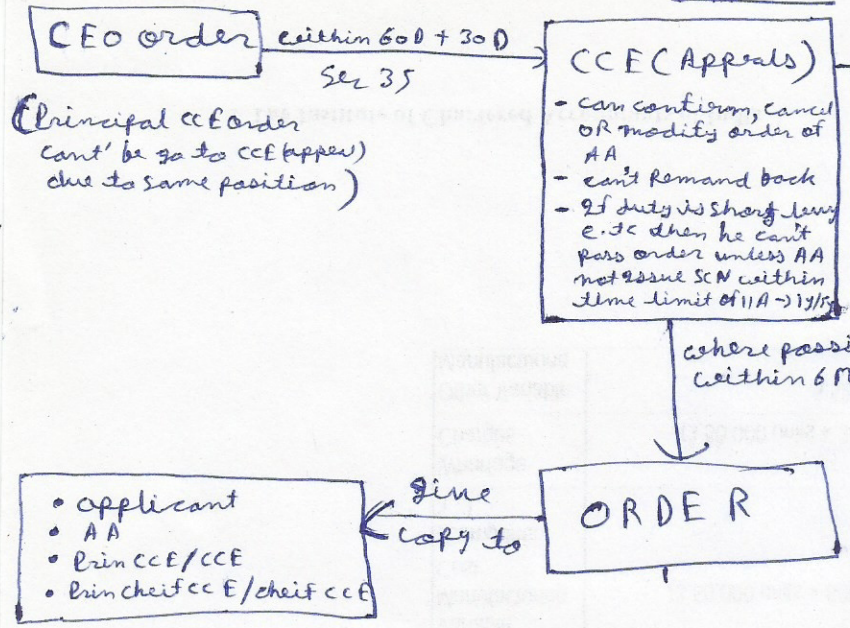


Appeals



Additional ground can be considered if satisfied that not useful

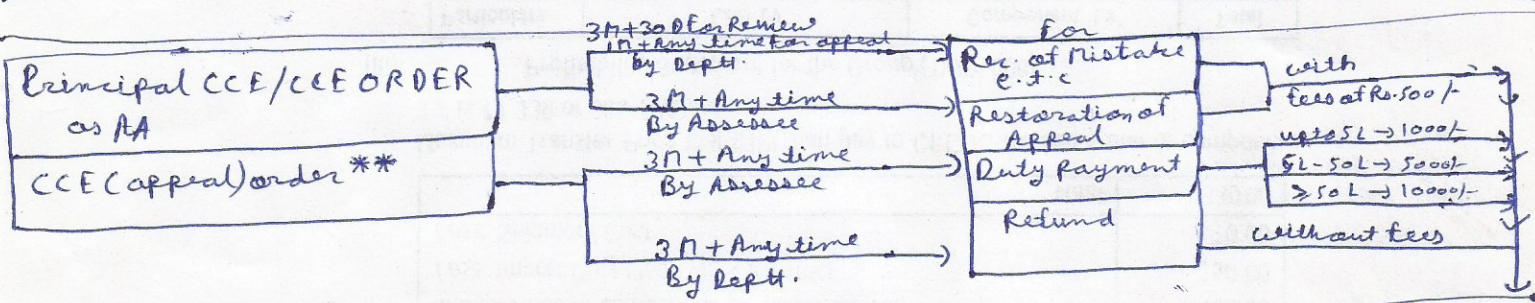
→ Applicant can produce additional evidence in 4 cases:-

- AA refuse to take evidence
- AA has not give sufficient oppor. to produce evidence
- Applicant has suff. cause to not produce evidence ~~where~~ which are necessary
- Applicant has suff. cause to not produce evidence which is demanded by AA

→ After getting additional evidence CCE (appeal) give reasonable oppor. to AA to:-

- examine/cross examine the add. evidence
- produce any evidence against such add. evidence

→ Allowed Max 3 adjournment



Penalty order ≤ 2,00,000

Duty order ≤ 2,00,000 but only if not at the case of determination of Rate or value

May Reject if

Accept

Send a notice

Order of CCE (appeal) can't taken to CESTAT but can be file revision 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
- Cannot credit

From the date notified by CG but currently no date notified so cannot credit can be if to CESTAT

To other party within 45D + Any time

(Called respondent)

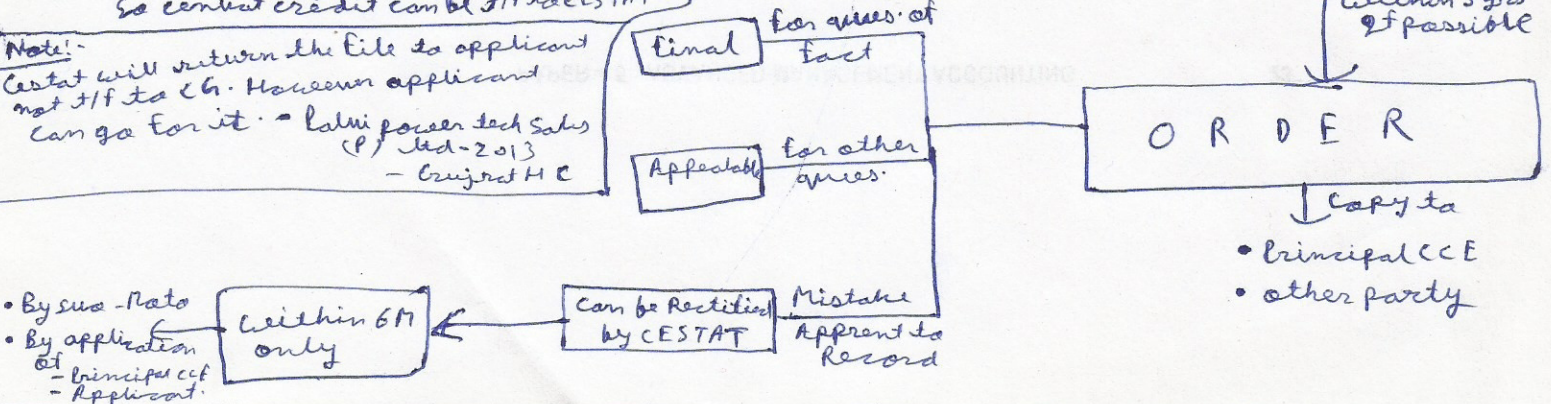
File a notice of cross objection (treated as file appeal) No fees.

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 320 in Set Com.

Note:-

Cestat will return the file to applicant not if to CG. However applicant can go for it. - Balu power tech Sahas (P) Ltd - 2013 - Gujrat HC



Principal CCE / CCE within 3M + 30d

Call for and examine the records to satisfy for the legality/propriety of any orders 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 prin CCE / CCE)

within 1M + 30D

CCE (Appeal)

All provisions of appeal shall apply as such)

Cestat order

within 180 days + Anytime
with fee of ₹ 200/-

HC

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

Conditions:-

- 1) If HC is satisfied that case involve only substantial question of law.
- 2) Order not related to determine any question of ratio / value (because this is directly appealable to SC. If one part of appeal represent this then whole case will t/f to SC)

Formulate question of law itself

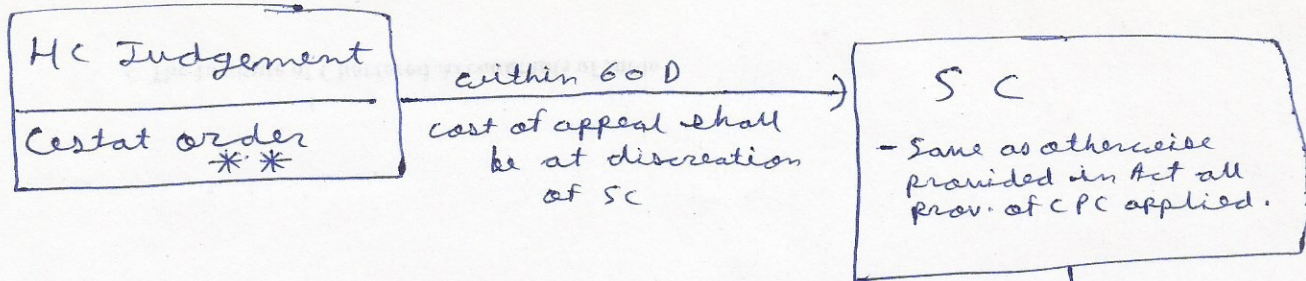
Appeal shall be heard only on this formulated question of law

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

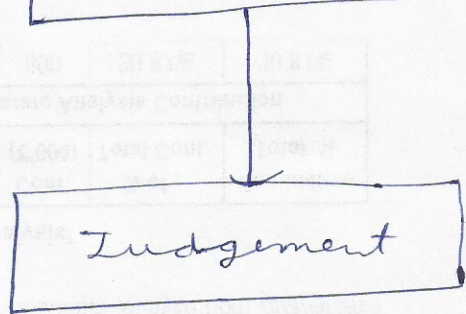
In this HC can determine cases:-

- not determined by Tribunal
- wrongly, by Tribunal by reasons of decision of sub question of law.

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
aggrieved person may apply
(depth through proper action)

upto 1 lakh fees = 200/-
More than 1 lakh fees = 1000/-

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

May
Reject

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

Accept

ORDER
which is final &
non appealable

writ can't file
by deptt.

computation of 3M+3M
Appeal wrongly file to
tribunal then to CG,
time consumed under
wrong appeal shall be
excluded.

- (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 challenged now.
- (4) If any assessee refer a case, then AA shall first consider reason of non-filing of case
 - If appeal is not filed on ground of monetary limit - dept. not bound
 - " " " " " " " " other ground - dept. 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 then considerable.
- 2) Limit also applicable for return 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 challenged by Tribunal	7.5% of — do —	In pursuance of order appealed against
U/S 35-B(1)(b) i.e. CCE (appeal) order challenged by Tribunal	to 10% 10% of — do —	— do —

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

Provided further that,

Appeals pending b4 FA 2014, shall be governed by old Sec 35-F

Note:-

(Refer clarificatory example on Pg 127 of other chapter book 28 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 credit card credit
- 5) In case of duty disputed pre-deposit can be allowed through credit card credit
- 6) But not in case of penalty disputed.
- 6) Pre-deposit not applicable in case of order challenged in revision, ie u/s 35 EE
- 7) Pre-deposit is applicable in case of Drawback also

35-FF

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

Provided that:-

Pre-deposit made prior F.A 2014
Int. on those shall be governed by old Sec 35-FF

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

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 challenged by dept.)
- 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 dept. applies for stay order and stay is granted, then refund shall be withheld.