Appeals

CEO order → within 60D + 30D, Sec 35 → CCE (Appeals)

(Principal CCE order can't be go to CCE (appeal) due to same position)

CCE (Appeals)
- can confirm, cancel OR modify order of AA
- can't Remand back
- If duty is short levy e.t.c then he can't pass order unless AA not issue SCN within time limit of 11A → 1y/5y

Procedure, Sec 35 A:
- → Additional ground can considered If satisfied that not willful
- → Applicant can produce additional evidence in 4 cases:-
  - AA refuse to take evidence
  - AA has not give sufficient opport. to produce evidence
  - Applicant has suff cause to not produce evidence ~~which~~ which are necessary
  - Applicant has suff cause to not produce evidence which is demanded by AA
- → After getting additional evidence CCE (appeal) give resonable oppor. to AA to:-
  - examine/cross examine the Add evidence
  - produce any evidence against such Add. Evidence
- → Allowed Max 3 adjournment

where possible within 6M → **ORDER**

Give copy to:
- applicant
- AA
- Prin CCE/CCE
- Prin cheif CCE/cheif CCE

Principal CCE/CCE ORDER as AA:
- 3M + 30D for Review, 1M + Any time for appeal, By Deptt
- 3M + Any time, By Assessee

CCE (appeal) order **:
- 3M + Any time, By Assessee
- 3M + Any time, By Deptt.

For:
- Rec. of Mistake e.t.c
- Restoration of Appeal
- Duty Payment
- Refund

with:
- fees of Rs. 500/-
- upto 5L → 1000/-
- 5L – 50L → 5000/-
- > 50L → 10000/-

without fees

→ **CESTAT**
- Can confirm, cancel, OR Modify previous ORDER
- Can also refer back
- Allowed Max 3 Adjournment
- Cestat have a bench of generally two member
  - 1 Judicial Member
  - 1 Technical Member
- Can also be with single member If
  - ED (other than determination of rate or value) ≤ 50,00,000
  - Penalty ≤ 50,00,000
- Majority same as Sec 32 D in Set com.

May Reject If:
- Penalty order ≤ 2,00,000
- Duty order ≤ 2,00,000 but only If not of the case of determination of Rate or value

Accept → Send a notice → To other party (called respondent) → within 45D + Any time, May file a memo of cross objection (Treated as file appeal) No fees

within 3 yrs If possible → **ORDER**

Copy to:
- Principal CCE
- other party

Final → for ques. of Fact

Appealable → for other ques.

**

Order of CCE (appeal) can't taken to CESTAT but can be file revise petition by CG in 4 cases:-
- Loss of goods
  - In transit from f/c to w/H, or f/c to f/c & vice versa
  - In processing
  - In storage
- Repate of duty
- Export goods without paid duty
- Cenvat credit (From the date notified by CG but currently no date notified So cenvat credit can be f/f to CESTAT)

Note:- Cestat will return the file to applicant not f/f to CG. However applicant can go for it. – Laxmi power tech Sales (P) Ltd – 2013 – Gujrat H C

Mistake Apprent to Record → Can be Rectified by CESTAT → within 6M only
- By suo-moto
- By application of
  - Principal CCE
  - Applicant

Principal CCE / CCE — within 3M + 30d

Call for and examine the records to satisfy for the legality/propriety of any order given by AA

after determining points arising out of order given by AA, direct by an order to apply for CCE (appeal)

CEO (lower than princ CCE/CCE)

within 1M + 30 D

CCE (Appeal)

(All provisions of appeal shall apply as such)

Cestat order — within 180 days + Anytime with fee of ₹ 200/- → HC

HC
- At least 2 Judges
- Majority applied
- Save as otherwise provided in Act all prov. of CPC applied.

Formulate question of law Itself

Appeal shall be heard only on this formulated question of law

(But it can be argued by respondent that this is not the case which is involved such question.)

Judgement

In this HC can determine cases:-
- not determined by Tribunal
- wrongly ,, by tribunal by reasons of decision of sub question of law.

Conditions :-

1) If HC is satisfied that case involve only substantial question of law.

2) order not related to determine any question of rate/value (because this is directly appealable to SC. If one part of appeal represent this then whole case will t/f to SC)

HC Judgement

Cestat order **

within 60 D

cost of appeal shall be at discreation of SC

S C

- Same as otherwise provided in Act all prov. of CPC applied.

Judgement

**

Cestat order relates to determination of question ~~of~~ having relation to rate or value, question relating to Rate Include determination of Taxability or Exisability

CCE (Appeals)
4 cases only

3M + 3M

aggrived person may apply (deptt through proper officer)

upto 1 lakh fees = 200/-

More than 1 lakh fees = 1000/-

Central govt.
- Cancel or modify such order
- CG can suo moto cancel or modify such order even after the prescribed time limit.

May Reject

If amount of duty/penalty/fine is less than or equal to ₹ 5000/-

Accept

ORDER
which is final & non appelable

writ can't file by depth.

computation of 3M+3M

Appeal wrongly file to tribunal then to CG, time consumed under wrong appeal shall be excluded.

35-R

(1) CBEC may from time to time fix monetary limits for the purpose of regulating the filing of appeal, application, revision, or Reference.

(2) In pursuance of sub sec (1) the CEO has not filed an appeal, application, revision or reference. It shall not preclude such CEO for any other case. Means CEO is free to go appeal in another case with similar points if other provisions satisfied.

(3) If appeal, application, revision or reference not filed by CEO, then assessee can't argue that judgement which can't be challanged now.

(4) If any assessee refer a case, then A A shall first consider reason of non-filing of case
- If appeal is not filed on ground of monetry limit – deptt. not bound
- " " " " " other ground – deptt. is bound.

Limit currently prescribed

CESTAT	– 5,00,000
HC	– 10,00,000
SC	– 25,00,000

Note:

1) Limit applicable on disputed part means If duty disputed then limit of amt. will consider only duty part and not Interest/penalty thereon. But where penalty is disputable than considerable.

2) Limit also applicable for refund cases.

3) Redemption fine & penalty is to be consider together.

4) Only limits for CESTAT, HC, SC, CEO is free to appeal at any other place irrespective of amount.

5) Limit of SC i.e 25 Lakhs shall also be applicable to special leave petition filed before SC (CBEC Instruction dated 15 May 2015)

35-F

Appellant has to deposit such % as given below to appeal. If not deposit then Tribunal or CCE (appeal) shall not entertain any appeal:-

U/S 35 (1) i.e Appeal to CCE (appeal)	7.5% of - duty, where duty or duty & penalty in dispute - penalty, where penalty in dispute	In pursuance of CEO order
U/S 35-B (1) (a) (i.e) principal CCE/CCE adjudication order challanged by Tribunal	7.5% of — do —	In pursuance of order appealed against
U/S 35-B (1) (b) i.e. CCE (appeal) order challanged by Tribunal	~~7.5%~~ 10% of — do —	— do —

Provided that amount required to be deposited shall not Exceed ₹10 crore.

Provided further that,

Appeals pending by FA 2014, shall be governed by old Sec 35-F

Note :-

(Refer clarificatory example on Pg 127 of other chapter book if in confusion)

1) If penalty in dispute under several provision, then pre deposit amount will be calculated on the aggregate of all penalties

2) Payment in course of Investigation / Audit shall be treated as pre-deposit
   - If amt. shortfall then deposit
   - If ,, exceed the required amt. u/s 35 F then that part is not treated as deposit.

3) E-payment allowed, wherever possible

4) Proof of pre-deposit shall be submitted to Appellate Authority.

5) In case of duty disputed pre-deposit can be allowed through cenvat credit
   But not in case of penalty disputed.

6) Pre-deposit not applicable in case of order challanged in revision, i.e u/s 35EE

7) Pre-deposit is applicable in case of Drawback also

35-FF

If assessee wins he can claim refund of pre-deposit with Interest @ 6%. from the date of payment of such amt. till date of refund.

This rate may be from 5% to 36%. Presently 6% prescribed.

Provided that :

Pre-deposit made prior F.A 2014

Int on those shall be governed by old sec 35-FF

Notes :-

1) Apply for refund on plain paper (need not to follow process of Sec - 11B)

2) Refund with Int should be paid within 15 days of the receipt of letter of the appellant seeking refund. (even ORDER is challanged by deptt.)

3) For Refund write application to AC/DC with xerox of order and xerox of evidence of payment of pre-deposit.

4) Unjust enrichment do not apply.

5) In remand back cases also leads to refund of pre-deposit with Int.

6) If deptt. applies for stay order and stay is granted, then refund shall be withheld.