

### Penalties and Offences

CEA provides for penalties and punishments for violation of excise law. Penalties can be levied for civil and criminal liability. Civil Liability includes fines, confiscation of goods, etc., where as Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. Section 34A of CEA and section 127 of Customs Act specifically provide both departmental penalties and criminal prosecution for same offence is permissible.

#### Offence under central Excise Rule 25 of Central Excise Rules

**Under rule 25(1) of Central Excise Rules, following are offences:**

- Removing excisable goods in contravention of Excise Rules or notifications issued under the rules.
- Not accounting for excisable goods manufactured, produced or stored
- Engaging in manufacture, production or storage of excisable goods without applying for registration certificate u/s 6 of CE Act
- Contravening any provision of Central Excise Rules or notifications issued under these rules with intention to evade payment of duty.

**Penalties imposable under rule 25**

- (a) Confiscation of contravening goods
- (b) Penalties up to duty payable on such contravening goods or Rs.2000 whichever is higher.
- (c) Penalties can be imposed on Manufacturer, warehouse keeper, FSD/SSD

**Mandatory penalty in case of fraud, suppression of facts etc.** - Provisions of Rule 25(1) are subject to section 11AC, which means that provisions of section 11AC prevail over provisions of rule 25(1). The penalty u/s 11 AC is mandatory which is equal to duty evaded - **neither more nor less**. However, if the duty, interest and penalty are paid within 30 days from communication of order, penalty payable will be reduced to 25%.

**Rules of Natural Justice**

Penalty can be levied only by giving opportunity being heard to assessee

#### Personal penalty on director / partner / employee/ transporter / driver/Any person etc: Rule 26 of Central Excise rules

Rule 25 is applicable only to manufacturer, producer, and registered person of a warehouse or registered dealer. Penalty on others like transporter, person concealing goods etc. can be levied under rule 26

Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or rules, shall be liable to a penalty up to the duty payable on such goods or Rs 2,000 whichever is greater.

A director or partner or an employee will be personally liable to penalty if he is personally involved in clandestine removal etc.

**Penalty on any person**

Non issuance of excisable invoice, issuance of excise invoice without delivery of goods specified therein or issuance of any documents whereon receiver takes any ineligible benefit of CENVAT or refund. A penalty on such offence would be Rs.5000 or amount of benefits, whichever is greater.

#### Residual Penalty – Rule 27 of Central Excise Rules:

For breach of excise rules, if no penalty has been prescribed under Act or rules, the penalty would be Rs. 5,000 plus confiscation of goods in respect of which offence has been committed.

## Indirect taxes- Central Excise- simplified

### Confiscation of goods

Section 12 of CEA authorises Central Government to apply provisions of Customs Act These are (a) section 105(1) - Powers of search (b) section 110 - seizure of goods, documents and things (c) section 115 - confiscation of conveyances (d) section 118(a) - confiscation of packages containing goods (e) section 119 - confiscation of goods for concealing goods (f) section 120 - confiscation of goods even if form changes (g) section 121 - confiscation of sale proceeds of contravening goods (h) section 124 - issue of show cause notice before confiscation of goods (i) section 142(1)(b) and 142(1)(c)(ii) - Recovery of duty (j) section 150 - procedure for sale of goods.

### Contravening goods liable to confiscation

- Under rule 25 of CE, following goods are liable to confiscation –

- Goods removed in contravention of Central Excise rules,
- Goods not accounted for
- Goods on which Cenvat credit is wrongfully taken
- Goods manufactured without registration of the factory.

### Confiscation of Conveyance

Following conveyances are liable to confiscation under section 115(1) of Customs Act, as made applicable to Central Excise:

- any conveyance from which goods are thrown overboard or destroyed to prevent seizure
- Conveyance which is required to land or stop for inspection but fails to do so.
- Conveyance by which warehoused goods are cleared for export, but goods is unloaded without permission.

### Confiscation of packages

When the goods are liable for confiscation, the packages in which contravening excisable goods are packed, such packages are also liable for confiscation.

### Confiscation even form changes

Contravening goods are liable for confiscation even if there is any change in its form for example mixing with other.

### Confiscation of sale proceeds

If the contravening goods are found to have been sold, sale proceeds of such sale are liable to confiscation

### Redemption fine in lieu of confiscation

Whenever confiscation of goods is ordered, the adjudicating officer *may* give option to owner of goods to pay 'fine' in lieu of confiscation. After payment of redemption fine; the goods are returned to the owner of goods. Section 125(2) of Customs Act makes it clear that where any fine in lieu of goods is imposed, the owner of goods or the person from whom the goods were seized is liable to pay duty and charges in respect of such goods, in addition to the fine.

**Limit for imposing redemption fine** – As per proviso to section 125(1) of Customs Act, redemption fine up to market price of goods less duty chargeable thereon can be imposed.

### Procedure after confiscation Rule 28(1) of Central Excise Rules

After confiscation, the goods shall vest in Central Government. The Central Excise Officer adjudging confiscation shall take and hold possession of things confiscated. Every Police Officer is required to assist excise officer in taking and holding such possession. (Parallel provision in Customs section 126.)

If the assessee does not pay fine in lieu of confiscation, the goods will be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct. [Rule 29].

If the assessee exercises option to pay fine in lieu of confiscation, he may be asked to pay storage charges as may be determined by adjudicating officer. [Rule 30]

## Indirect taxes- Central Excise- simplified

### Prosecution for Offences

**Section 9 defines following as offences punishable:**

- Contravening provisions of restrictions of possession of goods in excess of prescribed quantity as prescribed under section 8.
- Contravening provisions of rules regarding transit of excisable goods
- Contravening provisions of rules regarding registration of a unit
- Evading payment of duty payable under CEA.
- Removing excisable goods, in contravention of provisions of Central Excise Act and Rules.
- Acquiring or in any way concerning himself with transporting, depositing, concealing, selling, purchasing or otherwise dealing with excisable goods where he knows or has reason to believe that the goods are liable to confiscation under Central Excise Act or Rules.
- Contravening any provision of Central Excise Act or rules in relation to Cenvat credit.
- Failure to supply information or knowingly supplying false information.

**Quantum of Punishment that can be imposed**

#### A. For first time Conviction

**If the duty exceeds Rs. 1 lakh:** imprisonment up to seven years (minimum 6 months) and fine (without limit) *or both* can be imposed.

**If the duty does not exceeds Rs. 1 lakh:** imprisonment up to three years or fine (without limit) *or both* can be imposed.

#### B. For subsequent conviction:

**Irrespective of value of duty:** imprisonment up to seven years (minimum 6 months) and fine (without limit) *or both* can be imposed.

**Imprisonment less than 6 months when**

If there are special and adequate reasons for granting lesser punishment.

The following are **shall not be treated** as adequate reasons

- First time offence
- Age of the accused
- Accused is not a principal offender
- Punishment for second time for the same offence under CE Act

**Further punishments Sec 9B/sec 135 B-** Court has powers to order for further punishments like revocation of offer of redemption of fine and Publication of names, place of business or residence, nature of contravention etc in news paper.

**Burden of proof** – The burden of proof is on Excise department to prove the commitment of offence by a person. Similarly accused has to prove that there was no culpable state of mind like intention, knowledge, belief etc. Both proofs should be beyond reasonable doubt.

**Relevancy of Statement before Excise / Customs Officer**

**[Section 9D of CEA – parallel section 138B of Customs Act].** Statement made and signed before any Central Excise Officer / customs officer of gazetted rank is allowed as evidence in the prosecution as follows

(a) In case of a person who is dead or if he cannot be found or whose presence cannot be obtained without undue delay or expenses, the statement *will be* allowed as evidence

(b) In case of person who is present before the Court and is examined as witness, Court *may* admit the statement if it is of the opinion that the statement should be admitted in the interest of justice. Discretion is given to Court in case of statements made before Excise Officer, only if such person is examined as witness.

The provisions apply to adjudication and appeal proceedings also.

**Presumption regarding Documents seized from a person**

Any document seized from a person shall be *presumed* to be true about the contents therein. Signature and other part of hand written document on such seized document, purporting to have been of a person or reasonably assumed to be of that person shall be presumed to be of that

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person. If such person claims that the document is not true or not signed by him, *the burden of proof* is on him

### Computer print outs

Statement printed by Computer is admissible if

- Computer printout was produced during the period when the computer was used for storing and processing the information
- The information contained in the statement was regularly supplied to computer during the period
- computer was operating properly during the period or breakdowns were not significant to affect accuracy of documents
- The print out is reproduced in ordinary course of activities

**Central excise Offence is non-cognizable [Section 9A of CEA].** - As per section 2(c) of Criminal Procedure Code, 'cognizable offence' means an offence for which a police officer may arrest without warrant. Offences under section 9 of CEA are non-cognizable. For offences under excise action will be taken by police only at the instance of CEO.

### Offences by Companies Sec 9AA

For the offences committed by companies, Directors, officers are also responsible if they are involved in committing of breach/offence.

### Compounding of Offence Sec 9A(2)

Any offence committed from sec 3 to Sec 12 of CE Act may, either before or after institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

### Power of Central Government to Publish Names of persons (new section 37 E)

- This section provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest.
- The Central Government may publish name of any person and any other particulars relating to any proceedings in the public interest. The Government can do the publication in such manner as it thinks fit.
- The publication in respect to penalty shall be only after appeal time limit is expired or appeal is disposed of.
- In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.

### Appeals and Revision

Excise Law as well as Customs Act makes elaborate provisions for departmental adjudication, appeals and revision. The provisions are almost identical in both the Acts, as below

| Orders of the Authority                                                                                 | Appeal can be made with |
|---------------------------------------------------------------------------------------------------------|-------------------------|
| Superintendent, Assistant Commissioner, Dy Commissioner, Jt. Commissioner, and Additional Commissioner) | Commissioner            |
| Commissioner,                                                                                           | Tribunal.               |
| Tribunal.                                                                                               | High Court              |
| High Court                                                                                              | Supreme Court           |

### Appeal to Commissioner (Appeals)

Appeal against order of Superintendent, Assistant Commissioner, Dy. Commissioner and Additional Commissioner lies with Commissioner (Appeals), u/s 35(1) of CEA - parallel section 128(1) of Customs Act.

### Time limit for filing appeal

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Appeal must be filed within 60 days from date of communication of order. Commissioner (Appeals) has powers to extend this period by further 30 days if *sufficient cause* is shown.

### **Form of Appeal to Commissioner (Appeals) –**

Appeal should be in prescribed form No. EA-1 (CA-1 in case of Customs) in duplicates and should be accompanied by a certified copy of the decision or order against which appeal is filed.

**Stay application** - If duty demanded and penalty/fine imposed is not paid, separate application for waiver of pre-deposit of duty and stay of recovery should be filed. If appeal is filed but stay application is not filed, appeal may be dismissed without hearing-

Duty demanded includes, duty payable as per sec 3, duty collected from buyer as per sec 11 D, duty erroneously refunded, amount payable as per cenvat credit rules and interest payable under act or rules.

### **Departmental appeal –**

Departmental appeal should be in form EA-2 in duplicate (form CA-2 in case of Customs), with two copies of decision or order passed by adjudicating authority and a copy of order passed by Commissioner of CE directing the authority to apply to Commissioner (Appeals). The time limit for this appeal is one month.

### **Affixing Court fee stamps**

In case of appeal to Commissioner (Appeals), the memorandum of appeal should bear court fee stamp of 50 Ps, while appeal to CESTAT should bear court fee stamp of Rs 2/-.

### **Order that can be passed**

The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. [Section 35A(3) of Central Excise Act – parallel section 128(3) of Customs Act]

### **Order of Commissioner (Appeals)**

The order should be in writing, shall state all points for determination, give decision and reasons for the same [section 35A (4)]. Copy of the order should be communicated to (i) Appellant (ii) the adjudicating authority against whose order the appeal was filed and (iii) Commissioner.

### **Revision by Central Government**

In some cases appeal does not lie with CESTAT. In such cases, a revision application has to be made with Central Government. [An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government].

**Appeal against order of Commissioner or Commissioner (Appeals)** lies with Tribunal against all orders, *except*

- (a) Loss of goods occurring in transit from factory to warehouse or to another factory
- (b) Rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported and
- (c) Goods exported without payment of duty.

In the aforesaid matters, Tribunal has no jurisdiction, but revision application can be filed with Central Government under section 35EE of CEA within three months. Central Government can annul or modify the order. In all other matters, appeal lies with Tribunal. , Assessee or the Commissioner of CE can file revision application.

**In case of Customs, CESTAT has no jurisdiction in the matters of**

- (a) baggage
- (b) payment of duty drawback and
- (c) Goods short landed in India. In these matters, revision application lies with Central Government [section 129DD of Customs Act].

### **Time limit for filing application –**

Revision application must be filed in 3 months from communication of the order. This period can be further extended by three months on sufficient cause being shown. - .

### **Revision application by Commissioner –**

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Application for revision can also be made by Commissioner of Central Excise, if he is of the opinion that order of Commissioner (Appeals) is not proper. No fees are payable along with such an application. No time limit has been prescribed for filing the application.

### **No provision of appeal against revision order**

There is no provision of appeal against decision of Central Government in such revision applications (The only remedy is writ petition to High Court or SLP in Supreme Court).

### **Appeal to Tribunal (CESTAT)**

Tribunal is a *quasi-judicial* body. This Tribunal hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals). Tribunal orders are binding on lower authorities. Tribunal is final fact finding authority. Finding of facts arrived at by Tribunal cannot be upset by higher authority unless found to be based on no evidence or irrelevant evidence or incorrect principles. Tribunal is creature of Statute and cannot traverse beyond provisions of Statute.

### **Constitution of CESTAT**

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has been formed under section 129 of Customs Act. The Tribunal is empowered to hear appeals in cases of Customs, Excise and Service Tax. CESTAT was known as CEGAT upto 14-5-2003]. The Tribunal consists of Judicial Members and Technical members, which give the Tribunal a balanced overall view of legal background and practical implementation of law.

**Benches of Tribunal** - Tribunal sits in benches. The benches may be single member bench and larger benches etc. Work among various benches will be allotted by President or in his absence senior most Vice President by special or general order.

### **Procedure for Appeal to CESTAT**

Some procedures are prescribed in Central Excise Rules. Besides, Tribunal is empowered to regulate its own procedure vide section 129 C(6) of Customs Act, which has been made applicable to Excise Act. These procedures must be within the provisions of Act and Rules of Central Excise. Under these powers, Tribunal has framed CESTAT (Procedure) Rules, 1982

**Filing of appeal** – Appeal / application / cross objection should be filed within prescribed period. In case of appeals, the period is three months from date of receipt of order to be appealed against. In case of departmental appeal time limit is one month. Appeal / application / cross objection can be personally presented to Registrar of Tribunal or sent by registered post.

**Fees payable for appeal** - a fee must accompany the appeal. No fee is payable if appeal is filed by department.

**Affixing Court fee stamps** – Court fee stamp of Rs 2/- is required to be affixed on memorandum of appeal and 50 Ps on copy of order appealed against. However, non-affixing court fee stamp is a curable defect.

**Stay applications and its immediate hearing** - Application for stay of requirement of making deposit of any duty or penalty shall be presented in triplicate. Contents of application for stay must be supported by a verification regarding their correctness. The Bench may, in a particular case, direct the filing of affidavit by the applicant/respondent. [Rule 28A (4) of CESTAT Rules].

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**Appeal in prescribed form** - Appeal should be in prescribed form No. EA 3 (CA-3 in case of Customs) in quadruplicate with copy of order appealed against also in quadruplicate. –Departmental appeal should be in form EA-5 (CA-5 in case of Customs) in quadruplicate with equal number of copies of order appealed against and copy of order of CBE&C (Board) directing Commissioner to file appeal to CESTAT. – Rule 7(1) of Central Excise (Appeals) Rules [earlier Rule 217].

One of the copies of order should be a certified copy. The appeal can be in triplicate if it is to be heard by a single member bench. Further, if appeal is to be heard by larger bench, additional copies have to be supplied

The prescribed form asks for details like name, address, details of order appealed against, whether duty demanded has been deposited etc. Grounds of appeal, statement of facts and reliefs claimed are also to be given. Grounds of appeal should be concise and without argument or narrative and should be numbered consecutively.

### **Documents to be attached with Appeal**

The appeal must be accompanied by (a) Copies of order appealed against - one of the copies must be a certified copy (b) Copies of original order appealed against, if appeal to CESTAT is a second appeal - one copy must be a certified copy. [CESTAT Procedure Rule 9(1).]

**Grounds of Appeal** - Applicant is expected to mention all grounds of appeal in the appeal memorandum. A ground not mentioned in grounds of appeal can be accepted only with permission of Tribunal.

**Paper Book** - A Paper Book containing copies of documents, statement of witnesses and other papers on which appellant wants to rely at the hearing of appeal should be filed.

**Allocation of work - Appellant and respondent** - In appeal filed by person other than Commissioner, Commissioner shall be respondent, while in case of appeal by Commissioner, other party shall be respondent.

### **Inherent Powers of Tribunal**

#### **Granting stay for recovery of duty**

Tribunal can grant stay for recovery of duty and penalty pending appeal -.

#### **Recall of order passed ex parte**

Tribunal can recall an order passed *ex parte*, if sufficient cause is shown for absence of the party -

**Recall if deposit of duty as ordered paid late** - Tribunal can dismiss appeal if duty is not deposited. If assessee deposits duty though late, Tribunal can recall and restore order of dismissal of appeal.

**Recall if glaring mistake** - order was recalled when it was found that a different issue was decided and issue in appeal was not decided in final order at all.

#### **Tribunal can quash its own order**

Tribunal can recall and quash its own order in exceptional cases where it is shown that it was obtained by fraud or palpable mistake or was made in utter disregard of statutory provision.

#### **Correct an error so that justice is done**

Tribunal can review on merits where the error is apparent on the face of record. It was held that inadvertent error committed by Tribunal can be corrected.

Tribunal can recall an order to correct any error committed by itself so that justice is done to assessee and the revenue. Tribunal can also recall its order if there has been a mistake of the court prejudicing the party.

#### **Limitations on inherent powers**

Tribunal cannot use its inherent powers when (a) Alternate remedy is available (b) If the order can be appealed against (c) If the power would conflict with any specific provision of law which prohibits such a remedy. However, it can exercise power if (a) Non-exercise of power may result in abuse of the process of court (b) Non-exercise of power may result in failure of justice.

#### **Tribunal is Final fact finding authority**

## Indirect taxes- Central Excise- simplified

Tribunal is the final fact finding authority. High Court cannot go behind the facts found by Tribunal

### Rectification of mistakes

Tribunal has no powers to review its orders. -. However, Tribunal can pass order for rectifying a mistake apparent from the records, within six months of passing of order. - Section 35C(2) of CEA - similar section 129B(2) of Customs Act. The mistake can be corrected only if it is apparent from records. The error could be of fact or an error in law

### Limitations of Tribunal

Tribunal has no inherent powers to review its order –

Tribunal has to presume and accept legal validity of provisions of Central Excise Act and Rules. The Tribunal is created by Statute and cannot challenge validity of any provision of the statute itself. Tribunal cannot declare a provision of Statute as *ultra vires*

Tribunal is not empowered to issue writs.

Tribunal is not a Court, though it has been granted various powers. A Tribunal is a Tribunal and though exercises judicial powers; it cannot be equated to a court -

Tribunal is bound by judgments of High Court (and of course Supreme Court). In case of conflicting decisions of High Courts, decision of High Court in which the appellant is situated should be followed.

### Appeal to High Court

#### Appeal to High Court on substantial question of law

Tribunal is final fact finding authority. However, if there is a substantial question of law arising out of order of Tribunal (in cases other than relating to rate of duty and valuation); an appeal can be made to High Court within 180 days. [Section 35G(1) of CEA] - parallel section 130(1) of Customs Act] The high court can admit appeal even after expiry of 180 days if there is a sufficient cause for not filing appeal within time limit of 180 days.- In case of question relating to rate of duty and valuation, appeal lies with Supreme Court.

The appeal can be made either by the Commissioner of CE/Customs or the other party. If other party makes the appeal, the application should be accompanied by prescribed fee. The memorandum of appeal shall clearly state the substantial question of law involved. [Section 35 G(2)(c) of CEA - parallel section 130(2)(c) of Customs Act]. Appeal to High Court can be made against interim orders of Tribunal.

#### Hearing of appeal

High Court bench of at least two judges will hear the appeal. [Section 35G(7) of CEA – parallel section 130(7) of Customs Act]. Decision will be by majority. If the judges are equally divided on the issue, matter will be referred to third judge. He will hear only on the point on which the judges were differing. Majority, including those who had first heard the appeal, will then decide the point. [Section 35G(8) of CEA - parallel section 130(8) of Customs Act]. Provisions of Code of Civil Procedure relating to High Court will apply in case of such appeals.

### Appeal to Supreme Court

Appeal to Supreme Court can be made in following cases:

Judgment of High Court in appeal, if High Court certifies it to be a fit case for appeal to Supreme Court

Order of Appellate Tribunal where it relates to question relating to rate of duty excise or value for purpose of duty.

By Special Leave Petition (SLP) under Article 136 of Constitution i.e. permission of Supreme Court, even in cases where High Court does not certify it to be a fit case for appeal to Supreme Court.

Such appeal should be presented within 60 days from the date the order is communicated. Appeal should be with seven extra sets and should recite all relevant facts and set forth objections to the order and ground of appeal. An authenticated copy of order appealed against should be attached. These are 'civil appeals'. Supreme Court passes orders after hearing appeals.

## Indirect taxes- Central Excise- simplified

### Settlement Commission

#### Constitution of Settlement Commission

Settlement Commission has been constituted in June, 1999; The Commission consists of Chairman, Vice Chairmen and members, functioning under Department of Revenue, Ministry of Finance. The Chairman, Vice-Chairmen and other members of the Settlement Commission shall be appointed from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of Customs and Central Excise laws.

The powers and authority of the Settlement Commission will be exercised by a principal Bench sitting at Delhi and such additional Benches established by the Central Government at the places as it considers necessary. Settlement Commission deals with Customs and Central Excise matters. The purpose of constitution of settlement commission is for speedy completion of assessments and settlement of pending cases at the earliest.

#### Conditions to be fulfilled for making an application

- Assessee can make an application to settlement commission only when the case is pending before the adjudicating authority as on the date of application. It can only be approached when original adjudication is pending.
- The assessee shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation, and inapplicability of exemption notification or CENVAT credit
- the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;
- a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- The additional amount of duty accepted by the applicant in his application exceeds Rs. 3 lakhs (before 01.06.2007 Rs.2 lakhs).
- The applicant shall deposit the additional amount of excise duty accepted by him along with interest due under section 11AB at the time of **filing** of applications
- Where any excisable goods, books of account, other documents have been seized the assessee entitled to make an application only after the expiry of 180 days from the date of the seizure.
- In respect of an application filed before 1st June, 2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted duty by 30th June, 2007, failing which the application shall be rejected.
- Once application is made to SC it cannot be withdrawn.

#### Application to Settlement Commission cannot be made

- Settlement Commission **cannot be** approached when an appeal is pending before a central excise officer or Central Government.
- It can also not be approached when the matter is remanded for further adjudication.

#### Procedure of Settlement Commission [New section 32F]

- Assessee should make application giving full disclosures along with all relevant documents should be submitted in quintuplicate in prescribed application along with prescribed fees.
- After receipt of application Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application, asking the reason why application should be allowed
- Settlement commission will take into consideration the explanation provided by the applicant.
- Settlement Commission shall, within a period of 14 days from the date of the notice to assessee shall pass an order for allowing or rejecting the application.
- Where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed.

## **Indirect taxes- Central Excise- simplified**

- In case of rejection of application, the proceedings before the Settlement Commission shall abate on the date of rejection.
- A copy of accepting /rejecting order shall be sent by settlement Commission to the applicant and to the Commissioner of Central Excise having jurisdiction.
- Settlement Commission shall, within 7 days from the date of acceptance order shall, call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction.
- The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.
- Where the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.
- Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary and it may direct, the Commissioner (Investigation) within 15 days of the receipt of the report, to make such further enquiry or investigation
- The Commissioner (Investigation) should furnish the report of such enquiry within a period of 90 days from the date of the receipt of the communication from the Settlement Commission.
- Where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order without such report.
- The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and on the matters not covered by application as per report of commissioner.
- An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Central Excise having jurisdiction before passing of such order

### **Time Limit for passing order for Settlement commission**

- In respect of application received before 01.06.2007 order should be passed by 29.02.2008
- In respect of application received on or after 01.06.2007, within 9 months from the last day of the month which application was made..
- This 90 days limit can be extended by another 3 months, by recording the reasons in writing (WEF 01.04.2010)

### **Consequences if SC not passed order with in Time limit**

- The proceedings of SC shall abate.
- The adjudicating authority under which the case is pending shall proceed, as if no application is made to SC.

### **Order of Settlement Commissions**

- The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant
- In case of rejection of application, the order shall contain the reasons therefor.
- The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- Where the order of Settlement is void, The Central Excise Officer complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void

### **Assessee should pay the amount**

- The duty, interest, fine and penalty payable as per SC order shall be paid by the assessee within 30 days of receipt of a copy of the order by him.
- If the assessee fails to pay the amount which remains unpaid shall be recovered along with interest due thereon, as per sec 11 of CE Act.

### **Powers of Settlement Commission**

## **Indirect taxes- Central Excise- simplified**

- Settlement Commission has all powers of a Central Excise/Customs Officer.
- It can attach property of applicant during pendency of proceedings, in the interest of revenue.
- It can regulate its own procedure and decide places where the bench will sit.
- The proceedings before the Commission are judicial proceedings.
- Every order of settlement is conclusive as to the matters covered by the order.
- SC has powers to grant immunity from prosecution penalty for an offence under Central excise and Customs Act
- SC has power to withdraw the immunity granted, if the payment is not made as per order,
- SC has power to send back case to CEO if assessee not cooperated during proceedings,

### **Settlement Commission has no power**

- To grant immunity from prosecution or offence under Indian Penal Code any other Central Act
- To grant immunity from payment of interest under Central excise and Customs Act.
- To reopen completed Proceeding of Assessment in respect of cases where application made on or after 01.06.2007.
- To grant extension of time to pay the final sum specified in the settlement order.

### **Application for settlement permissible only once during the lifetime of the assessee in certain cases where application made before 01.06.2007**

In respect of application made before 01.06.2007, Assessee cannot make subsequent application when

- Where the settlement commission imposed penalty in the order for concealment of duty liability
- After the Order Assessee convicted an offence under the Excise and customs Act
- When case referred back to CEO due to non co-operation of assessee

Remaining all other circumstances assessee can make application to Settlement commission more than once (ie application made before 01.06.2007 other than three above and all applications made after 01.06.2007)- WEF 01.04.2010.

### **Appeal against order of Settlement Commission**

There is no specific provision for appeal against order of Settlement Commission; however writ can be filed in High Court.

### **Authority for Advance Ruling Sec 23 A to 23 H**

Advance Ruling' means determination of a question of law or fact specified in the application submitted by applicant regarding the liability to pay duty in relation to activity (of manufacture/production/import/export) proposed to be undertaken by the applicant.

Advance ruling brings certainty in determining duty/Service tax liability and it helps in avoiding long drawn and expensive litigation at a later date.

### **Constitution of the Authority**

The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as "the Authority for Advance Rulings (AAR) for Central Excise, Customs and Service Tax".

AAR under the Income Tax Act, 1961 shall exercise the powers of the AAR under Central Excise Act, 1944 (Sec 28 F Customs Act)

The Authority shall consist of the following Members appointed by the Central Government, namely:

- A Chairperson, who is a retired Judge of the Supreme Court/High Court

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- An officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;
- An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

### **Who can apply to the authority**

- Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident
- A resident setting up a joint venture in India in collaboration with a non-resident or
- A wholly owned subsidiary Indian company, of which the holding company is a foreign company, where such holding company is undertake joint venture in India
- A Public sector Indian Company

“Joint venture in India” means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders are a non-resident having substantial interest in such arrangement. Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.

Application can be made in respect of activity of production or manufacture (in case of Central Excise) or import and export (in case of customs) or liability to pay service tax in relation to service provided or proposed to be provided (in case of service tax). Such person is called ‘applicant’

### **Application for Advance ruling**

#### **The application in the question can be in respect of –**

- classification of goods (or services in case of service tax)
- applicability of an exemption notification
- principles to determine value of goods for purpose of assessment
- notifications issued in respect of excise duty payable under CEA, CETA or any other law where duty is chargeable in same manner as duty of excise or customs duty payable under Customs Tariff Act or
- Admissibility of Cenvat Credit (service tax credit in respect of service tax).
- Whether a good is excisable goods or not” or “whether the process amounts to manufacture or not?”

The application shall be made in quadruplicate and be accompanied by prescribed fees.

An applicant may withdraw his application within thirty days from the date of the application.

### **Procedure on Receipt of Application**

- Authority send a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:
- Authority may admit or reject the application.
- Authority may reject the application if the case is already pending before appellate authority or court. Or court /Tribunal already decided the case.
- If application is admitted, authority will examine the material submitted by applicant or obtained by authority.
- On a request received from the applicant, personal hearing will be entertained.
- Authority will then pronounce its advance ruling within 90 days of receipt of application.
- Copy of the order, signed by members of Authority, will be sent to the party and Commissioner.

### **Applicability of Advance Ruling**

The advance ruling will be applicable and binding only

- On the applicant who had sought it;
- In respect of any matter referred to it

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- On the Commissioner and authorities subordinate to him, in respect of the applicant.
- Advance ruling not applicable if law changes.

### **Advance ruling to be void in certain circumstances.**

If authority finds that the advance ruling was obtained by fraud or misrepresentation of facts, the authority can declare the ruling as void *ab initio*.

### **Powers of Authority**

The authority will have powers of discovery and inspection, enforcing attendance of any person and examining him on oath, issuing commissions and compelling production of books. The Authority shall be deemed to be 'civil court' and every proceeding before authority will be a 'judicial proceeding'. Procedures for authority will be determined by Authority itself.

### **End of Central Excise**

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