of the appellant and respondent are required to be specified. Appellant is the person who is preferring the appeal. Respondent is the Commissioner concerned. Reference may be made to Rule 12 of Customs, Excise and Service tax Appellate Tribunal (Procedure) Rules, 1982 which contains provisions with regard to persons who may be joined as Respondents.**

**The Form, besides various factual data, requires mention of the address where the notices may be sent to the appellant and respondent. The address to be mentioned here is the address at which the assessee would like to receive notices. It is important that the permanent address is mentioned here since the notices for hearing or any other matter e.g. defect in appeal are sent to this address. The Form also requires mention as regards the deposit of tax, penalty, interest, as the case may be and if the same is not deposited whether application for stay of demand is filed or not. Thus, if the duty interest or penalty, as the case may be, is paid appropriate documentary evidence is required to be furnished. However, if the same are not paid, specific mention of stay application is required to be made.**

**Ordinarily, an appellant is required to deposit tax, interest or penalty demanded in the order appealed against. However, the appellant may seek stay of such demand if it can prove that such deposit would cause undue hardship and may file an application for stay of demand. If such an application is being filed, reference to the same is required to be mentioned in the appeal form.**

**The appeal form also requires the appellant to specifically mention whether the appellant wishes to be heard in person. Ordinarily, while filing appeal, one always states 'yes' unless the appellant is certain that it would not like to be heard in person and that CESTAT may decide the matter without hearing.**

**The Form further requires mention of the relief which is sought through the appeal like deletion of tax demand, deletion of tax penalty, quashing of the**

order and like. Ordinarily, the relief is stated in the grounds of appeal and, therefore, in this section it may be specified 'relief claimed as per grounds of appeal'.

**Grounds of Appeal:** Here, specific grounds on which appeal is filed and the relief sought for are set out. The Grounds could be objecting to the specific observations in the order appealed against (if that observation is incorrect) or it could relate to the confirmation of tax demand. Separate grounds of appeal are ordinarily taken in respect of duty demanded, interest levied or penalty imposed, as the case may be.

Each ground of appeal could have a specific prayer seeking the specific relief sought for e.g. if the appeal seeks to quash the order appealed against if the order is without jurisdiction, the following would be the prayer:

*“The appellant prays that the order passed by .....be quashed as being without jurisdiction.”*

If the appeal seeks relief in terms of tax demand, prayer could be as under:

*“The appellant prays that tax demand confirmed, as aforesaid, be deleted.”*

These are just examples and the actual draft of grounds of appeal as also the prayer would depend on specific facts of each case.

Specific request seeking permission to add, amend, or alter any grounds taken in the grounds of appeal is also added.

The appeal form states that the grounds of appeal should be without any argument and narrative and grounds should be numbered consecutively

The Form also requires mention of statement of facts. This is generally added as a separate annexure.

**Statement of facts:** In this statement, the facts are set out sequentially. Ordinarily to begin with, the background relevant to the case under consideration is provided which would assist the Tribunal in understanding and appreciating the appeal issues. Thereafter, the date on which show cause notice is issued together with reference of the show cause notice and the key points raised in the show cause notice to the extent they are relevant to the appeal matter is given.

The next point ordinarily is the response of the appellant to the show cause notice and the key grounds on which the appellant responded to the show cause notice.

The next point is the decision of the Commissioner or Assistant Commissioner as the case may be, again briefly setting out the key findings (to the extent relevant).

Thereafter, the grounds taken in appeal before the first appellate authority are set out in brief, to the extent relevant to the appeal. After that, the decision of the first Appellate Authority setting out key findings on the basis of which the order is passed to the extent it is relevant to the appeal matter are set out.

Lastly, the facts of the current appeal are mentioned.

### ***Stay Petition***

Ordinarily, the appeal is admitted by the Tribunal only after the duty demand raised in the appealed order is paid unless it is specifically stayed by the Tribunal. Therefore, if the tax or any other demand raised in the order appealed against is not paid and it is desired to obtain a stay against recovery of the same, an application seeking stay is required to be filed together with the appeal before CESTAT. There is no specific format prescribed under the law for filing of stay application, however, the application should set out:

- (i) Amount of demand raised
- (ii) Facts of the case
- (iii) The grounds on which appeal is sought for
- (iv) The ground on which stay of demand is sought for specifically referring to the genuine hardship that would be caused to the appellant if the stay is not granted.
- (v) Whether the appellant would like to be heard in person as also the security that the appellant would be in a position to offer for seeking stay of demand.

### ***More than one SCN adjudicated in one adjudication order***

In such cases, a single appeal filed by the assessee is considered sufficient by Larger Bench (5 members) of CEGAT, Delhi in case of *Eicher Motors Ltd. Vs. Collector of Central Excise, Indore 2000 (116) E.L.T. 306 (Tribunal)*. It has been held that a single appeal filed by assessee is sufficient where common and consolidated order passed by Commissioner (Appeals) in respect of demands arising out of 32 show cause notices.

Further in the case of *Escorts Ltd. Vs. Commissioner of Central Excise, Faridabad 2008 (11) S.T.R. 532 (Tri - Del)* aforesaid judgment of larger bench of CEGAT was relied upon and followed by principal bench of Delhi CESTAT.

### ***Documents to be filed with appeal form***

The appeal form together with the grounds of appeal and statement of facts and all other relevant documents like copies of the order appealed against (of which at least one is required to be a certified copy) are required to be filed in quadruplicate.

### ***Place & manner of filing appeal***

The appeal can be filed by the appellant in person or through an agent. The appeal is to be filed with the concerned officer of the jurisdictional bench. The appeal can also be sent through registered post. In case of urgency or other sufficient reason, the appeal can also be sent to the concerned officer of the Bench nearest to the appellant, even though the matter relates to a different Bench. In such a case, the concerned officer receiving the appeal then forwards it to the concerned officer of the appropriate Bench. Addresses of various benches of the Tribunal are given in Annexure IV.

### ***Time Limit for filing the Appeal***

Every appeal before the Appellate Tribunal is to be filed within 3 months from the date on which the order sought to be appealed against is received by the assessee - Section 86(3) of the Finance Act, 1994.

### ***Admission of Appeal after the relevant period***

The Tribunal may admit the appeal after the expiry of the time period for filing appeal, if it is satisfied that there was sufficient cause for not filing the same within the stipulated period – Section 86(5) of the Finance Act, 1994.

### ***Fees for preferring Appeal to the CESTAT***

With effect from 01.11.2004, the fees payable by the assessee for preferring appeal to the CESTAT has been increased from Rs. 200 vide *Notification No. 31/2004* as per details given hereunder:

<b>Order against which appeal is filed</b>	<b>Fees (Rs.)</b>
<b>Where the service tax and interest demanded along with penalty imposed is Rs 5 Lakh or less</b>	<b>1,000</b>
<b>Where the service tax and interest demanded along with penalty imposed is more than Rs 5 lakh but not exceeding Rs 50 Lakh</b>	<b>5,000</b>
<b>Where the service tax and interest demanded along with penalty imposed is more than Rs 50 Lakh</b>	<b>10,000</b>

Application for stay	500
----------------------	-----

### ***Procedure for payment of fee***

The prescribed fee is to be paid by way of crossed demand draft in favour of “Assistant Registrar, CESTAT” on a branch of any nationalized bank payable at the place where office of the Tribunal is situated. The demand draft should be attached to the form of appeal.

### ***Language***

The official language of the Tribunal is English. However, the assessee may file documents drawn up in Hindi before the Tribunal, if it so desires. The final order passed by the Tribunal is in English. However, the Tribunal is also empowered to pass the order in Hindi. The orders in Hindi are accompanied by a translation in English of the same, duly attested by the concerned Bench.

### ***Hearing***

The date and place of hearing of the appeal is notified to the parties by the Tribunal. The notices are sent at the address in the form of appeal. On the fixed day, the appellant is heard in support of the appeal. The arguments of the respondent are also heard simultaneously.

If the appellant does not appear on the day fixed for hearing, the Tribunal may either dismiss the appeal for default or hear and decide it on merits, *ex parte*.

### ***Production of Additional Evidence before CESTAT***

Rule 23 of CESTAT (Procedure) Rules, 1982 deals with the subject.

A reading of this rule indicates that the parties to the appeal are not entitled to produce any additional evidence, either oral or documentary, before the Tribunal. However, the Tribunal is vested with wide powers in this regard to meet ends of justice.

### ***Additional Legal Ground***

Additional legal ground can be raised at Tribunal level for the first time. Additional ground raised is a legal issue and the same is admitted in view of the decision of Hon'ble SC in case of NTPC reported in 2009 ITR 383.



### ***Persons who can appear before CESTAT***

**The appellant may appear in person or through an “authorized representative”. An authorized representative can be (Section 35Q(2) of the Central Excise Act, 1944)**

- (a) his relative or regular employee;**
- (b) any legal practitioner entitled to practice in any civil court in India;**
- (c) any person having the following qualifications, namely-**
  - a chartered accountant within the meaning of the Chartered Accountants Act, 1949; or;**
  - a cost accountant within the meaning of the Cost and Works Accountants Act, 1959; or**
  - a Company Secretary within the meaning the Company Secretaries Act, 1980 who has obtained a certificate of practice under Section 6 of that Act; or**
  - 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**
  - a person formerly employed in the Department of Customs and Central Excise or Narcotics and has retired or resigned from such employment after having provided service in any capacity in one or more of the said departments for not less than ten years in the aggregate.**

### ***Dress Code***

**The assessee or his authorized representative has to appear before the Tribunal in his professional dress, if any. However, where no professional dress is specified, the following dress code should be adhered to for appearing before the CESTAT:**

<b>Males</b>	<b>Close-collared black coat, or in an open collared black coat, with white shirt and black tie</b>
<b>Females</b>	<b>Black coat over a white sari or nay other white dress</b>

### ***Cross Objections***

**An assessee or the Department may itself not have preferred appeal against orders passed by the Commissioner or Commissioner (Appeals) even though it might have been aggrieved by the said order for any reason. It gets an**

**opportunity to contest the matter on which it is aggrieved if the other party files appeal in the Tribunal through cross objections.**

**The relevant provision with regard to memorandum of cross objections are contained in Section 86(4) of Finance Act, 1994. The same is required to be filed in Form ST-6. The Form is given at Annexure V for ready reference. Instead of the grounds of appeal and statement of facts, this form requires mention of grounds of cross objections. Such cross objections are required to be filed within 45 days of receipt of notice that an appeal against specified order has been filed.**

**All other requirements as specified for filing grounds of appeal are applicable and relevant for filing of cross objections as well except that no fee is payable for filing cross objections.**

### **Appeals by Department**

#### **Appeal at the instance of Committee of Chief Commissioners of Central Excise / Commissioners of Central Excise**

**This appeal is to be in Form ST-7 [See Annexure VI], in quadruplicate and has to be accompanied by equal number of copies of the order of the Commissioner of Central Excise passed under section 73 or 83A / section 85 (one of which shall be a certified copy) i.e. the order appealed against.**

**The Departmental appeal is also to be filed along with a Statement of Facts and Grounds of Appeal within 3 months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or the Committee of Commissioners, as the case may be or within such extended time as may be allowed by the Tribunal. No fees is payable in case of departmental appeals. The dress code applicable for the assesses also applies for the department.**

#### **Committee of Chief Commissioners or Commissioners in relation to service tax matters**

***Power of Board to constitute Committee of Chief Commissioners or Commissioners:* Section 86 of Finance Act, 1994 has been amended with effect from 11.05.2007 to empower the Board to constitute committee of Chief Commissioners or Commissioners. Every such committee constituted by the Board shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be. Further power has been granted to such committee with effect from 11.05.2007 to direct Commissioner of Central Excise to appeal to the Appellate Tribunal against the order of Commissioner passed under Section 73 or Section 83A or Section 84 which was earlier exercised by the Board. Constitution of these committees has been**

changed number of times and are governed by Notification No. 18/2007 dated 12.05.2007, Notification No. 19/2005 dated 12.05.2007, Notification No. 37/2007 dated 24.07.2007, Notification No. 44/2007 dated 19.12.2007, Notification No.25/2008 dated 21.05.2008 and Notification No.26/2008 dated 21.05.2008.

*Reference by Committee of Chief Commissioner for filing the appeal before CESTAT against order passed by Commissioner with effect from 10.05.2008:* As per Section 86(2) of Finance Act,1994, if Committee of Chief Commissioners objects to any order passed by the Commissioner, it may direct to Commissioner to appeal on its behalf to CESTAT against that order.

Vide the Finance Act, 2008, provisos were inserted after aforesaid Section to provide that where the Committee of Chief Commissioners differs in its opinion against the order of the Commissioner, it shall state the point or points on which it differs and make a reference to the Board which shall then consider the facts of the order. Thereafter, if the board is of the opinion that the order passed by the Commissioner is not legal or proper, it shall direct the Commissioner to appeal to CESTAT against the order.

*Reference by Committee of Chief Commissioner for filing the appeal before CESTAT order passed by Commissioner (Appeals) with effect from 10.05.2008:* As per Section 86(2A) of Finance Act,1994, if Committee of Chief Commissioners objects to any order passed by Commissioner (Appeals), it may direct to Central Excise Officer to appeal on its behalf to CESTAT against the order.

In the Finance Act, 2008, provisos are inserted after the aforesaid Section to provide that where the Committee of Commissioners differs in its opinion 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 Chief Commissioner 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 Central Excise Officer to appeal to CESTAT against the order.

#### *Other applications before CESTAT*

Beside appeals and stay petitions, other applications are also sometimes required to be filed before CESTAT for example, where an appeal is dismissed for non appearance and the appellant has genuine reason (the notice of hearing was not served) for not appearing before the Tribunal, an application would be required to be made to the Tribunal for restoration of appeal. Applications would also be required to be made to the CESTAT in case of rectification of a mistake apparent in the order of the Tribunal.

### ***Fees for other applications***

A fee of Rs 500 is prescribed for every such application before CESTAT filed by an assessee. No fees is payable if the application is filed by the Department.

### **5. Appeal before the CESTAT by Government Companies of Central/State Government**

#### ***Approval by Committee on Disputes (COD)***

The Committee on Disputes (COD) has been constituted in compliance of the directions of Hon'ble Supreme Court given on 11-10-1991 in the case between ONGC and Collector of Central Excise and a subsequent order passed on 07-01-1994.

The prime objective of COD is to reduce litigation between two arms of the Union Govt. by ensuring that no litigation of unnecessary and frivolous nature or involving petty matters and issues between Central Govt. Departments or Central Public Sector Undertakings or between a Central Govt. Department and a Central Public Sector Undertakings reached a Court or a Tribunal without the matter having been first examined by it. The Committee is a forum to provide to the disputing parties an opportunity of in-house conciliation. It hears the parties to the dispute to ascertain whether the issues in dispute involve questions of facts and/or law, needing adjudication by a Tribunal or a Court. It strives to resolve disputes through mutual understanding by administrative measures and mechanisms, avoiding litigations.

The Apex Court has observed in the case of *ONGC and another V Collector of Central Excise (1992) Supp(2) SCC 432* that PSUs of the Central Government and Union of India should not fight their litigations in a Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time.

In this connection it is important to note that appeal can be filed before CESTAT within the stipulated period of 90 days from the date of receipt of order in appeal and permission from COD can be submitted later on. However, Tribunal will keep the proceedings in abeyance till permission from the committee on dispute is submitted before the Tribunal. Alternatively Tribunal may dismiss the appeal for want of permission from the COD and the said appeal can be restored back to its original number after the Misc. Application for restoration of appeal is filed alongwith permission received from COD.

***COD clearance is required even when disputes takes place between two state governments entities***

**In the case of *Tamil Nadu Sugar Corporation Ltd. Vs State of Tamil Nadu (2009) 21 VST 158 (Mad)*, the Hon'ble High Court expressed the view that the petitioner being a public sector company has to take clearance from COD before filing an appeal against the Commercial Tax Department. In order to reinforce its view mentioned previously, following cases were quoted by the High Court in its pronouncement:-**

- 1. ONGC Vs City & Industrial Development Corporation, Maharashtra Ltd. (2007) 7 SCC 39**
- 2. ONGC Vs Collector of Central Excise (2004) 6 SCC 437**
- 3. Chief Conservator of Forests, Government of A.P. Vs Collector (2003) 3 SCC 472**
- 4. ONGC VS Collector of Central Excise (1995) supp 4 SCC 541**

**It was also specifically pointed out that in all the above cases Hon'ble Apex Court had issued directions to constitute Departmental Committees for the purpose of resolving disputes involving Government Departments or Government owned companies of the Central and State Governments, rather than adjudicating the same before Courts of law.**

#### ***Composition of COD***

**In *Tamil Nadu Sugar Corporation Ltd case (supra)* the following composition of COD was suggested:-**

- 1. The Cabinet Secretary of the Union;**
- 2. Chief Secretary of the State;**
- 3. Secretaries of the department concerned of the Union and the States; and**
- 4. Chief Executive Officers of the undertakings concerned**

***No Need for approval by COD when issue involved settled in precedent decision of Court***

**A very interesting & vital dimension has been added to this issue in the case of *Commissioner of Income Tax V MMTC of India 2010(17) S.T.R. 341 (Del)* In the foregoing Delhi High Court has fervidly pointed out that Right to file reference is conferred by statute and the Supreme Court Judgment in *ONGC V Collector of Central Excise-1994 (70) E.L.T. 45 (S.C.)* does not in any way take away that right. The Court went on to add that need for reference to COD arises only when there exist a dispute. In the absence of such a circumstance, there was no occasion to approach COD. The High Court emphatically specified that the entire purpose of routing matters through the Committee on Disputes is that,**

**the State and/or its instrumentalities do not fritter away valuable funds, and clog the courts with disputes which perhaps can be resolved inter-departmentally. In the instant situation where the court has already provided the answer to the issues raised in the reference, an approval for filing the reference was not a pre-requisite and moreover all that the reference sought to achieve was to bring the impugned judgment in line with an earlier decision of that court.**

## Annexure I

### Section 86 of the Finance Act, 1994

- (1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under Section 73 or Section 83A or Section 84 or an order passed by a Commissioner of Central Excise (Appeals) under Section 85, may appeal to the Appellate Tribunal against such order.**
- (1A) (i) The Board may, by Notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Chapter.**
- (ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioner of Central Excise, as the case may be.**
- (2) The Committee of 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 or Section 84, direct the 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 his behalf to the Appellate Tribunal against the order.**
- (3) Every appeal under sub-section (1) or sub-section (2) or sub-section (2A) shall be filed within three months of the date on which the order sought to be appealed against is received by the assessee, the Committee of Chief Commissioners or the Committee of Commissioners, as the case may be.**
- (4) The 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 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 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 (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 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 thousands 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 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 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 appeals 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)”.**



**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 Commissioner of Central Excise (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 Commissioner of Central Excise 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 Commissioner of Central Excise 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.”***

## Annexure II

### CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

*CEGAT Notification No. 1/CEGAT/ 82, dated 25-10-1982 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 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) ***“Commissioner” means the Commissioner of Customs or the 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 the 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) ***\*\*\****
- (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 relates 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 appeal and such grounds shall be numbered consecutively and shall be typed in double space of the paper.**

*(2) Every memorandum of appeal, cross-objections, reference applications, stay applications or any other miscellaneous applications shall be typed neatly in double spacing on the foolscap 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 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 Members shall be determined by the President by separate orders in the light of the relevant statutory provisions.**

*(4) Where an appeal which can be heard by a single Member is referred to or placed before a two-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 an 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 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 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-objections 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 or 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-objections, applications or replies to appeals/applications. — Every memorandum of cross-objections 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 Commissioner. In case of Departmental appeal, a copy of the same shall be served on the other party as soon as they are filed.**

**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 to bear date. — Every order of the Tribunal shall be in writing and shall be signed by the Members constituting the Bench concerned and the last date of hearing of the matter and the date of dictation on the Bench or if order is reserved for pronouncement, the date of such pronouncement, as the case may be, shall be typed on the first page of the order. Such date shall be typed on the last page of the order also.**

**RULE 27. Publication of 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 officer 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 :**

**(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 Commissioner or the Administrator, the Commissioner or the Administrator shall be made the respondent, and where the application for reference is filed by the Commissioner or the Administrator, the other party shall be made the respondent.**

**(3) The provisions of the rules relating to the filing of appeals 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 Courts and the points of conflict in the decisions.**

**RULE 31. Same Bench to hear the 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 communicated to the appellant or the applicant and to the respondent either in person 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, Bombay and Madras**

**From 10.30 A.M. to 1.30 P.M. and from 2.15 P.M. to 4.45 P.M.**

**In Calcutta**

**From 10.15 A.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.”**

**Annexure III**

**Form ST-5**

**Form of Appeal to Appellate Tribunal under Section 86 of the  
Finance Act, 1994**

**In the Customs, Excise and Service Tax Appellate Tribunal**

**Appeal No. .... of .....20.....**

**.....Appellant**

**Vs**

**.....Respondent**

1.	<b>The designation and address of the authority passing the order appealed against</b>	
2.	<b>The number and date of the order appealed against</b>	
3.	<b>Date of communication of a copy of the order appealed against</b>	
4.	<b>State/Union Territory and the Commissionerate in which the order/decision of assessment/penalty/interest was made</b>	
5.	<b>Designation and address of the adjudicating authority in cases where the order appealed against is an order of the Commissioner (Appeals)</b>	
6.	<b>Address to which the notices may be sent to the appellant</b>	
7.	<b>Address to which the notices may be sent to the respondent</b>	
8.	<b>Whether the decision or order appealed against involves any question having a relation to the value of the taxable service for purposes of assessment; if not, difference in tax or tax involved, or amount of interest or penalty involved, as the case may be</b>	
8A.	<b>(i) Period of dispute</b>	
	<b>(ii) Amount of tax, if any, demanded for the period mentioned in item (i)</b>	
	<b>(iii) Amount of refund, if any, claimed for the period mentioned in item (i)</b>	
	<b>(iv) Amount of interest involved</b>	
	<b>(v) Amount of penalty imposed</b>	
9.	<b>Whether tax or penalty/interest is deposited; if not, whether any</b>	



	application for dispensing with such deposit has been made (a copy of the challan under which the deposit is made shall be furnished)	
9A.	Whether the appellant wishes to be heard in person	
10.	Relief's claimed in appeal	

**STATEMENTS OF FACTS**

.....

**GROUND'S OF APPEAL**

- (i)
- (ii)
- (iii)
- (iv)

*Signature of authorized Representative, if any*

*Signature of the appellant*

*Verification*

I .....the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of .....20.....

*Signature of authorized representative, if any*

*Signature of the appellant or his authorized representative*

**Notes :**

- (1) The appeal including the statement of facts and the grounds of appeal 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 certified copy).
- (2) The form of appeal shall be in English (or Hindi) and should set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative and such grounds be numbered consecutively.
- (3) The fee of Rs. 200/- required to be paid under the provisions of the Act shall be paid through a crossed bank draft drawn in favour of the Assistant Registrar of the Bench of the Tribunal on a branch of any nationalised bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

**BENCHES OF CESTAT**

**Appeal which falls under the jurisdiction of CESTAT is to be made at the addresses mentioned below:**

- 1. Customs, Excise & Service Tax Appellate Tribunal  
West Block No. 2,  
R.K.Puram  
New Delhi - 110066  
Website: [www.cestat.gov.in](http://www.cestat.gov.in).  
E-mail: [cestatdelhi@indiatimes.com](mailto:cestatdelhi@indiatimes.com)**
- 2. Customs, Excise & Service Tax Appellate Tribunal,  
26, Haddows Road,  
Shastri Bhavan Annexe, 1st Floor,  
Chennai - 600006  
E-mail: [cestatchennai@indiatimes.com](mailto:cestatchennai@indiatimes.com)**
- 3. Customs, Excise & Service Tax Appellate Tribunal,  
3rd Floor, Jai Centre,  
34, P'Dmello Road, Masjid (East),  
Mumbai - 400 009.  
E-mail: [cestatmumbai@indiatimes.com](mailto:cestatmumbai@indiatimes.com)**
- 4. Customs, Excise & Service Tax Appellate Tribunal,  
169, A.J.C. Road, Bamboo Villa, 7th Floor,  
Kolkata - 700 014.  
E-mail: [cestatkolkata@indiatimes.com](mailto:cestatkolkata@indiatimes.com)**
- 5. Customs, Excise & Service Tax Appellate Tribunal,  
1st Floor, WTC Building, FKCCI Complex, K.G. Road,  
Bangalore – 560009.  
E-mail: [cestatbangalore@indiatimes.com](mailto:cestatbangalore@indiatimes.com)**
- 6. Customs, Excise & Service Tax Appellate Tribunal,  
O-20, Meghani Nagar,  
New Mental Compound,  
Ahmedabad - 380 016.**

**Annexure V**

**FORM NO. ST -6**

**Form of memorandum of cross-objections to the Appellate Tribunal under  
Section 86 of the Finance Act, 1994**

**In the Customs, Excise and Service Tax Appellate Tribunal**  
**Appeal No..... of.....20.....**  
**.....Appellant**  
**Vs**  
**.....Respondent**

<b>1.</b>	<b>State/Union territory and the Collectorate in which the order/decision of assessment/penalty/Interest was made</b>	
<b>2.</b>	<b>Date of receipt of notice of appeal or application filed with the Appellate Tribunal by the appellant or as the case may be, the Commissioner of Central Excise</b>	
<b>3.</b>	<b>Address to which the notices may be sent to the respondent</b>	
<b>4.</b>	<b>Address to which the notices may be sent to the appellant/applicant</b>	
<b>5.</b>	<b>Whether the decision or order appealed against involves any question having a relation to the rate of tax or to the value of taxable service for purposes of assessment if not; difference in tax or tax involved, or amount of interest or penalty involved or value of taxable service involved, as the case may be</b>	
<b>(5A).</b>	<b>(i) Period of dispute</b>	
	<b>(ii) Amount of tax, if any, claimed for the period mentioned in item (i)</b>	
	<b>(iii) Amount of refund, if any, claimed for the period Mentioned in item (i)</b>	
	<b>(iv) Amount of interest imposed</b>	
	<b>(v) Amount of penalty imposed</b>	
<b>6.</b>	<b>Relief claimed in memorandum of cross - objections</b>	

**GROUND OF CROSS-OBJECTIONS**

- (1)
- (2)
- (3)
- (4)

*Signature of authorized representative, if any*

*Signature of the appellant or his authorized representative*

**Verification**

I .....the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of .....20.....

*Signature of authorized representative, if any*

*Signature of the appellant or his authorized representative*

**Notes :**

- (1) The form of memorandum of cross-objections shall be filed in quadruplicate.
- (2) The form of memorandum of cross-objections should be in English (or Hindi) and should set forth, concisely and under distinct heads the ground of the cross-objections without any argument or narrative and such grounds should be numbered consecutively.
- (3) The number and year of appeal/application as allotted by the office of the Appellate Tribunal and appearing in the notice of appeal/application received by the respondent is to be filled in by the respondent.

**Annexure VI**

**FORM NO. ST -7**

**Form of application to Appellate Tribunal under [Section 86(2) or 86(2A)] of the Finance Act, 1994**

**In the Customs, Excise and Service Tax Appellate Tribunal**

**Appeal No..... of.....20.....**

**.....Appellant**

**Vs**

**.....Respondent**

<b>1.</b>	<b>Designation and address of the applicant(if the applicant is not the adjudicating authority, a copy of the authorization from the [Commissioner] of Central Excise to make the application should be enclosed)</b>	
<b>2.</b>	<b>Name and address of the respondent</b>	
<b>3.</b>	<b>Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order</b>	
<b>4.</b>	<b>State /Union territory and the Collectorate in which the decision or order was made</b>	
<b>5.</b>	<b>Date on which order under sub-section (2) of section 86 of the Finance Act, 1994, has been passed by the Board or the date on which the order under sub - section (2A) of the section 86 of the Finance Act,1994 has been passed by the Commissioner of Central Excise</b>	
<b>6.</b>	<b>Date of communication of the order referred to in (3) above to the adjudicating authority</b>	
<b>7.</b>	<b>Whether the decision or order appealed against involves any question having a relation to the rate of tax or to the value of taxable service for purposes of assessment; if not; difference in tax or duty involved, or amount of</b>	

	<b>fine or penalty involved or value of goods involved, as the case may be</b>	
<b>(7A).</b>	<b>(i)Period of dispute</b>	
	<b>(ii) Amount of tax, if any, demanded for the period mentioned in column (i)</b>	
	<b>(iii)Amount of refund, if any, claimed for the period Mentioned in column (i)</b>	
	<b>(iv)Amount of interest imposed</b>	
	<b>(v)Amount of penalty imposed</b>	
<b>8.</b>	<b>Reliefs claimed in application</b>	

**STATEMENTS OF FACTS**  
.....  
**GROUNDS OF APPLICATION**  
.....

*Signature of the applicant*

**Note :**The form of application including the statement of facts and grounds of application shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decisions or order passed by the [Commissioner] of Central Excise (one of which at least shall be certified copy) and a copy of the order passed by the Board or copies of orders of [Commissioner] of Central Excise (Appeals) (one of which shall be a certified copy) and a copy of the order of [Commissioner] of Central Excise as the case may be under sub-section (2) of Section 86.