

# APPEALS

## APPELLATE HEIRARCHY

| The Income-tax Act, 1961                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Indirect Tax Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <p><b>Appealable Order</b></p> <p>First Appeal – Sec 246A</p> <p>↓ within <b>30 days</b> of order<br/>condonation – without time limit</p> <p><b>Commissioner (Appeals)</b></p> <p>Second Appeal – Sec 253</p> <p>↓ within <b>60 days</b> of order<br/>condonation – without time limit</p> <p><b>Income-Tax Appellate Tribunal [ITAT]</b></p> <p>Third Appeal – Sec 260A</p> <p>↓ within <b>120 days</b> of order</p> <p><b>High Court</b></p> <p>Final Appeal – Sec 261</p> <p>↓ within <b>90 days</b> of order</p> <p><b>Supreme Court</b></p> | <p><b>Appealable Order</b></p> <p><u>First Appeal</u></p> <p>CEA, 1944 - Sec 35<br/>CuA, 1962 - Sec 128<br/>FnA, 1994 - Sec 85</p> <p>↓ within <b>60 days (2 months in S.T.)</b><br/>of order<br/>condonation – 30 days (1 month)</p> <p><b>Commissioner (Appeals)</b></p> <p><u>First/Second Appeal</u></p> <p>CEA, 1944 - Sec 35B<br/>CuA, 1962 - Sec 129A<br/>FnA, 1994 - Sec 86</p> <p>↓ within <b>3 months</b> of order<br/>(<b>4 months</b> in case of S.T. appeal<br/>filed by department.)<br/>condonation – without time limit</p> <p><b>Customs, Excise and Service Tax Appellate Tribunal [CESTAT]</b></p> <p><u>Appeal to High Court</u></p> <p>CEA, 1944 - Sec 35G<br/>CuA, 1962 - Sec 130<br/>FnA, 1994 - Sec 83<sup>#</sup></p> <p>↓ within <b>180 days</b> of order<br/>condonation – without time limit</p> <p><b>High Court</b></p> <p><u>Appeal to Supreme Court</u></p> <p>CEA, 1944 - Sec 35L<br/>CuA, 1962 - Sec 130E<br/>FnA, 1994 - Sec 83<sup>#</sup></p> <p>↓ time limit as per Code of Civil<br/>Procedure, 1908</p> <p><b>Supreme Court</b></p> |
| #Sec 83 FnA94 makes certain provisions of the CEA44 applicable to the service tax proceedings.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## APPEAL TO COMMISSIONER(APPEALS)

### The Income-tax Act, 1961 [Sec 246A to 251]

- Appeal can be filed only by Assessee and not by department.
- Sec 249: Appeal can be filed in Form no. 35(in duplicate), along with Statement of Facts, Grounds for Appeal, Copy of Order sought to be appealed against and filing fees as follows:

| Assessed Income                  | Fees  | Assessed Income      | Fees    |
|----------------------------------|-------|----------------------|---------|
| a) $\leq 1,00,000$               | 250/- | c) $> 2,00,000$      | 1,000/- |
| b) $>1,00,000$ , $\leq 2,00,000$ | 500/- | d) Not w.r.t. income | 250/-   |

- Sec 249(4): Pre-conditions for filing appeal:
  - Where ROI is filed, the assessee has paid the tax due on the amount of income returned by him.
  - Where no ROI filed, then assessee should have paid the tax, which is equal to the amount of advance tax payable by him. (however, on an application made by assessee, CIT(A) may exempt the assessee from such payment)
- Sec 250: Procedure in appeal and time limit:
  - The CIT(A) shall give due notice of hearing and opportunity of being heard (to the appellant and the AO) before passing an order.
  - The CIT(A) shall have the power to adjourn the hearing of the appeal from time to time.
  - The CIT(A) may before disposing of any appeal, make such further enquiry as he thinks fit, or may direct the AO to make further enquiry and report the result of the same to him.
  - The disposal shall be in writing and shall state the points of determination and reasons for the decision.
  - The CIT(A), where it is possible, may hear and dispose the appeal within one year from the end of the financial year in which appeal is filed before him.
  - On disposal, the CIT(A) shall communicate order passed by him to the assessee and to the PCCom/CCom/PCom/Com.

### Indirect Tax Laws [Sec 35 & 35A of CEA44, Sec 128 & 128A of CuA62 and Sec 85 of FnA94]

- Appeal can be filed only by Assessee and not by department.
- Sec 35 CEA44/128 CuA62/85 FnA94: Every appeal shall be in the prescribed form and shall be verified in prescribed manner.
- Sec 35F CEA44/129E CuA62: Pre-deposit as a pre-condition for filing appeal.
- Sec 35A CEA44/128A CuA62/85 FnA94: Procedure in appeal and time limit:
  - The Com(A) shall give an opportunity of being heard to the appellant, if the appellant so desires.
  - The Com(A) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.
    - However, no adjournment shall be granted more than three times to a party during hearing of the appeal.
  - The Com(A) shall, after making such further inquiry as may be necessary, pass his order.
  - The disposal shall be in writing and shall state the points of determination, the decision thereon and reasons for the decision.
  - The Com(A) 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 disposal, the Com(A) shall communicate order passed by him to the appellant, the adjudicating authority and to the PCCom/CCom/PCom/Com.

### APPEAL TO APPELLATE TRIBUNAL

#### The Income-tax Act, 1961 [Sec 252 to 255]

- Can be filed either by the assessee or by the department.
- Sec 253: Appeal can be filed in Form no. 36(in triplicate), along with Statement of Facts, Grounds for Appeal, Copy of Order sought to be appealed against and filing fees as follows:

| Application where                                      | Fees                                 |
|--------------------------------------------------------|--------------------------------------|
| a) Assessed income $\leq$ 1,00,000                     | 500/-                                |
| b) 1,00,000 < Assessed income $\leq$ 2,00,000          | 1,500/-                              |
| c) Assessed income > 2,00,000                          | 1% of Assessed Income (max 10,000/-) |
| d) Not w.r.t. income                                   | 500/-                                |
| e) For stay of recovery proceedings                    | 500/-                                |
| f) For rectification of mistakes apparent from records | 50/-                                 |
| g) Filing of Memorandum of Cross Objections            | NIL                                  |

- Memorandum of Cross Objection is to be filed, by the party which was otherwise not going to appeal at ITAT, within a period of 30 days from the receipt of notice of hearing.
- Sec 254: Orders of ITAT:
  - The ITAT may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
  - The ITAT may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendment if the mistake is brought to its notice by the assessee or the AO
    - An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made unless the ITAT has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard
  - In every appeal, the ITAT, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed.
    - the ITAT may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed, for a period not exceeding one hundred and eighty days from the date of such order and the ITAT shall dispose of the appeal within the said period of stay specified in that order
    - where such appeal is not so disposed of within the said period of stay, the ITAT may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit;
    - the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the ITAT shall dispose of the appeal within the period or periods of stay so extended or allowed:
    - if such appeal is not so disposed of within the above mentioned period, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.
  - The ITAT shall send a copy of any orders passed under this section to the assessee and to the PCom/Com.
- The ITAT shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131.

**Indirect Tax Laws [Sec 35B to 35D of CEA44, Sec 129A to 129C of CuA62 and Sec 86 of FnA94]**

- Appeal can be filed either by the assessee or by the department.
- An appeal against an order or decision passed by the PCom/Com as an adjudicating authority must be made directly to the CESTAT as first appeal without appealing to Com(A).
- Sec 35B CEA44/129A CuA62/86 FnA94: Appeal can be filed in following form(in quadruplicate):

| Case                          | Form No.       |         |             |
|-------------------------------|----------------|---------|-------------|
|                               | Central Excise | Customs | Service Tax |
| Appeal by the assessee        | E.A.-3         | C.A.-3  | S.T.-5      |
| Memorandum of Cross Objection | E.A.-4         | C.A.-4  | S.T.-6      |
| Appeal by the department      | E.A.-5         | C.A.-5  | S.T.-7      |

- along with filing fees as follows:

| Application where                                         | Fees     |
|-----------------------------------------------------------|----------|
| a) Duty, Interest & Penalty $\leq$ 5,00,000               | 1,000/-  |
| b) $5,00,000 <$ Duty, Interest & Penalty $\leq$ 50,00,000 | 5,000/-  |
| c) Duty, Interest & Penalty $>$ 50,00,000                 | 10,000/- |
| d) For rectification of mistakes apparent from records    | 500/-    |
| e) Filing of Memorandum of Cross Objections               | NIL      |

- No fee shall be payable in case an appeal is filed by the department or in the case of a rectification application filed by or on behalf of the CCEX.
- Memorandum of Cross Objection is to be filed by the party which was otherwise not going to appeal at CESTAT within a period of 45 days from the receipt of notice of hearing.
- Sec 35C CEA44/129B CuA62: Orders of CESTAT:
  - The CESTAT may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
  - The CESTAT may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.
    - However, no such adjournment shall be granted more than three times to a party during hearing of the appeal.

- The CESTAT may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendments if the mistake is brought to its notice by the CCEx or the other party to the appeal:
  - An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-Section, unless the CESTAT has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.
- The CESTAT shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed.
- The CESTAT shall send a copy of every order passed, to the CCEx and the other party to the appeal.

**Sec 35F CEA44/129E CuA62:** The CESTAT or the Com(A), as the case may be, shall not entertain any appeal unless the following conditions regarding pre deposits are satisfied:

| Appeal                                     | Condition to be satisfied by the appellant                                                                                   |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| to Com(A)                                  | deposit - 7.5% of the duty where duty or duty and penalty are in dispute, or<br>7.5% of the penalty where penalty is dispute |
| to CESTAT against decision of the PCom/Com | deposit - 7.5% of the duty where duty or duty and penalty are in dispute, or<br>7.5% of the penalty where penalty is dispute |
| to CESTAT against decision of the Com(A)   | deposit - 10% of the duty where duty or duty and penalty are in dispute, or<br>10% of the penalty where penalty is dispute   |

- The amount required to be deposited under this section shall not exceed Rs 10 Crores.
- Where an amount deposited by the appellant as above, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate of 6% p.a., after the expiry of three months, from the date of payment of such amount, till the date of refund of such amount. [Sec 35FF CEA44/129EE CuA62]

## THE POWERS OF THE COMMISSIONER(APPEALS) AND THE APPELLATE TRIBUNAL

| Sl. No. | Power                                                                   | Commissioner(Appeals) |                  |                  |                  | Appellate Tribunal |                  |                  |                  |
|---------|-------------------------------------------------------------------------|-----------------------|------------------|------------------|------------------|--------------------|------------------|------------------|------------------|
|         |                                                                         | ITA61                 | CEA44            | FnA94            | CuA62            | ITA61              | CEA44            | FnA94            | CuA62            |
| 1.      | Enhance/Reduce/Confirm/Annul the assessment <sup>#1</sup>               | ✓                     | ✓                | ✓                | ✓                | ✓                  | ✓                | ✓                | ✓                |
| 2.      | Refer the assessment back (remand)                                      | ✗                     | ✗                | ✓ <sup>#2</sup>  | ✗                | ✓                  | ✓                | ✓                | ✓                |
| 3.      | Rectify mistakes in its own order apparent from records                 | ✓ <sup>#3a</sup>      | -                | ✓ <sup>#3b</sup> | -                | ✓ <sup>#3c</sup>   | ✓ <sup>#3d</sup> | ✓ <sup>#3d</sup> | ✓ <sup>#3d</sup> |
| 4.      | Review its own order <sup>#4</sup>                                      | ✗                     | ✗                | ✗                | ✗                | ✗                  | ✗                | ✗                | ✗                |
| 5.      | Admit additional grounds of appeal <sup>#5</sup>                        | ✓                     | ✓                | ✓                | ✓                | ✓                  | ✓                | ✓                | ✓                |
| 6.      | Decide any matter not considered in the grounds of appeal <sup>#6</sup> | ✓                     | ✓                | ✓                | ✓                | ✓                  | ✓                | ✓                | ✓                |
| 7.      | Admit additional evidence                                               | ✓ <sup>#7a</sup>      | ✓ <sup>#7b</sup> | ✓ <sup>#7b</sup> | ✓ <sup>#7b</sup> | ✓ <sup>#7c</sup>   | ✓ <sup>#7d</sup> | ✓ <sup>#7d</sup> | ✓ <sup>#7d</sup> |
| 8.      | Grant stay of recovery proceedings <sup>#8</sup>                        | ✗                     | ✗                | ✗                | ✗                | ✓                  | ✗                | ✗                | ✗                |
| 9.      | Reject the appeal                                                       | -                     | -                | -                | -                | -                  | ✓ <sup>#9a</sup> | ✓ <sup>#9a</sup> | ✓ <sup>#9a</sup> |

**#1:** An order enhancing an assessment or 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.

**#2:** Section 85(4) of FnA94 and 35A of CEA44 are differently worded. While Sec 35A specifically mentions types of orders which can be passed by Com(A) i.e. The Com(A) shall pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against, whereas under sec 85(4), the FnA94 states that the Com(A) can pass such orders “as he thinks fit”. Hence, it can be concluded that the Com(A) under sec 85(4) is empowered to remand matters on service tax to original adjudicating authority. [CST v. World Vision [2011] 24 STR 650 (Del.)]

**#3a:** The CIT(A) under sec 154 ITA61 **may** rectify its own order on its own motion or **shall** rectify its own order where the mistake is brought to its notice by the assessee or the AO, within a period of 4 years from the end of the financial year in which the order sought to be rectified was passed.

**#3b:** The Central Excise Officer under sec 74 FnA94 **may** rectify his own order on his own motion or **shall** rectify his own order where the mistake is brought to his notice by the assessee or the CCEx or Com(A), within two years of the date on which such order was passed

**#3c:** The ITAT **may**, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and **shall** make such amendment if the mistake is brought to its notice by the assessee or the AO

- An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the ITAT has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

**#3d:** The CESTAT **may**, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it and **shall** make such amendments if the mistake is brought to its notice by the CCEx, CCus or the other party to the appeal

- An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-Section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

**#4:** The power to review its own order is not given under relevant tax laws to the appellate authorities. However, under sec 35E CEA44, 129D CuA62 and 85 & 86 FnA94, the term 'review' is used in a sense where an higher authority directs the subordinate authority to refer the order passed by the subordinate authority to an appellate authority and therefrom the proceeding is carried on as if it were an appeal.

**#5:** The Com(A) may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Com(A) is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

While sec 250(1) specifically enables an appellant to raise before the CIT(A) a ground not specified in the grounds of appeal, but the provisions of sec 253 or 254 do not specifically provide for raising of additional ground or plea by the appellant before the ITAT. However, Rule 11 of the Appellate Tribunal Rules, 1962 implicitly provides for raising up of additional ground or plea before the Tribunal.

**#6:** The Appellate authority may decide on matters not originally considered in the grounds of appeal.



**#7a:** Rule 46A of Income Tax Rules, 1962: The appellant shall not be entitled to produce before the Com(A), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the AO, except in the following circumstances, namely:—

- (i) where the AO has refused to admit evidence which ought to have been admitted; or
- (ii) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO; or
- (iii) where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal; or
- (iv) where the AO has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

No evidence shall be admitted unless the Com(A) records in writing the reasons for its admission.

The Com(A) shall not take into account any evidence produced unless the AO has been allowed a reasonable opportunity—

- to examine the evidence or document or to cross-examine the witness produced by the appellant, or
- to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

**#7b:** Rule 5 of Central Excise (Appeals) Rules, 2001: The appellant shall not be entitled to produce before the Com(A) 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 :-

- (i) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or
- (ii) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority; or
- (iii) 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
- (iv) 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 evidence shall be admitted unless the Com(A) records in writing the reasons for its admission.

The Com(A) shall not take any evidence produced unless the adjudicating authority or an officer authorised 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 evidence produced by the appellant under sub-Rule (1).

**#7c:** The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the ITAT, but

- a) if the ITAT requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or ,
- b) if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them,

the ITAT, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

**#7d:** Rule 23 of the CESTAT Procedure Rules, 1982: the parties to the appeal shall not be entitled to produce any additional evidence either oral or documentary before the Tribunal, but the Tribunal may or reasons to be recorded allow such documents to be produced or witnesses to be examined or affidavits to be filed or such evidence to be adduced. The Tribunal may however require production of any documents or examination of any witness or filing of any affidavits if it is of the opinion that it is necessary to enable it to pass orders or for any sufficient cause.

**#8:** The power to grant stay is accorded only to the Appellate Tribunals. Also, w.e.f. 06-08-2014 the power of the CESTAT to grant stay has been done away with and consequently the CESTAT can no longer exercise such power.

**#9a:** The CESTAT may, in its discretion, refuse to admit an appeal in respect of an order of the Com(A) where -

- (i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
  - (ii) in any disputed case, other than a case where 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 is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
  - (iii) the amount of fine or penalty determined by such order,
- does not exceed two lakh rupees.

### **APPEAL TO THE HIGH COURT**

- Appeal can be filed by both the assessee as well as the department.

#### **The Income-tax Act, 1961 [Sec 260A & 260B]**

- Only an order which involves a substantial question of law can be appealed against at the HC.
- Appeal filing fees & form will be governed by the Code of Civil Procedure, 1908.
- HC does not have the power to review its order.

#### **Indirect Tax Laws [Sec 35G of CEA44, Sec 130 of CuA62 and Sec 83 of FnA94]**

- Only an order which involves a substantial question of law and an order other than that 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 can be appealed against at the HC.
- Appeal procedures, so far as not provided in the Act, will be governed by the Code of Civil Procedure, 1908.

### **APPEAL TO THE SUPREME COURT**

- HC must certify it as fit case to for appeal to the SC.
- Appeal can be filed by both the assessee as well as the department.

#### **The Income-tax Act, 1961 [Sec 261 & 262]**

- Appeal filing fees & form will be governed by the Code of Civil Procedure, 1908.
- SC has the power to review its order.

#### **Indirect Tax Laws [Sec 35L of CEA44, Sec 130E of CuA62 and Sec 83 of FnA94]**

- An order of the CESTAT 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 can be appealed against at the SC.
- Appeal procedures, so far as not provided in the Act, will be governed by the Code of Civil Procedure, 1908.

## **CASES WHERE NO APPEAL SHALL LIE TO THE APPELLATE AUTHORITIES**

### **The Income-tax Act, 1961**

There is no right of appeal against the following orders:

- (i) An order levying interest under sec 234A/234B/234C,
- (ii) A revisional order passed by CIT under sec 264,
- (iii) An order of CIT under sec 264 rejecting the revision petition of the assessee,
- (iv) An order of Income Tax Settlement Commission(ITSC),
- (v) An order of Authority for Advance Ruling(AAR),
- (vi) An order of ITAT on a question of fact,
- (vii) An order of CIT under sec 273A(1) or 273A(4) [power to reduce or waive off penalty].

### **Indirect Tax Laws**

**Sec 35B CEA44:** No appeal shall lie to the CESTAT and the CESTAT shall not have jurisdiction to decide any appeal in respect of any order passed by the Com(A), if such order relates to, -

- (a) a case of loss of goods during transit or during their processing in a warehouse or in storage in a factory or a warehouse;
- (b) a rebate of duty of excise on export goods or on excisable materials used in the manufacture of export goods;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) CENVAT credit which is utilised for payment of excise duty on final products(date yet to be notified).

**Sec 129A CuA62:** no appeal shall lie to the CESTAT and the CESTAT shall not have jurisdiction to decide any appeal in respect of any order passed by the Com(A) under sec 128A, if such order relates to, -

- (a) any goods imported or exported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- (c) payment of drawback as provided in Chapter X, and the rules made thereunder.

## **REVISION**

**Revision:** reconsidering an issue/order by an authority which was already considered by an authority subordinate to it.

**Review:** reconsidering an issue/order by an authority, which was passed by itself. However, under sec 35E CEA44, 129D CuA62 and 85 & 86 FnA94, the term 'review' is used in a sense where an higher authority directs the subordinate authority to refer the order passed by the subordinate authority to an appellate authority and therefrom the proceeding is carried on as if it were an appeal.

### **Revision under The Income-tax Act, 1961**

- Under the Income Tax Act, the authority to revise is given only to the PCom/Com.
- There are two types of revision under ITA61, governed by sec 263 and 264 respectively as follows:
  - Sec 263: Revision of orders prejudicial to the interests of the revenue.
  - Sec 264: Revision of orders other than those under sec 263.

#### **Sec 263:** Revision of orders prejudicial to the interests of the revenue

- Under this section, the PCom/Com can call for and examine the records of any proceeding in which an order has been passed by an AO, which is erroneous and sue to such errors, the order is prejudicial to the interests of the revenue.
- The PCom/Com can pass any revisional order, as he deems fit, either enhancing or modifying the assessment or cancelling the original assessment and directing a fresh assessment.
- An opportunity of being heard must be given to the assessee, before passing any such revisional order.
- Such order must be passed within 2 years from the end of the relevant financial year in which the original order of AO, which is sought to be revised, was passed. However, the time lost in any of the following shall be excluded:
  - Time lost due to stay order of any Court,
  - Time lost in giving an opportunity of being re-heard to the assessee under sec 129.
- Every order thus passed under this section is appealable against at the ITAT.
- Where an order sought to be revised under this sec had been a subject matter of an appeal, then the PCom/Com can revise such order only to the extent to which such order had not been so considered and decided in such appeal.

**Sec 264:** Revision of orders other than those under sec 263

- The PCom/Com may either on his own motion or on an application made by assessee, call for and examine the records of any proceeding in which an order other than order referred to in sec 263, has been passed by any subordinate authority and the PCom/COM may pass such a revisional order under this section as he deems fit.
- Where the PCom/Com revises an order on his own motion, the revisional order shall be passed within a period of one year from the date of passing of the order by AO, which is sought to be revised. However, where the assessee applies for revision, the assessee must apply within a period of one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier. Delay may be condoned by the PCom/Com. For this purpose, the time lost in any of the following shall be excluded:
  - Time lost due to stay order of any Court,
  - Time lost in giving an opportunity of being re-heard to the assessee under sec 129.
- Every application for revision by the assessee shall be accompanied with a filing fee of Rs 500/-.
- An order shall be passed by the PCom/Com within one year from the end of the financial year in which such application is made by the assessee for revision.
- Order prejudicial to the interest of the assessee cannot be passed under this section. However, order declining/refusing to interfere will not be considered as an order prejudicial to the interest of the assessee.
- Assessee can apply for revision under this section, only if:
  - The time limit of 30 days to appeal to the CIT(A) against the original order of the AO has already expired, without an appeal having been preferred, or
  - If the time limit as such has not expired but the assessee specifically waives off his right of appeal in writing.
- The PCom/Com shall not revise any portion of an order if there is an appeal pending before the appellate authority, though the appeal may relate to the other portion of the order.

**Revision under Indirect Tax Laws**

**Sec 35E CEA44/129D CuA62:** The review authority (the PCom/Com or the Committee of PCom/CCom, as the case may be) may, of its own motion, call for and examine the record of any proceeding in which an adjudicating authority (an authority lower in rank to PCom/Com or the PCom/Com, as the case may be) has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such adjudicating authority or any subordinate Central Excise Officer to apply to the CESTAT for the determination of such points arising out of the decision or order as may be specified by the review authority in its order.

| Review Authority       | Order which can be reviewed                                | Time-limit to pass review order                                                                                                         | Review Order                                                                                                                                                                   |
|------------------------|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PCom/Com               | Order passed by an authority lower in rank to the PCom/Com | 3 months from the date of communication of the decision or order of the adjudicating authority.                                         | To file appeal to Com(A) within one month of review order.                                                                                                                     |
| Committee of PCom/CCom | Order passed by the PCom/Com                               | 3 months from the date of communication of the decision or order of the adjudicating authority. (Not applicable in case of service tax) | To file appeal to the CESTAT within one month of review order. (In case of service tax, four months from date of receipt of the order of adjudication by the review authority) |

Where in pursuance of an order as above, the adjudicating authority or the authorised officer makes an application to the appellate authority within the above mentioned period, such application shall be heard by the CESTAT or the Com(A), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions regarding the filing of memorandum of cross objections shall, so far as may be, apply to such application.

**Sec 35EE CEA44/129DD CuA62:** The CG may, on the application of any person aggrieved by any order of Com(A) passed under sec 35A CEA44/129A CuA62, where no second appeal lies to the CESTAT, annul or modify such order.

The revision may also be made by CG of its own motion.

| Revisionary Authority | Order which can be reviewed                       | Time-limit to pass review order                      | Review Order                                |
|-----------------------|---------------------------------------------------|------------------------------------------------------|---------------------------------------------|
| The CG                | Matters where no second appeal lies to the CESTAT | 3 months (condonation of delay for further 3 months) | The CG can pass such order as it thinks fit |