

## CHAPTER LVI

### **RULES RELATING TO REFERENCES AND APPLICATIONS UNDER SECTION 35 OF THE CENTRAL EXCISES AND SALT ACT, 1944 (ACT 35 OF 1944)**

<sup>1</sup>[1004. References to be sent to the Prothonotary and Senior Master at Bombay, Additional Registrar at Nagpur and Aruangabad and Sepcial Officer at Panji, Goa. – All References and Applications under section 35 of the Central Excises and Salt Act, 1944 (hereinafter in this Chapter referred to as “the Act”), shall be forwarded to the Prothonotary and Senior Master, and shall be dealt with on the Original side of the High Court;

1. [Rule 1004 was substituted by G.N.No.G/Amend/3481, dated 20-7-1989, pub. in MG.G. Pt. IV-Ka,p.202-204.](#)

- (i) Provided that References and Applications arising in the Judicial Districts of Akola, Amravati, Bhandara, Buldhana, Chandrapur, Nagpur, Wardha, Yavatmal and Gadchiroli, which lie to the High Court of Bombay shall be presented to the Additional Registrar of that High Court at Nagpur and shall be disposed of by the Judges sitting at Nagpur :

Provided further that the Chief Justice may, in his discretion, order that any case arising in any such District shall be heard at Bombay:

- (ii) Provided that References and Applicatons arising in the Judicial Districts of Ahmednagar, Aurangabad, Beed, Jalgaon, Jalna, Nanded, Osmanabad, Parbhani and Latur which lie to the High Court at Bombay, shall be presented to the Additional Registrar at Aurangabad and shall be disposed of by the Judges sitting at Aurangabad:

Provided further that the Chief Justice may, in his discretion, order that any case arising in any such District shall be heard at Bombay;

- (iii) Provided that References and Applications arising in the State of Goa which lie to the High Court at Bombay, shall be presented to

the Special Officer at Panaji, Goa and shall be disposed of by the Judges sitting at Panaji, Goa;

Provided further that the Chief Justice may, in his discretion, order that any case arising in the State of Goa shall be heard at Bombay.

(2) (a) References and Applications filed at Bombay prior to 1<sup>st</sup> July 1989, may be transferred for hearing and final disposal to any of the Benches of the High Court at Nagpur/Aurangabad/Goa, provided the Advocate or the party concerned obtains an Order from the Court to that effect.

(b) The Office of the Prothonotary and Senior Master, shall, on receipt of a certified copy of the Order from the Advocate/Party concerned to that effect transfer the papers and proceedings in such Reference/Application to the concerned Bench for hearing and final disposal.

(c) The Officer-in-Charge at the concerned Bench shall return the papers and proceedings to the Office of the Prothonotary and Senior Master, after the matter is finally disposed of. He shall also forward a true copy of the final order along with the said papers and proceedings.

**1005. Notice of reference to party at whose instance the reference is made** – When the Appellate Tribunal refers a case to the High Court, it shall give notice of that fact to the party at whose instance the reference has been made and shall call upon him to take such steps in the Office of the Prothonotary and Senior Master <sup>2</sup>[or Officer-in-Charge at the concerned Bench] as may be necessary for bringing the reference to a final conclusion.

**1006. Filing Statement of case, issuing notice and fixing date for the hearing** - The party at whose instance a reference has been made shall file the Statement of the case in the Office of the Prothonotary and Senior Master <sup>1</sup>[or Officer-in-Charge at the concerned Bench] and shall forthwith take steps to bring the reference to a final conclusion. Such party shall apply to the Prothonotary and Senior Master <sup>2</sup>[or Officer-in-Charge at the concerned Bench] to issue notice and to fix a date for the hearing of the reference and shall serve notice on the opposite party. If such party fails to take such steps for two months from the receipt of the reference in the High Court, the Prothonotary and Senior Master may set down the reference on board for Orders. The Court may pass such Order on the reference as it may deem fit.

**1007. Preparation of Paper Book** – The party at whose instance a reference has been made shall prepare the paper book which shall contain the Statement of the case and other papers forwarded by the Appellate Tribunal. The paper book, shall be typed or cyclostyled, but the Prothonotary and Senior Master<sup>2</sup> [or Officer-in-Charge at the concerned Bench] may, on the application of any party, direct that the paper book be printed. Two copies of the paper book shall be filed in the Office of the Prothonotary and Senior Master<sup>2</sup> [or Officer-in-Charge at the concerned Bench] within two months from the date of the filing of the reference in the High Court.

**1008. Failure to the Paper Book** – In the event of non-compliance with the last preceding rule, the Prothonotary and Senior Master<sup>2</sup> [or Officer-in-Charge at the concerned Bench] may set down the reference on board for Orders. The Court may pass such Order on the reference as it may deem fit.

**1009. Application under section 35(3)** – An application under sub-section (3) of section 35 of the Act shall be presented to the Prothonotary and Senior Master [or Officer-in-Charge at the concerned Bench]. Such application shall be by petition. There shall be annexed to such petition copies of the Order and Judgment, if any, of the Appellate Tribunal and also of the relevant documents on which the applicant wants to rely in support of his application.

**1010. Placing of application before the Court** – The Prothonotary and Senior Master<sup>2</sup> [or Officer-in-Charge at the concerned Bench] shall place such application before the Court on a day appointed by the Chief Justice. The Court may either reject the application summarily, or order a rule *nisi* to issue to show cause why the Order applied for should not be made. The rule shall be made returnable on such date as the Court may direct.

**1011. Service of rule nisi-** The rule *nisi* together with a copy of the application shall be served on the opposite party i.e. on the assessee or the Collector of Central Excise, as the case may be, at least fourteen days before the returnable date of the rule.

**1012. Time for furnishing copies of application** – On a rule being issued the applicant shall furnish to the Office of the Prothonotary and Senior Master<sup>2</sup> [or Officer-in-Charge at the concerned Bench] two type written or cyclostyled or printed copies of such application with all its annexures at least one week before the day fixed for the hearing of the rule.

**1013. Answer to rule nisi** – Answer to the rule *nisi* shall be made on affidavit and the same shall be filed at least four days before the returnable date of the rule *nisi*. Two copies of such affidavit shall be furnished to the Office of the Prothonotary and Senior Master <sup>1</sup>[or Officer-in-Charge at the concerned Bench]

**1014. A copy of the Court's Order and Judgment to be sent to the Appellate Tribunal** – Where the rule nisi is made absolute, the Prothonotary and Senior Master <sup>2</sup>[or Officer-in-Charge at the concerned Bench] shall send a copy of the Court's Order and Judgment, if any, to the Appellate Tribunal.

**1015. References and Applications to be heard by a bench** – All references and applications under section 35 of the Act shall be heard by a bench of not less than two Judges appointed by the Chief Justice.

2. These words were inserted by G.N.No.G/Amend/3481, dated 20-7-1989, Pub.in M.G.G.Pt. IV-Ka,pp.202-204)

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