

## PERIODICAL STATISTICAL STATEMENTS

15.01

The following periodical statements showing receipts, disposal and pendency of appeals, cross-objections, reference applications and stay applications are required to be furnished by the respective Bench Registries to the Central Registry located in New Delhi :-

- a. Information regarding the disposal of appeals and stay applications during the month
- b. Detailed statement showing receipts and disposal during the month and pendency at the end of the month in respect of appeals cross objections reference applications and stay applications filed in the Tribunal on or after the 11<sup>th</sup> October 1982
- c. Similar statement as at (b) above showing receipts disposal and pendency at the end of the month in respect of transferred matters
- d. Year-wise breakup of appeals cross-objections and reference applications pending at the close of the month.
- e. The statement at (a) above should be furnished on the first working day of the month following the month to which it relates (Bench Registries at Bombay Calcutta and Madras should furnish the information by telegram). The statements at (c) and (d) above shall be furnished by the 5<sup>th</sup> day of the following month or on the next working day if the 5<sup>th</sup> day happens to be a holiday.
- f. 15.02 The Central Registry shall prepare a consolidated statement under the directions of the Deputy Registrar (Judicial) and place the same before the President for his perusal.
- g. 15.03 Registrar/Deputy Registrar (Judicial) shall send a copy of the consolidated statement as soon as it is approved, to (1) The Desk Officer, Ministry of Finance, Department of Revenue, North Block, Central Secretariat, New Delhi and (2) The Director (Review), Central Board of Excise and Customs, North Block, New Delhi, under a covering letter. Copies shall also be sent to all Members including those at out-stations.

## PROCEDURE FOR FORWARDING STATEMENTS OF CASES IN REFERENCE APPLICATIONS TO THE HIGH COURT/SUPREME COURT.

### 16.01

The relevant provisions for dealing with reference applications and referring a question or questions of law to the High Court are (a) Section 130 of the Customs Act, (b) Section 35G of the Central Excise Act, and (c) Section 82B of the Gold (Control) Act. Some further provisions relating to the drawing up of a Statement of Case and referring a question or questions of law to the High Court are as follows :-

- a. The Tribunal has to refer the question(s) of law along with the Statement of Case drawn up to the High Court concerned within 120 days of the receipt of the reference application. For this purpose, on the analogy of decisions under the Income Tax Act, the "High Court concerned" is the High Court within whose jurisdiction the authority passing the original order is situated.
- b. If the Tribunal refuses to make a reference, the applicant may, within six months of communication of such refusal, apply to the High Court for directing the Tribunal to refer the question(s) of law to that High Court. The High Court may, if it deems fit, direct the Tribunal to draw up a Statement of the Case and refer the question(s) of law to it. Thereupon the Tribunal shall draw up the Statement of Case and refer the question(s) of law to that High Court.
- c. The High Court has the Power to get the Statement of Case amended or altered by referring it back to the Appellate Tribunal (Section 130B of the Customs Act and the corresponding provisions of the other Acts).
- d. 16.02 On a application by a party for making a reference in terms of any of the above provisions action should be taken to scrutinize the reference application as set out in Chapter 3. The guidelines for fixing reference applications for hearing are contained in Chapter 9.
- e. 16.03 If the Bench decides that a reference should be made, the Bench will draft a Statement of Case, which will be circulated to the parties. A further hearing (Appendix 40) will be fixed at which the draft Statement of Case will be finalised.
- f. 16.04 The next step will be to compile the papers and send the reference to the High Court. At this stage the party making the reference application will be required to file certified copies of the documents which are to be annexed to the Statement of the Case. It is the duty of the Bench Clerk to check whether the requisite number of the certified copies of the annexures are available or not. If not, he should bring this to the notice of the Bench which will fix the final date for filing the certified copies. If he fails to do so, the Statement may be forwarded without those annexures.

### 16.05

On finalisation of the Statement of Case, the Head Clerk in the Bench Registry has to make necessary entries in Register No. CEGAT-22. He will then prepare an index after page numbering of the entire file in which process he will remove all the routine correspondence, noting etc. He will then check the enclosures to the Statement drawn by the Bench and number the same. When all the papers are ready the Head Clerk shall prepare a draft forwarding letter to the Registrar of the concerned High Court/Supreme Court as in the specimen at Appendix 41.

The covering letter is to be signed by either the Registrar or the Deputy Registrar (Judicial). The Head Clerk will then put up the file through the assistant Registrar to the Registrar or Deputy Registrar (Judicial), as may be directed. In the case of references to the Supreme Court, the Registrar shall submit the file to the President for his approval to forward the reference to the Supreme Court. On receipt of the approval of the

appropriate authority (Registrar/Deputy Registrar(Judicial) or President, as the case may be) the covering letter will be clean typed and got signed. It will then be dispatch through the Central Registry. While sending the appeal file along with the reference application to the High Court/Supreme Court, the remaining folders will be retained in the Registry.

#### 16.06 Action when Tribunal Refuses to Make a Reference :

- a. When the Tribunal refuses to state the case and/or refer the questions of law to the High Court, and the applicant desires to move the High Court for issuing a direction to the Tribunal, the applicant will have to obtain a certificate from the Tribunal to the effect that the reference application in question has not been withdrawn and that the fee of Rs.200/- paid by him has not been refunded. Another certificate for not noting the date of service of the order of refusal to refer the question of law to the High Court is also to be furnished therein. These certificates should be issued in the proformae in Appendix 42 and 43.
- b. On receipt of the orders of the High Court under Section 130 of the Customs Act (and corresponding provisions of other Acts) such cases are to be entered in the register No. CEGAT-19 and put up with the relevant reference application and the appeal files before the Bench for orders whether the case is to be fixed for hearing for drafting the Statement of Case; it is to be fixed in the same manner as a reference application is fixed for hearing. Further action is to be taken as in the case of reference applications where the Tribunal agrees to make a reference.

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- c. The High Court has the Power to get the Statement of Case amended or altered by referring it back to the Appellate Tribunal (Section 130B of the Customs Act and the corresponding provisions of the other Acts).

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the Supreme Court, the Registrar shall submit the file to the President for his approval to forward the reference to the Supreme Court. On receipt of the approval of the appropriate authority (Registrar/Deputy Registrar(Judicial) or President, as the case may be) the covering letter will be clean typed and got signed. It will then be dispatch through the Central Registry. While sending the appeal file along with the reference application to the High Court/Supreme Court, the remaining folders will be retained in the Registry.

#### 16.06 Action when Tribunal Refuses to Make a Reference :

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- b. On receipt of the orders of the High Court under Section 130 of the Customs Act (and corresponding provisions of other Acts) such cases are to be entered in the register No. CEGAT-19 and put up with the relevant reference application and the appeal files before the Bench for orders whether the case is to be fixed for hearing for drafting the Statement of Case; it is to be fixed in the same manner as a reference application is fixed for hearing. Further action is to be taken as in the case of reference applications where the Tribunal agrees to make a reference.

## REFERENCE TO SUPREME COURT IN CERTAIN CASES

### 16.05 Reference to Supreme Court in Certain Cases :

In terms of Section 130A of the Customs Act and corresponding provisions in the Central Excises & Salt Act, 1944 and the Gold (Control) Act, 1968) the Tribunal may draw up a Statement of Case and refer a question or questions of law to the Supreme Court on a Reference Application made under Section 130 of the Customs Act (and corresponding provisions of the other two Acts), if it is of the opinion that there is a conflict of decisions of High Courts in respect of a particular question of law arising in the reference application. The Bench will in such a case refer the question(s) of law to the Supreme Court through the President of the Tribunal the Supreme Court has powers corresponding to those of a High Court under the provisions of Section 130B of the Customs Act (and the corresponding provisions of other Acts) to direct the Tribunal to amend or alter the Statement of the Case.

16.08 The procedure to be followed for making a reference to the Supreme Court will be on the some general lines as for making a reference to a High Court.

16.09 In this Chapter and in Chapters 3 and 9, the procedure to be generally followed for dealing with reference applications and making references to the Supreme Court or to a High Court has been described. However it should be noted that the Supreme Court and different High Courts have made their own rules laying down the procedure for submission of the Statement of Case to them according to their requirements. Therefore, each Bench of the Tribunal referring any question. If law arising out of its order has to draw up the Statement of Case and submit it along with the Annexures, conforming to the procedure laid down by the Supreme Court or the particular High Court to which the case is being referred. The Registry also has to take into account the details of the procedure laid down by the particular Court and see that it is followed. The Procedures described by the Supreme Court and some of the High Courts, as available in the Tribunal are at Appendix-44.