

Chapter 31

Appeal, Review and Settlement of Cases

1. Introduction:

1.1 Like any other taxation statute, the Customs Act contains detailed provisions for judicial review, for resolution of disputes, by way of appeals and review. The various appellate authorities are Commissioner (Appeal), Revision Authority, Customs Excise and Service Tax Appellate Tribunal (CESTAT), High Court and the Supreme Court. Any appeal by the department, before any appellate authority, is filed only after following a procedure of review of orders as prescribed in the Customs Act. Beside the route of appeals, an alternative dispute resolution mechanism has also been provided by way of the settlement of cases by the Settlement Commission. These provisions are contained in Chapter XV and XIVA respectively of the Customs Act, 1962.

2. Appeal to Commissioner (Appeal):

2.1 The power of adjudication of cases is bestowed on all officers of the rank of Superintendent/ Appraiser and above as per specified monetary limits and other criterion. Thus, the first stage of appeal against any order passed by any officer below the rank of Commissioner of Customs lies with the Commissioner of Customs (Appeals) in terms of Section 128 (appeal by any person aggrieved by such order) or Section 129 (D)(4) [Departments appeal on review of order], as the case may be, of the Customs Act, 1962.

2.2 The procedure of filing of appeal by Department against the order/decision of officers below the rank of Commissioner is that every such adjudication order is reviewed, for legality and propriety of such order, by the Commissioner of Customs, under Section 129D(2) of the said Act. If on review, the adjudication order/decision is not found to be legal and proper, the Commissioner may direct any officer subordinate, by an order, to file an appeal to Commissioner (Appeal). The said order shall be made by the Commissioner within 3 months from the date of communication of adjudication order and in pursuance of such order, an appeal would be filed to Commissioner (Appeal) within a period of 1 month from the date of issue of said order by the Commissioner.

2.3 The limitation period for filing of appeal to Commissioner (Appeal) is 60 days from the date of communication of order being appealed against. However, Commissioner (Appeal) may allow a further period of thirty days for filing of appeal provided he is satisfied that appellant was prevented by sufficient cause from presenting the appeal within the period of 60 days.

2.4 The procedure for filing of appeal before Commissioner (Appeal) is that the appeal is required to be filed in a Form No. CA-1 [under Section 128 of the said Act] and Form CA-2 [under Section 129D(4) of the said Act], as prescribed under rule 3 and rule 4, respectively, of the Customs (Appeals) Rules, 1982. Once (Appeal) is filed, The Commissioner (Appeal) shall give opportunity to the appellant to be heard. Commissioner (Appeal), on being shown sufficient cause, can give adjournment from hearing upto 3 times. The Commissioner (Appeal), may allow any grounds of appeal not specified in the appeal filed, provided he is satisfied that omission thereof was not willful or unreasonable. The Commissioner (Appeal), wherever possible, would decide the appeal within 6 month

Customs Manual 2014

from the date of filing of appeal, by issue an order in writing, and shall communicate such order to the appellant, the adjudicating authority, the jurisdictional Chief Commissioner and Commissioner. The relevant provisions are contained in Sections 128 and 128A of the said Act and the Customs (Appeals) Rules, 1982.

3. Appeal to CESTAT:

- 3.1 The Customs Excise and Service Tax Appellate Tribunal (CESTAT) has been constituted by the Central Government under Section 129(1) of the said Act.
- 3.2 In terms of Sections 129A(1) (appeal by any person aggrieved by such decision or order) or Section 129D(4) [departments appeal on review of order of Commissioner of Customs, by the Committee of Chief Commissioner] of the said Act any person may file appeal to CESTAT, if aggrieved by:
- (a) any decision or order passed by a Commissioner of Customs as an adjudicating authority; or
 - (b) an order passed by the Commissioner (Appeals).
- 3.3 Appeal cannot be filed before CESTAT if the matter relates to:
- (i) import or export of goods as baggage;
 - (ii) import goods not landed or short landed; and
 - (iii) Drawback.
- 3.4 The CESTAT may refuse to admit an appeal where the value of goods that have been confiscated or differential duty involved or the amount of fine and penalty involved does not exceed Rs.50,000, except the cases that involve any question relating to rate of duty of customs or determination of value of goods for the purpose of assessment.
- 3.5 The limitation period for filing of appeal to CESTAT is 3 months from the date of communication of order being appealed against. The Tribunal may admit appeal after the expiry of this period if it is satisfied that there was sufficient cause for not presenting it within the limitation period.
- 3.6 In accordance with Sections 129A, 129B and 129C of the Customs Act, 1962 read with the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982, the procedure for filing of appeal before CESTAT and disposal thereof is as follows:
- (a) The appeal is required to be filed in a Form No. CA 3 [Section 129A(1) of the said Act] and Form CA-5 [Section 129 D(4) of the said Act], prescribed under rule 6(1) and rule 7, respectively, of the Customs (Appeals) Rules, 1982.
 - (b) On receipt of notice of appeal the respondent may file a memorandum of cross objection within 45 days of receipt of notice [Section 129A(4) of the said Act]. The memorandum of cross examination is required to be filed in Form CA 4, prescribed under rule 6 (2) of the Customs (Appeals) Rules, 1982. In the memorandum of cross objections, the respondent can agitate against any part of the order appealed against and such cross objections are disposed of by the Tribunal as if it were an appeal. Rules 15 and 15A of the CESTAT (Procedure) Rules, 1982 allow filing of

reply to such appeal within a month by the respondent, and rejoinder to the reply within a month by the appellant.

- (c) The CESTAT shall give opportunity to the appellant to be heard, and on being shown sufficient cause, can give adjournment from hearing. In terms of proviso to Section 129B(1A) of the said Act, no such adjournment shall be granted more than three times to a party during hearing of the appeal. After hearing the case, CESTAT, pass an order confirming, annulling or modifying the order appealed against or remand the case back to the authority, which passed the order appealed against.
- (d) The CESTAT may, within six months from the date of its order, amend its order to rectify any mistake apparent from the record that is brought to its notice by the appellant or the respondent.
- (e) A prescribed fee is required to be paid for filing of appeal or rectification of mistake (ROM) or for restoration of appeal. The fee prescribed at present is (i) Rs 1000, where amount of duty, interest and penalty is upto Rs 5 lakh; (ii) Rs 5000, where amount of duty, interest and penalty is between Rs 5 lakh to Rs 50 lakh; (iii) Rs 10000, where amount of duty, interest and penalty is more than Rs 50 lakh; (iv) Rs 500 for any other purposes, including ROM or restoration of appeal. However, no fee is payable in case of appeal or ROM or restoration of appeal application by department.
- (f) The CESTAT, shall decide the appeal, where order has been stayed, within a period of 180 days from the date of stay order, and would decide the appeal in other cases, wherever possible, within three years from the date of filing of appeal, by issue an order in writing, and shall communicate such order to the appellant to the Commissioner and the other party. In case where order of stay has been made by the CESTAT and appeal is not decided within 180 days, the stay order shall stand vacated.

4. Review of orders passed by Commissioner of Customs and Commissioner of Customs (Appeal) and filing of appeal by Department:

- 4.1 The process of review of the order of Commissioner of Customs and Commissioner of Customs (Appeals), by the Department is prescribed in Section 129 D(1) and Section 129A(2) of the Customs Act, respectively.
- 4.2 The order of Commissioner of Customs is examined, for legality and propriety of such order, by the Committee of Chief Commissioners that consists of two Chief Commissioners, one of them being Jurisdictional Chief Commissioners. The Committee may direct, by an order, the Commissioner to file an appeal to the Tribunal. Such order has to be passed within three months from date of communication of decision/order being examined. An appeal would be filed by the Commissioner of Custom, within a period of one month from the date of order passed by the Committee. In case the Committee disagrees in its opinion, it shall make a reference to the Board, through Joint Secretary (Review), and the Board will examine such order, and if it is of the view that order is not legal and proper, will direct the concerned Commissioner to appeal to the Tribunal.
- 4.3 The Committee of Chief Commissioners is notified by the Board under Section 129A(1B) of the said Act vide Notification No. 39/2005-Cus.(NT), dated 13-5-2005.

Customs Manual 2014

- 4.4 The order of Commissioner (Appeal) is examined by a Committee of Commissioners, consisting of two members, one of them being the Commissioner, to whose jurisdiction the order concerns. In case the Committee of Commissioners differs in its opinion, it would make a reference to the jurisdictional Chief Commissioner for taking a view as regards legality and propriety of order under examination.
- 4.5 The Committee of Commissioners is notified by the Board under Section 129A(2) of the said Act vide Notification No. 40/2005-Cus.(NT), dated 13-5-2005.

5. Revision Application:

- 5.1 The appeals against the order of Commissioner or Commissioner (Appeals), in cases of baggage, Drawback and short-landing/ not landing of goods lies with the Revision Authority (instead of CESTAT) under Section 129DD of the Customs Act, 1962. However, the Revision Authority may refuse to admit an application differential duty, fine and penalty involved does not exceed Rs.5,000/-.
- 5.2 The limitation period for filing of an application to Revision Authority is three months from the date of communication of order being appealed against. The Revision Authority may allow a further period of three months if it is satisfied that there was sufficient cause for not presenting it within the limitation period.
- 5.3 In terms of Sections 129A and 129DD of the Customs Act, 1962 and the Customs (Appeals) Rules, 1982 the Revision Application is required to be filed in a Form No. CA 8, prescribed under Rules 8A and 8B of the said Rules. The fee prescribed at present is (i) Rs.200/-, where amount of duty, interest and penalty is upto Rs.1 lakh; (ii) Rs.1,000/-, where amount of duty, interest and penalty is more than Rs.1 lakh. However, no fee is to be paid in case Revision Application is filed by the Department.

6. Pre-deposit of duty demanded or penalty levied:

- 6.1 Section 129E of the Customs Act, 1962 requires that a person desirous of appealing against a decision or order before Commissioner (Appeals) or the Appellate Tribunal shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied. In case an appellant is not in a position to pre-deposit the entire amount of duty demanded or penalty levied, the appellant should file the stay application for waiver of pre-deposit. The Commissioner (Appeals) and the Appellate Tribunal are empowered to waive pre-deposit, either fully or partially, if the appellant is able to show that pre-deposit of duty or penalty levied would cause undue hardship to such person.
- 6.2 Commissioner (Appeals) is required, wherever it is possible to do so, to decide a stay application within 30 days from the date of its filing.
- 6.3 Section 19EE prescribes that if the pre-deposit made by the party under Section 129E is required to be refunded consequent to the order of the Commissioner (Appeal) or CESTAT, and such amount is not refunded within three months from the date of communication of order, unless the order of appellate authority is stayed by the higher appellate authority, an interest at the rate specified in Section 27A shall be paid to the after expiry of three month from the date of order. Presently, the interest rate is 6% per annum.

7. Appeal to High Court:

- 7.1 Against any order passed in appeal by the CESTAT, on or after 1-7-2003, which is not relating to determination of rate of duty or value of goods for the purposes of assessment, appeal lies to the High Court. However, where the issue involved relates to determination of rate of duty or value for the purpose of assessment, appeal lies to Supreme Court.
- 7.2 The limitation period for filing of appeal to High Court one hundred and eighty days from the date when the order being appealed against was received by the Commissioner of Customs. The High Court may admit appeal after the expiry of this period if it is satisfied that there was sufficient cause for not presenting it within the limitation period.
- 7.3 If appeal is filed by party, a fee of Rs 200 is required to be paid.
- 7.4 Where High Court is satisfied that question of law is involved, it shall formulated the question of law. The High Court may hear any other substantial question of law not formulated by it, it is satisfied that the case involves such question. High Court may determine any issue that has not been determined by the CESTAT or has been wrongly determined.
- 7.5 The Code of Civil procedure, 1908 applies to the Appeal so filed to the High Court except as otherwise provided in the said Act.
- 7.6 In respect of order passed by CESTAT prior to 1-7-2003, Section 130A of the Customs Act, 1962 provides that within 180 days of receipt of order of Tribunal passed under Section 129B of the said Act, a person could have filed an application if the order of the Tribunal does not relate to determination of any question having relation to the rate of duty of Customs or the valuation of goods for purposes of assessment.

[Refer Circular No. 935/25/2010-CX, dated 21-9-2010]

8. Appeal to Supreme Court:

- 8.1 Under Section 130E of the Customs Act, 1962 appeal lies to the Supreme Court against:
- (a) Any judgment of a High Court delivered on an appeal under Section 130 or a reference made by CESTAT, in respect of order passed by it before 1-7-2003 of the said Act or a reference application filed by Commissioner under Section 130A, in respect of order of CESTAT received by him before 1.7.2003, provided the High Court certifies, on its own motion or on an oral application made by the party aggrieved, it to be a fit case for appeal to Supreme Court; and
 - (b) Civil Appeal against any order passed by the CESTAT relating, among other things, to the determination of any question having a relation to the rate of duty of Customs or to the value of goods for purposes of assessment can be made to the Supreme Court.
- 8.2 The time limit for filing civil appeal before the Supreme Court is 60 days from the date of receipt of order.
- 8.3 Normally no application is made by the aggrieved party before the High Court, to certify that case is fit for filing of appeal before the Supreme Court. Therefore in such cases, the aggrieved party can agitate the order / judgment of the High Court before the Supreme Court by way of filing a Special Leave Petition under Article 136 of the Constitution of

Customs Manual 2014

India. The limitation for filing of SLP is 90 days from the date of the High Court's order. The time taken by the Court from the date of filing of application for certified copy of the order till the copy is ready for delivery is excluded from the computation of the period of limitation.

- 8.4 The proposal for filing of SLP and Civil Appeal are examined and processed in the Board, on receipt of proposals from field formations duly approved by the Chief Commissioner.

[Refer Circular No. 935/25/2010-CX, dated 21-9-2010]

9. Disputes between Central Government Department and PSU / other Government Departments:

- 9.1 In cases where disputes arise between two Central Government Departments or a Government Department and Public Sector Undertaking, there is no requirement of obtaining approval of the Committee on Disputes for pursuing litigations. Field formations may pursue their appeals in the respective Tribunals / Courts.

[Refer Instruction F.No.390/R/262/09-JC, dated 24-3-2011]

10. Monetary limits for filing appeals to CESTAT, High Courts and Supreme Court:

- 10.1 In accordance with the National Litigation Policy that is aimed at reducing Government litigation and also expedite the dispute resolution process, so that Government becomes an "efficient" and "responsible" litigant, in revenue matters appeal shall not be filed if the amount involved is not significant. Hence, appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs.1 lakh and below. Similarly in the case of High Courts appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs.2 lakhs and below. As regards Supreme Court, appeals should not be filed in cases where the duty involved is Rs.5 lakhs or less. However, adverse judgments relating to the following should be contested irrespective of the amount involved:

- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- (b) Where notification/instruction/order or Circular has been held illegal or ultra vires.
- (c) Where audit objection on the issue involved in a case has been accepted by the Department.

[Refer Instruction DO F No. 390/170/92-JC, dated 13-1-1993]

- 10.2 In such cases wherever it is decided not to file appeal, such cases shall not have any precedent value. In such cases, it should specifically be record that "*even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit prescribed by the Board.*" Further, in such cases, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assessees, if the amount involved exceeds the monetary limits.

[Refer Instruction F No. 390/170/92-JC, dated 13-1-1993 and F.No. 390/Misc./163/2010-JC, dated 20-10-2010]

11. Settlement Commission:

- 11.1 An alternative channel for resolution of dispute for assesseees without prolonged litigation in adjudication/appeals/revisions etc. is the Customs & Central Excise Settlement Commission. Presently, four Benches of the Settlement Commission function at Delhi, Mumbai, Chennai and Kolkata. Provisions relating to Settlement Commission are contained in Sections 127A to 127N of the Customs Act, 1962 In terms of Section 127B of the Customs Act, 1962, any importer, exporter or any other person, may file an application before the Settlement Commission for settlement, before adjudication of case. However, the Settlement Commission cannot entertain the cases which are pending with the Appellate Tribunal or in a Court. Similarly, the matters relating to classification cannot be raised before the Commission. It is also specified that no application can be made unless the appellant has filed a Bill of Entry, or a Shipping Bill etc., or a Show Cause Notice issued by Proper Officer and the additional amount of duty accepted by the applicant in his application exceeds Rs.3 lakhs. Further, no application shall be made for the interpretation in relation to goods to which Section 123 of the said Act applies or to goods in relation to which any offence under the Narcotics and Psychotropic Substances Act, 1985 has been committed.
- 11.2 The procedure prescribed for the Settlement Commissions essentially requires examination of the application for its acceptability, payment of additional duty admitted by the applicant, calling and examination of records from jurisdictional Commissioner of Customs, getting further enquiries/investigations caused from Commissioner of Customs or Commissioner (Investigation) attached to Settlement Commission, giving opportunity for detailed submission to the applicant and passing order by the Commission. Where any duty or interest or fine or penalty is not paid within thirty days of receipt of the order of Settlement Commission, such amount is recoverable in accordance with the provision of Section 142 of the Customs Act, 1962.
- 11.3 Every order passed by the Settlement Commission under Section 127J of the Customs Act, 1962 is conclusive in respect of the matters stated therein. The Settlement Commission can consider immunity from prosecution proceedings if the applicant cooperates with the Commission in the proceedings before it and makes full and true disclosure of his duty liability. Even grant of immunity, whole or part, from imposition of penalty, fine and interest may also be considered. Further Settlement Commission has power to reopen completed proceeding, if the Settlement Commission is of the opinion that it is necessary to re-open the case for proper disposal of case.

[Refer Circulars No. 935/25/2010-CX, dated 21-9-2010,
 No. 27/27/94-CX, dated 2-3-1994, No.156/67/95-CX, dated 17-11-1995,
 No.515/11/2000-CX, dated 18-2-2000 and No.578/15/2001-CX, dated 20-6-2001 and
 Instructions F.No. 390/Misc./163/2010-JC, dated 20-10-2010 and
 F.No.390/170/92-JC, dated 13-1-1993]
