

APPEALS

Question 1

State briefly the provisions for adducing additional evidence in appeal proceedings before the Commissioner (Appeals) under Section 35 of the Central Excise Act, 1944.

(3 Marks) (May 2011)

Answer

The Commissioner (Appeals) shall not admit any additional evidence unless the adjudicating authority or his authorized person in this behalf has been allowed a reasonable opportunity:

- (a) to examine the evidence or documents 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.

However, the Commissioner (Appeal) must record in writing the reason for admission of additional evidence.

Question 2

Explain the validity of the following statement with reference to the Central Excise Laws as amended:

High Court is empowered to condone delay in filing appeal and cross objection filed under sections 35G and 35H of the Central Excise Act, 1944, beyond the prescribed period.

(1 Mark) (May 2010)

Answer

Yes, the statement is valid. Sub-section (2A) of section 35G and sub-section (3A) of section 35H, **empowers the High Court to condone the delay in filing appeal and cross objections** filed under sections 35G and 35H of the Central Excise Act, 1944 after the expiry of the prescribed period.

Question 3

M/s Raj Fibres had filed an appeal to the High Court on Aug. 11, 2011 under section 35G of the Central Excise Act, 1944 aggrieved by an order passed by the Appellate Tribunal. The order appealed against was received by the assessee on Jan. 1, 2011. The High Court dismissed the appeal petition on the ground that the same had been filed beyond the period provided for filing an appeal under section 35G of the Act and the Court had no power to condone the delay. M/s Raj Fibres urged before the High Court that the provisions of the Limitation Act, 1963 should be made available and the delay in presenting the appeal ought to be condoned. State briefly whether the High Court could condone the delay in presenting the appeal pursuant to the provisions of the Limitation Act, 1963 as urged by M/s Raj Fibres.

(5 Marks) (Nov 2008)

Answer

With effect from 19-08-2009, section 35 G as well as 35H have been amended with retrospective effect from 01-07-1999 to provide that High Court can condone delay in filing appeal or cross objection, if sufficient cause is shown to the High Court.