

10.1 INTRODUCTION

The provisions for appeal are contained in Chapter VI A of the Central Excise Act, 1944. The rules pertaining to Appeals i.e. Central Excise (Appeals) Rules, 2001 (may be referred to as 'Appeal Rules') have been notified w.e.f. 1.7.2001.

These provisions provide for appeals to Commissioner (Appeals), Appellate Tribunal, procedure orders of Appellate Tribunal, powers of revisions of Board, revision by Central Government, appeal to High Court (**up to the date when the National tax Tribunal (NTT) is constituted**), **appeal to NTT (after the NTT is constituted - refer Note at the end of the Chapter)**, appeal to the Supreme Court, transfer of certain pending proceedings and transitional provisions.

10.2 APPELLATE STAGES

Under Chapter VIA of the Central Excise Act, 1944 both assessee and department have been conferred with a right of three stage remedies against the orders passed under Central Excise Act and Rules. Briefly, it consists of three stages of appeal two stages of revision and further appeal to Supreme Court. The three stages of Appellate Authorities are the Commissioner (Appeals), CESTAT and High Court.

For orders passed by officers lower than the rank of Commissioner of Central Excise, the first appeal lies to the Commissioner (Appeals) and there from to the Appellate Tribunal, and then to High Court and finally to the Supreme Court. Where the order of the Tribunal does not relate to determination of rate of duty or value of goods, an appeal is made to the High Court under sections 35G, instead of appeal to Supreme Court. In cases where the order-in-original is passed by a Commissioner of Central Excise, appeal lies directly to the Appellate Tribunal.

As per the provisions of section 35 read with sections 35B, 35G, 35H and 35L of the Central Excise Act, any person aggrieved by the order passed by the Central Excise Officer, can file an appeal to the following authorities:-

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	Order passed by	Appellate Authority
1	All officers upto & including Additional Commissioner	Commissioner (Appeals)
2	Commissioner or Commissioner (Appeals)	CESTAT except in cases where order relates to:– a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse; a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India; goods exported outside India (except to Nepal or Bhutan) without payment of duty; credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No.2) Act, 1998].
3.	Commissioner or Commissioner (Appeals)	Revision application to Central Govt. (in matters relating to baggage, drawback, export without payment of duty, goods short landed, loss of goods in transit). No further appeal.
4	CESTAT	Supreme Court (Classification and valuation cases)
5	CESTAT	High Court (Other than classification and valuation matters)
6	High Court	Supreme Court

10.3 APPEALS TO COMMISSIONER (APPEALS)

All decisions and orders passed under the Central Excise Act or the rules made thereunder are subject to two departmental appeals except in the case where the order-in-original is passed by the Commissioner as an adjudicating authority when only one right of appeal to the Tribunal is conferred. The First Appeal as per the provisions of section 35

of the Central Excise Act lies to the Commissioner (Appeals) if the order or decision is of an officer lower in rank than the Commissioner of Central Excise. Such an appeal can be filed within sixty days from the date of the communication of decision/ order. This period can be extended by a further period of thirty days by Commissioner (Appeals) on sufficient cause being shown. Commissioner (Appeals) may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties and adjourn the hearing for reasons to be recorded in writing. However, such adjournment shall not be granted for more than three times to a party during the proceeding. The Second Appeal against the order of the Commissioner (Appeals) can be filed to the Appellate Tribunal except for the type of cases referred to in SI.No.2 of the chart above.

As per Rule 3 of Central Excise (Appeals) Rules, 2001 an appeal under sub-section (1) of section 35 to the Commissioner (Appeals) shall be made in Form No.E.A.-1(in duplicate) and shall be accompanied by a copy of the decision or order appealed against.

As per Rule 3(2), of Appeal Rules, 2001 the grounds of appeal and the form of verification as contained in Form No.E.A.-1 shall be signed -

- (a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorized by him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
- (b) in the case of a Hindu undivided family, by the karta and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;
- (c) in the case of a company or local authority, by the principal officer thereof;
- (d) in the case of a firm, by any partner thereof, not being a minor;
- (e) in the case of any other association, by any member of the association or the principal officer thereof; and
- (f) in the case of any other person, by that person or some person competent to act on his behalf.

As per Rule 4 of Appeal Rules, an application is made by the authorised officer of the department for revision (under sub-section (4) of Section 35E) to the Commissioner(Appeals) shall be made in Form No.E.A.2 & such an application shall be treated as appeal.

The form of application in Form No.E.A.2 shall be filed in duplicate and accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order passed by the Commissioner of Central Excise directing such authority to apply to the Commissioner (Appeals).

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10.3.1 Procedure in appeal [Section 35A]

The Commissioner (Appeals) shall give an opportunity to the appellant to be heard, if he so desires. At the hearing of an appeal, Commissioner (Appeals) may allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. However, an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order. Further, where the Commissioner (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 11A to show cause against the proposed order.

The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed. On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority, the Chief Commissioner of Central Excise and the Commissioner of Central Excise.

10.4 PRODUCTION OF ADDITIONAL EVIDENCE BEFORE COMMISSIONER (APPEALS)

As per Rule 5 of the Appeal Rules, the appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority except in the following circumstances, namely :

- (a) Where the adjudicating authority has refused to admit evidence which ought to have been admitted; or
- (b) Where the appellant was prevented by sufficient cause from producing the evidence which was called upon to produce by the adjudicating authority; or
- (c) Where the appellant was prevented by sufficient cause from producing before the adjudicating authority any evidence which is relevant to any ground of appeal; or

- (d) Where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

No additional evidence shall be admitted as said above unless the Commissioner (Appeals) records in writing the reasons for its admission.

The Commissioner(Appeals) shall not take any additional evidence unless the adjudicating authority or an officer authorized in this behalf by the said authority has been allowed a reasonable opportunity -

- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant, or
- (b) to produce any evidence or any witness in rebuttal of the additional evidence produced by the appellant under sub-rule (1).

It is also important to note that the power of the Commissioner(Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal is independent of the above provisions relating to additional evidence and his powers will be not affected by the said provisions.

10.5 APPEALS TO APPELLATE TRIBUNAL

10.5.1 CESTAT : In response to the long outstanding demand of trade and industry for establishing an independent machinery to redress the grievances of the Excise and Customs assesses, the Central Government set up the Customs, Excise and Gold Control Appellate Tribunal (CEGAT) in the year 1982 to hear and dispose of appeals in Central Excise, Customs and Gold Control matters. The Tribunal has been renamed as Central Excise Customs and Service Tax Appellate Tribunal (CESTAT).

The Benches of the Tribunal are composed of Judicial and Technical Members. Single member Bench has the jurisdiction to hear appeals involving an amount of duty, fine or penalty not exceeding Rs.50,000/-.

As per Rule 6, of Appeal Rules, an appeal under sub-section (1) of section 35B to the Appellate Tribunal shall be made in Form No.E.A.3 and the following shall be observed:

1. Where an appeal under sub-section (1) of section 35B or a memorandum of cross-objections (under sub-section (4) of that section) is made by any person other than the Commissioner of Central Excise, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos.E.A.3 and E.A.-4, as the case may be respectively shall be signed by the persons listed above in case of appeal to Commissioner (Appeals).

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2. A memorandum of cross objections to the Appellate Tribunal shall be made in Form No.E.A.4.
3. The form of appeal in Form No.E.A.-3 and the form of memorandum of cross-objections in Form No.E.A.-4 shall be filed in quadruplicate and accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

10.5.2 Form of application to Appellate Tribunal : As per Rule 7, of the Appeal Rules an application under sub-section (1) of section 35E (to be made by the Board on its own motion to the Appellate Tribunal) shall be made in Form No.E.A.5. The form of application in Form No.E.A.-5 shall be filed in quadruplicate and accompanied by an equal number of copies of the decision or order passed by the Commissioner of Central Excise (one of which at least shall be a certified copy) and a copy of the order passed by the Board directing such Commissioner to apply to the Appellate Tribunal.

10.5.3 Appeal to Appellate Tribunal against order of Commissioner (Appeals) :

Section 35B contains the provisions in respect of appeals to the Appellate Tribunal. The provisions are summarized as under:

- (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order –
 - (a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;
 - (b) an order passed by the Commissioner (Appeals) under section 35A;

However, no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

- (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of Central Excise Act or the rules made thereunder.

The Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order passed by the Commissioner (Appeals) under section 35A where –

- (i) in any disputed case, (other than a case relating to the determination of rate of duty or valuation of goods) the difference in duty involved or the duty involved; or
 - (ii) the amount of fine or penalty determined by such order,
- does not exceed Rs.50,000.

The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 may by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of the Act. Every Committee so constituted shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) A Committee of Commissioners may, if it is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct any Central Excise Officer authorized by him in this behalf to appeal on its behalf to the Appellate Tribunal against such order.

However, where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal 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 of Central Excise. The Chief Commissioner shall direct any Central Excise Officer to appeal to the Appellate Tribunal against such order if it is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper.

It has also been clarified that "jurisdictional Chief Commissioner" means the Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (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 duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a specified amount of fee. The fee payable in different cases has been tabulated as under:

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Amount of duty, interest demanded and penalty levied	Fee for filing an appeal
Less than or equal to Rs. 5,00,000	Rs. 1,000.00
More than Rs.5,00,000 but not exceeding Rs.50,00,000	Rs. 5,000.00
More than Rs.50,00,000	Rs.10,000.00

However, no such fee shall be payable in the case of an appeal preferred by Commissioner of Central Excise. Also, no fee shall be payable in the case of filing of a memorandum of cross-objections.

Further, a fee of Rs.500 shall be paid for every application made before the Appellate Tribunal. The application can be an appeal for grant of stay or for rectification of mistake or for any other purpose; or for restoration of an appeal or an application. However, no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise.

Under Section 35C of the Central Excise Act, the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against. The Tribunal may even refer the case back to adjudicating authority for fresh adjudication. CESTAT may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties and adjourn the hearing for reasons to be recorded in writing. However, such adjournment shall not be granted for more than three times to a party during the proceeding.

Under Section 35C (2) the Appellate Tribunal may, at any time within six months from the date of order, with a view to rectifying any mistake apparent from the record, amend any order passed by it and the Tribunal shall make such amendments if the mistake is brought to its notice by either of the party to the Appeal.

Every appeal shall be decided by the Appellate Tribunal within a period of three years from the date on which such appeal is filed, if it is possible to do so. Further where a order of stay is made in the proceedings of a appeal, the Appellate Tribunal is required to dispose of the appeal within 180 days from the date of such order of stay. However, if such appeal is not disposed within the above specified period, the stay order shall stand vacated on the expiry of the period of 180 days.

The orders passed by the Appellate Tribunal are final unless an appeal is made to the High Court or the Supreme Court under section 35G or 35L respectively, **up to the date when the NTT is constituted. Thereafter, the orders passed by the Appellate Tribunal shall be final unless an appeal is made to the NTT under section 15 of the NTT Act.**

10.6 DEPOSIT, PENDING APPEAL, OF DUTY DEMANDED OR PENALTY LEVIED [SECTION 35F]

Section 35F of the Central Excise Act, 1944, *inter alia*, provides that where in any appeal, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the central excise authorities or any penalty levied under this Act, the person appealing against such decision or order shall first deposit the duty demanded or penalty levied with the adjudicating authority.

However, such pre-deposit may be waived by the Commissioner (Appeals) or the Appellate Tribunal if he or it is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person. Such pre-deposit shall be dispensed with subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

The Commissioner (Appeals) should decide the application for stay/waiver of such pre-deposit of duty or penalty within 30 days from the date of its filing. The explanation to the section clarifies that duty demanded shall include:

- (i) amount determined under section 11D;
- (ii) amount of erroneous CENVAT credit taken;
- (iii) amount payable under rule 57CC of Central Excise Rules, 1944;
- (iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004;
- (v) interest payable under the provisions of this Act or the rules made thereunder.

Thus, all the above-mentioned items would also be included within the ambit of expression 'duty demanded' in addition to the duty specified under section 3 of the Central Excise Act, thereby making their pre-deposit necessary as a condition for hearing appeal.

10.6.1 Interest on delayed refund of amount deposited under the proviso to section 35F [Section 35FF]: The amount of pre-deposit made under the first proviso to section 35F by an appellant becomes refundable if the appellant succeeds in appeal. Section 35FF provides that interest shall be paid to the appellant where such pre-deposit becomes refundable in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (appellate authority) and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority.

Interest shall be paid at the rate specified in section 11BB after the expiry of three months from the date of the communication of the order of the appellate authority, till the date of refund of such amount. However, payment of such interest would not be required if the operation of the order of the appellate authority is stayed by a superior court or tribunal.

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10.7 LEGAL DECISIONS RELATING TO STAY APPLICATIONS

PARTICULARS	CITATION
1. Relevant considerations for deciding stay applications are (a) hardship likely to be caused to appellant and their business (b) whether in the event of dismissal of appeal, sufficient assets will be available for recovery (c) interests of revenue.	<i>Triton Valves Ltd. v. CEGAT</i> 1995 (77) E.L.T. 829 (Mad).
2. Appellant should show prima facie case. Prima facie case does not mean that it should be a case bound to succeed but one which is arguable and fit for consideration.	<i>Ruby Rubber Industries v. CCE</i> 1998 (104) E.L.T. 330 (Cal).
3. Asking for pre-deposit where the appellant has prima facie case amounts to undue hardship.	<i>Ruby Rubber Industries v. CCE</i> 1998 (104) E.L.T. 330 (Cal); <i>Sri Krishna v. UOI</i> 1998 (104) E.L.T. 325 (Del); <i>Hooghly Mills Co. Ltd. v. UOI</i> 1999 (108) E.L.T. 637 (Cal).
4. Personal hearing not mandatory for deciding stay applications but can be granted if the authority deems it fit.	<i>UOI v. Jesus Sales Corporation</i> 1996 (83) E.L.T. 486 (SC).
5. Pre-deposit not required if company is sick industry declared by BIFR.	<i>Sangfroid Remedies Ltd. v. UOI</i> 1998 (103) E.L.T. 5 (SC)
6. Predeposit figure normally not to exceed profits of the company. Appellate authority not to take into account amount set apart for depreciation or amount due from sundry debtors.	<i>CCE v. Coronation Litho Works</i> 1994 (69) E.L.T. 238 (Mad)
7. Pre-deposit in RG23 A Part II also possible.	<i>India Casting Company v. CEGAT</i> 1998 (104) E.L.T. 17 (All).
8. Conflicting decisions of Courts sufficient for granting full stay .	<i>Partap Steel Rolling Mills Ltd. v. CEGAT</i> 1993 (67) E.L.T. 216 (MP)

10.8 REVISION APPLICATION

Sections 35E and 35EE of Central Excise Act provide for review of an order passed by the adjudicating authorities.

Section 35E gives powers to Committee of Chief Commissioners of Central Excise or Commissioner of Central Excise to pass certain orders. Sub-section (1) of section 35E provides that the Committee of Chief Commissioners of Central Excise may of its own motion, call for and examine the record of any proceeding in which a Commissioner of

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Central Excise has passed any order so as to satisfy itself upon the legality or propriety of the order. Thereafter, the Committee of Chief Commissioners may direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal to determine such points as may be specified by it.

However, where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board. If the Board, after considering the facts of the order, is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper, it may direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order.

Sub-section (2) of section 35E grants similar powers of review to the Commissioner of Central Excise in respect of decisions taken by the adjudicating authority subordinate to him. The Commissioner may direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner (Appeals) to determine such points as may be specified by him.

Every order under sub-section (1) and sub-section (2) shall be made within a period of 3 months from the date of communication of the decision or order of the adjudicating authority.

The time period available to the adjudicating authority or the authorised officer to make an application to the Appellate Tribunal or the Commissioner (Appeals) is 1 month from the date of communication of the order of the Committee of the Chief Commissioner or Commissioner. Such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals) as if such application were an appeal made against the decision or order of the adjudicating authority. The provisions regarding appeals, including the provisions of sub-section (4) of section 35B shall, so far as may be, apply to such application.

Section 35EE gives the power of revision to the Central Government in the following cases:

- (a) loss of goods in transit from factory to warehouse or from warehouse to warehouse;
- (b) rebate of duty of excise of goods exported;
- (c) goods exported outside India (except Nepal and Bhutan) without payment of duty;
- (d) processing loss;
- (e) Cenvat credit.

As per Rule 9 & 10 of the Appeal Rules, the revision application under section 35EE shall be in Form E.A.-8 & presented in person to the Under-Secretary Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, New Delhi or sent by

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registered post addressed to such officer.

1. The revision application sent by registered post shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer.
2. The grounds of revision application and the form of verification as contained in Form EA-8 shall be signed by the person specified in sub-rule (2) of Rule 3.
3. The application shall be filed in duplicate & shall be accompanied by two copies of following documents, i.e.
 - i. Order referred to in 1st proviso to section 35B(1)
 - ii. Decision or order passed by Central Excise Officer which was the subject matter of the order referred to in Rule 9(4)(i)

10.9 APPEAL TO HIGH COURT [SECTION 35G]

An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law [sub-section (1)].

The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be-

- (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;
- (b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;
- (c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved [sub-section (2)].

The High Court has power to condone the delay and admit an appeal after the expiry of the period of 180 days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period [sub-section (2A)].

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question [sub-section (3)].

The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. However, the Court has the power to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question [sub-section (4)].

The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit [sub-section (5)].

The High Court may determine any issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal, by reason of a decision on a question of law [sub-section (6)].

When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges [sub-section (7)].

Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it [sub-section (8)].

The provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section [sub-section(9)].

Note: This section shall be omitted with effect from the date when the NTT is constituted.

10.10 APPEAL TO SUPREME COURT [SECTION 35L]

The Central Excise Act, 1944, provides a two tier machinery for redressal of grievances against the decision of the Appellate Tribunal. In cases where the decision of the Appellate Tribunal relates to any question having relation with the determination of 'rate of duty' or 'value of goods' amongst other things, the same is directly appealable to the Supreme Court under section 35L of the Central Excise Act. However, where the order of the Appellate Tribunal does not relate to 'rate of duty' or 'value of goods', first an appeal is made to the High Court and thereafter an appeal against the judgment of the High Court can be made to the Supreme Court provided the High Court certifies it to be a fit case for appeal to the Supreme Court.

An appeal shall lie to the Supreme Court from

- (a) any judgment of the High Court delivered-
 - (i) in an appeal made under section 35G, or
 - (ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003, or
 - (iii) on a reference made under section 35H,
- if the High Court certifies the case to be fit for appeal to the Supreme Court. The High Court can certify any case on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the

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judgement.

- (b) any order of the Appellate Tribunal passed **before the establishment of NTT** having relation to the determination of rate of duty or value of goods, among other things. **After the establishment of the NTT, the appeal from any order of the Appellate Tribunal having relation to the determination of rate of duty or value of goods, among other things shall first lie to NTT.**

10.11 SUMMARY

The law and procedure relating to appeal can be summarized in the form of following table.

Order passed by	Appeal lies to	Form to be used	Section reference
1. Assistant/Deputy/ Joint/Additional Commissioner	Commissioner (Appeals) Within 60 days of receipt of order	EA1(assessee) EA2(Department)	Sec. 35
2. Commissioner/ Commissioner (Appeals) Note: If order of Commissioner (Appeals) relates to loss of goods, in transit, processing loss, rebate on exports/exports in bond without payment of duty (other than Nepal and Bhutan) and cenvat credit revision lies to Central Government	Appellate Tribunal (within 3 months from receipt of order)	EA3 –Cross objections to EA3 to be filed in EA4 by opposing party EA5 for application by Department	Sec. 35B
3. Appellate Tribunal (not involving rate of duty or valuation)	High Court Within 180 days of receipt of order	EA6 (Appellant) EA7 (cross objections)	Sec. 35H
4. Appellate Tribunal (relating to rate of duty/valuation)	Supreme Court Within 60 days of receipt of order	No specified form	Sec. 35L
5. Commissioner (Appeals) relating to loss of goods, in	Government of India	EA 8	Sec. 35EE

transit, processing loss, rebate on exports/exports in bond without payment of duty (other than Nepal and Bhutan) and cenvat credit.	(Revisionary Authority) Within 3 months of receipt of order		
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Note: National Tax Tribunal means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005. The National Tax Tribunal Act, 2005 has been enacted by the Parliament in pursuance of Article 323B of the Constitution. It came into force with effect from December 28th, 2005. The notified date of establishment of the National Tax Tribunal (NTT) by the Central Government is 6th January, 2006.

The objective behind the enactment of the National Tax Tribunal Act is to modify the present system of appeals under the Central Excise Act by substituting the National Tax Tribunal for the High Court, for facilitating quick adjudication of disputes under direct and indirect tax laws and achieve uniformity in the interpretation of central legislation. This Act provides that on establishment of the National Tax Tribunal, High Court will not have appellate jurisdiction in matters of direct and indirect taxes. This Act vests jurisdiction in NTT to decide direct and indirect tax disputes on appeal from the decision of the respective Appellate Tribunals. Appeal to NTT can be filed both by the assessee and the revenue, from order passed by the CESTAT, on a substantial question of law. Appeal to NTT will lie only if the NTT is satisfied that the case involves a substantial question of law. The NTT shall formulate the substantial question of law for the purpose of hearing of appeal by it.

A party to an appeal, other than the Government, may either appear in person or authorize one or more chartered accountants or legal practitioners or any person duly authorized by him or it to present the case before the NTT. The Government may authorize one or more legal practitioners or any of its officers to present its case before the NTT. It may be noted that the Act does not permit chartered accountants to present the case of the Government before the NTT.

The Act provides that any person, including any department of the Government, aggrieved by any decision or order of NTT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the NTT to him. The Supreme Court can allow filing of the appeal beyond 60 days, if the appellant was prevented by sufficient cause from filing the appeal within the said period of 60 days.

The Bombay High Court in P.C. Joshi vs. Union of India (2006) 152 Taxman 285 has passed an ad-interim order restraining the Government from constituting the NTT and transferring the matters pending in the High Court to the NTT. Therefore, the constitution of the NTT will take effect only after the stay is vacated.

Self-examination questions

1. What are the matters on which appeal does not lie with CEGAT? Where does

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redressal lie in such cases?

2. Discuss the revisionary powers of the Central Excise Authorities under section 35E and section 35EE of the Central Excise Act, 1944.
3. Who can sign the grounds of appeal and the form of verification as contained in Form No. E.A. -1?
4. What are the orders that are appealable to the Supreme Court?
5. Write a note on production of additional evidence before Commissioner (Appeals).

