

Question 1

M/s Raj Fibres had filed an appeal to the High Court on August 11, 2013 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 January 1, 2013. The High Court dismissed the appeal petition on the ground that the same had been filed beyond the period prescribed for filing an appeal under section 35G i.e. 180 days. Examine whether the High Court was empowered to condone the delay in the said case.

Answer

As per section 35G(2A) of the Central Excise Act, 1944, High Court can condone delay in filing appeal after the expiry of 180 days if sufficient cause is shown to the High Court for not filing the same within the said period.

Question 2

Write a brief note on power of rectification of mistakes given to the Appellate Tribunal under section 35C(2) of Central Excise Act, 1944. Is the Tribunal empowered to review the orders passed by it?

Answer

As per section 35C(2) of the Central Excise Act, 1944, the Appellate Tribunal may, at any time within six months from the date of order, with a view to rectify any mistake apparent from the record, amend any order passed by it.

The Tribunal shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.

However, an amendment which has the effect of increasing the liability of the other party will not be made without giving a notice to him and allowing him a reasonable opportunity of being heard.

The Appellate Tribunal cannot review the orders passed by it. It can only rectify any mistake apparent from the record [*CCE v. Steel Co. Gujarat Ltd. 2004 (163) ELT 403 (SC)*].

Question 3

Can the Department file an appeal in respect of the same assessee if in respect of some years, no appeal was filed in matters involving identical dispute? Discuss with reference to the provisions of the Central Excise Act, 1944.

10.2 Central Excise

Answer

It has been held by the Supreme Court in the case of *C.K Gangadharan v. CIT, Cochin, 2008 (228) ELT 497* that merely because Revenue has not preferred an appeal in some cases, it would not prevent the Revenue to prefer an appeal in another case if it is in the public interest or there is just cause for doing so or for a pronouncement by the higher Court when divergent views are expressed by the different High Courts.

However, the Supreme Court has given a conflicting decision in the case of *CIT v. J.K. Charitable Trust 2008 (232) ELT 769 (SC 3 members bench)* wherein it has held that if in respect of some years, in respect of same assessee, no appeal was filed involving an identical dispute, revenue can be precluded from filing an appeal if the fact situation in subsequent years remains the same.

Further, it may be noted that section 35R, *inter alia*, provides that where in pursuance of any instruction issued by CBEC with regard to fixing monetary limits for filing appeal etc., Central Excise Officer has not filed any appeal against any decision passed under the provisions of the Act, then it shall not preclude such officer from filing appeal in any other case involving the same or similar issues or questions of law.

Question 4

Bhavya Limited (BL) cleared the goods to Chandi Enterprises (CE) after making payment of excise duty @ 14% in the month of March although the rate of duty on the said goods had been reduced to 12% in the Union Budget of that year.

However, CE refused to pay the higher duty paid by BL by mistake and subsequently raised a debit note. BL applied for the refund of excess excise duty paid of ₹ 4,80,000 which was rejected by the Department on the ground that a debit note could not form the basis for refund.

An appeal was filed to the Commissioner of Central Excise (Appeals) which passed an order accepting RIL's refund claim. You are required to examine whether, in the instant case, Revenue being aggrieved by the order of the Commissioner of Central Excise (Appeals) can file an appeal to the CESTAT against such order.

Answer

No, Revenue cannot file an appeal to CESTAT against the order passed by the Commissioner of Central Excise (Appeals). As per the National Litigation Policy, in Revenue matters, appeal shall not be filed if the amount involved is less than the monetary limit fixed by the Revenue authorities for the said purpose. CBEC has issued the instructions fixing the monetary limits of duty below which an appeal shall not be filed in CESTAT, High Court and Supreme Court. Consequently, an appeal cannot be filed in Tribunal if the duty involved in a case is ₹ 5,00,000 or below and these monetary limits apply to cases of refund as well. Since the amount of duty involved in the instant case is less than ₹ 5,00,000, the Revenue cannot file an appeal in the Tribunal.

Question 5

Discuss with the help of decided case law, if any, can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944.

Answer

No, re-appreciation of evidence by CESTAT cannot be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944.

Supreme Court, in case of *CCE v. RDC Concrete (India) Pvt. Ltd.* 2011 (270) E.L.T. 625 (S.C.) observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

The Apex Court elucidated that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. It is a well settled law that a mistake apparent on record must be an obvious and patent mistake and the mistake should not be such which can be established by a long drawn process of reasoning.

The Apex Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the Court opined that CESTAT exceeded its powers under section 35C(2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.

Exercise

1. *Who can sign the grounds of appeal and the form of verification as contained in Form E.A.-1?*
2. *Briefly explain the provisions relating to revision application.*
3. *What are the matters on which appeal does not lie with CESTAT? Where does redressal lie in such cases?*
4. *What are the orders that are appealable to the Supreme Court?*
5. *Write a note on production of additional evidence before Commissioner (Appeals).*
7. *When can the power of revision under section 35EE be exercised, by the Central Government?*