

Updated as on 30.04.2024

[Training Material for Departmental Use]

E-BOOK

On

Appeals

Before the Commissioner (Appeals)

in

Central Excise / Customs / Service Tax

Appeals before the Commissioner (Appeals)

Note:

1. In this E-book, attempts have been made to explain about *filing of Appeals before the Commissioner (Appeals) in Central Excise, Customs & Service Tax*. It is expected that it will help departmental officers in their day-to-day work.
2. The first edition of this E-book was released in 2015. This is the **updated version as on 30/04/2024**.
3. Although all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACIN, Zonal Campus, Lucknow on the Email addresses: **nacin.kanpur@gov.in**. This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
5. If you feel that this e-book has really helped you in improving your knowledge or understanding of the subject matter, we request you to take few minutes out of your precious time and provide us your valuable feedback. Your feedback is important and will help us in improving our e-books.

NACIN, ZC, Lucknow
Email: nacin.kanpur@gov.in

Appeals before the Commissioner (Appeals)

INDEX

1. Introduction	1
2. Statutory Provisions for Appeals before Commissioner (Appeals).....	3
3. Other Important points	4
4. Applications (Appeals) by the Department before Commissioner (Appeals)	5
5. Procedures at the Stage of Commissioner (Appeals).....	6
6. Other Important Issues.....	7
(A) Service of Copy of Appeal to the Respondent Adjudicating Authority is mandatory.	7
(B) Production of Additional Evidence before Commissioner (Appeals)	7
(C) Remand of Cases by Commissioner (Appeals)- Not allowed.....	8
(D) Mandatory pre-deposit for filing Appeal by the Appellant before the Commissioner (Appeals)	9
(E) Principle of Natural Justice	9
7. Text of Relevant Statutory Provisions/Circulars/Instructions.....	10
7.1 Text of Relevant Sections/Rules of Customs/Central Excise/Service Tax laws	10
7.2 Text of Relevant Circulars	10
7.2.1 Circular No.984/08/2014-CX dated 16.09.2014.....	10
7.2.2 Instructions issued vide F.No.275/34/2006-CX.8A, dated 08.02.2010.....	13
7.2.3 Instruction issued vide F.No. 275/34/2006-CX.8A, dated 25.07.2008	14
7.2.4 Instruction issued vide F.No.390/Misc/116/2017-JC dated 04.04.2018	15
7.2.5 Instruction issued vide F.No.390/Misc/390/2017-JC dated 15.05.2018	17
8. Form and Formats	19
FORM NO. E.A. 1	19
FORM NO. E.A.-2.....	20
FORM NO. C.A.-1.....	21
FORM NO. C.A.-2.....	22
FORM ST-4	23

Appeals before the Commissioner (Appeals)

1. Introduction

- 1.1 Under Central Excise/Customs/Service Tax laws the officers of Customs, **Indirect Taxes & Central Excise** have been empowered to act as a quasi-judicial authority and decide as to whether an infringement or contravention has taken place and whether penal action is called for. The adjudication proceedings are quasi-judicial proceedings, ultimately resulting into issuance of a speaking order, which is appealable to the next higher forum.
- 1.2 In the Indirect Taxation, both assessee and department have been conferred with a right of two or three stage appellate remedies. **Against the orders passed by the officers who are lower than the rank of Principal Commissioner of Central Excise/Customs/Service Tax or Commissioner of Central Excise/ Customs /Service Tax, the first appeal lies to the Commissioner (Appeals).** and there from to the Customs, Excise & Service Tax Appellate Tribunal (i.e. CESTAT) and finally to the High Court/ Supreme Court, as the case may be. But where the order of the Tribunal does not relate to determination of rate of duty or value of goods, an appeal to the High Court lies under Sections 35G of Central Excise Act / Section-130 of Customs Act & reference application under 35H of Central Excise Act / Section-130 of Customs Act, instead of Appeal to Supreme Court.
- 1.3 In certain specified categories of cases, the appeal against the order of Commissioner (appeals) lies before Joint Secretary (Revision Application). **To know about the concept of Revision Application in indirect taxes, refer to e-book on “revision Application” at**

[Revision Application \(nacin.gov.in\)](http://nacin.gov.in).
- 1.4 In cases where the Order-in-Original is passed by a Principal Commissioner or Commissioner of Central Excise/Customs/Service Tax, first appeal lies directly to the Appellate Tribunal.
- 1.5 The provisions for appeals are contained in, **Chapter VI-A of the Central Excise Act, 1944** and **Chapter XV of the Customs Act, 1962**. In case of Service Tax, these provisions are contained in Sections 84, 85, and 86 of the Finance Act, 1994. Further, certain sections of the Central Excise Act, 1944, contained in Chapter VI-A, namely 35EE, 35F, 35FF to 35O, 35Q, 35R and 36 Sections have also been made applicable to Service Tax matters *Vide* section 83 of the Finance Act, 1994.
- 1.6 The Rules pertaining to appeal i.e. Central Excise (Appeals) Rules, 2001 have been notified w.e.f. 01.07.2001. Similarly, the provisions relating to appeals in Customs matters are contained in Customs (Appeals) Rules, 1982 which have been notified w.e.f. 10.09.1982. In case of Service Tax, the provisions are contained in Rule 8 and 9 of the Service Tax Rules, 1994.
- 1.7 The provisions relating to appeals, as contained in Central Excise Act, 1944 and rules made thereunder are also applicable to cases under Produce Cess Act, 1966, and for Handloom Cess leviable under Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953.

Appeals before the Commissioner (Appeals)

1.8 The appellate remedy available for orders passed by different authorities may be summarized in Table-I below:-

TABLE-1

Sl.	Order Passed by	Appellate Authority
1	All officers up to & including Additional Commissioner	Commissioner (Appeals)
2	Principal Commissioner of Central Excise/ Commissioner of Central Excise/ Commissioner (Adjudication) of DGCEI/ DRI/ Commissioner (Appeals)	CESTAT
3.	Commissioner (Appeals)	<p>CESTAT</p> <p>However, in following cases, appeals against order of Commissioner (Appeals) shall lie before the Joint Secretary (Revision Application)</p> <p><u>(A) In Central Excise cases</u></p> <p>(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;</p> <p>(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;</p> <p>(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;</p> <p>(d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of the Central Excise Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No.2) Act, 1998] (<i>Date for this clause not yet notified by the Central Government</i>).</p> <p><u>(B) In Customs cases</u></p> <p>(a) any goods imported as baggage;</p> <p>(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;</p>

Appeals before the Commissioner (Appeals)

		(c) payment of drawback as provided in Chapter X, and the rules made thereunder. (C) In Service Tax cases If the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service.
4	CESTAT	Supreme Court (Classification and Valuation cases)
5	CESTAT	High Court (Other than classification and valuation matters)
6	High Court	Supreme Court

- 1.9 **This e-book is limited to the subject matter of filing appeal before Commissioner (Appeals) and matter relating thereto.** For appeals before Tribunal, High Court and Supreme Court, separate *e-Books* are being prepared and will soon be available for reading.

2. Statutory Provisions for Appeals before Commissioner (Appeals)

The provisions relating to appeals before the Commissioner (Appeals) are contained in [Section 35 & 35A](#) of the Central Excise Act, 1944, [Section 128 & 128A](#) of the Customs Act, 1962 and [Section 84 & 85](#) of the Finance Act, 1994.

- 1.1 The provisions relating to appeals, as contained in Central Excise Act, 1944 and Rules made thereunder, are also applicable to cases under Produce Cess Act, 1966, and for Handloom Cess leviable under the Khadi and other Handloom Industrial Development (Additional Excise Duty on Cloth) Act, 1953.
- 1.2 The summaries of statutory provisions relating to appeals before Commissioner (Appeals) are given in Table-2 below.

TABLE-2

Sl. No.	Description	Particulars/ Details	Relevant Statutory Provision/ Authority (*)
1	Statutory provisions relating to appeals before Commissioner (Appeals)	In Central Excise	Section 35 & 35A of CEA
		In Customs	Section 128 & 128A of CA
		In Service Tax	Section 84 & 85 of FA
2	Time limit for filing appeal before the Commissioner (Appeals)	In Central Excise:- 60 days from the date of communication of order appealed against.	Section 35(1) of CEA
		In Customs:- 60 days from the date of communication of order appealed against.	Section 128(1) of CA
		In Service Tax:- 2 Months from the date of receipt of the decision/ order made on or after	Section 85 (3A) of FA

Appeals before the Commissioner (Appeals)

		28.05.2012 [earlier this period was 3 months u/s 85(3)]		
3	Extension of time limit for filing the appeal subject to the satisfaction of the Commissioner (Appeals) that appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days	In Central Excise:- 30 days from the original period of 60 days		Section 35(1) of CEA
		In Customs:- 30 days from the original period of 60 days		Section 128(1) of CA
		In Service Tax:- 1 month from the original period of 2 months w.e.f. 28.05.2012 [earlier this period was 3 months u/s 85(3)]		Section 85 (3A) of the Finance Act, 1994
4	Prescribed Form	Central Excise	E.A.-1	Rule 3 of Central Excise (Appeals) Rules, 2001
		Customs	C.A.-1	Rule 3 of Customs (Appeals) Rules, 1982
		Service Tax	S.T.-4	Rule 8(1) of the STR
5	Enclosures to be filed with Appeal [Appeal is required to be filed in duplicate in the prescribed format].	<ul style="list-style-type: none"> • Copy of O-in-O (being appealed against) • Self attested copy of proof of payment of pre-deposit [<i>Authority: CBEC Circular No.984/08/2014-CX dated 16.09.2014.</i>] 		Before 06.08.2014, Stay application for stay of disputed amount was also required to be filed. With introduction of concept of pre-deposit, it is no longer required.
6	Quantum of pre-deposit to be made before filing appeal (w.e.f. 06.08.2014)	7.5% of the duty, in case where duty or duty and penalty are in dispute; or penalty, where such penalty is in dispute (aggregate of all penalties imposed)		Section 35F of CEA and Section 129E of CA.

Note: (*) CEA means Central Excise Act, 1944; CA means Customs Act, 1962; FA means Finance Act, 1994; and STR means Service Tax Rules, 1994.

3. Other Important points

- 3.1. Any person aggrieved by any decision or order passed by a Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals) within specified period.
- 3.2. Specified period (of 60 days or 2 months, as the case may be) can be extended (by further period of 30 days or one month, as the case may be) by Commissioner (Appeals). This can be done only if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the specified period.
- 3.3. Appeal is required to be filed in Specified format in duplicate along with a copy of the decision or order appealed against.
- 3.4. Separate formats have been prescribed for the party and the Department for filing appeal before the Commissioner (Appeals)
- 3.5. The Grounds of appeal and the form of verification as contained in Form No. E.A.-1/ C.A.-1/ S.T.-4 is required to be signed by person as specified in Table 3 below: -

Appeals before the Commissioner (Appeals)

TABLE-3

Sr. No.	Appeal by	Who can sign appeal form?
1.	In the case of an individual,	the individual himself
2.	If the individual is absent from India	the individual concerned or by some person duly authorized by him in this behalf
3.	If the individual is a minor or is mentally incapacitated from attending to his affairs,	his guardian or by any other person competent to act on his behalf.
4.	In the case of a Hindu undivided family	The karta
5.	If the karta is absent from India or is mentally incapacitated from attending to his affairs	Any other adult member of such family
6.	In the case of a company or local authority	The principal officer thereof;
7.	In the case of a firm	Any partner thereof, not being a minor
8.	In the case of any other association	Any member of the association or the principal officer thereof.
9.	In the case of any other person	The person himself or any person competent to act on his behalf.

4. Applications (Appeals) by the Department before Commissioner (Appeals)

The summary of statutory provisions relating to Departmental Application (i.e. Appeals) before Commissioner (Appeals) is given in Table-4 below.

TABLE 4

Sl. No.	Description	Particulars/ Details	Relevant Statutory Provision/ Authority (*)	
1	Statutory provisions relating to Departmental appeals before the Commissioner (Appeals)	In Central Excise	Section 35E(2) of CEA	
		In Customs	Section 129D(2) of CA	
		In Service Tax	Section 84 of FA	
2	Time limit for filing appeal before the Commissioner (Appeals)	The order directing to apply to the Commissioner (Appeals) should be made within 3 months from the date of communication of the order to be appealed against, whether the issue relates to Central Excise or Customs or ST. Thereafter, an application has to be filed within 1 month of the date of communication of the said order, which is treated as appeal.	<p>Central Excise:- Section 35E(3) & (4) of CEA, 1944</p> <p>Customs:- Section 129D(3) & (4) of CA</p> <p>Service Tax:- Section 84 of FA</p>	
3	Prescribed Forms	Central Excise	E.A.-2	Rule 4 of Central Excise (Appeals) Rules, 2001
		Customs	C.A.-2	Rule 4 of Customs (Appeals) Rules, 1982

Appeals before the Commissioner (Appeals)

		Service Tax	ST-4, though no specific form prescribed.	Refer Section 84(3) of FA
5	Enclosures to be filed with Application (Appeal)	(i) The form of application including statement of facts and grounds of application (in duplicate) (ii) Two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) (iii) A copy of the order of the Principal Commissioner /Commissioner of Central Excise under sub-section (2) of Section 35E of the Central Excise Act /129D (2) of Customs Act / 84(1) of Finance Act.		
6	Quantum of pre-deposit to be made before filing appeal (w.e.f. 06.08.2014)	Nil		Section 35F of CEA and Section 129E of CA.

Note: (*) CEA means Central Excise Act, 1944; CA means Customs Act, 1962; FA means Finance Act, 1994; and STR means Service Tax Rules

5. Procedures at the Stage of Commissioner (Appeals)

- 5.1 The Commissioner (Appeals) is required to give an opportunity to the appellant to be heard, if he so desires [**Ref: Section 35A (1) of CEA, 1944/Section 128 A(1) of Customs Act, 1962**].
- 5.2 W.e.f. 10.09.2004, a new sub section 35(1A) of CEA, 1944/128 (1A) of CA, 1962 has been inserted which deals with the adjournment of hearing of appeal. On being shown sufficient cause at any stage of hearing of an appeal, the Commissioner (Appeals) should, grant time from time to time to the parties and adjourn the hearing of appeal. However, such adjournment can only be granted three times to a party during hearing of the appeal.
- 5.3 The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. However, an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund should not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order. In service tax, such order may include an order enhancing the service tax, interest or penalty [**Ref: Section 35A (3) of CEA, 1944/ Section 128A (3) of Customs Act, 1962/ 85(4) of the FA, 1994**].
- 5.4 The Commissioner (Appeals) should, wherever possible, hear and decide every appeal within a period of six months from the date on which it is filed. [**Ref: Section 35A (4A) of CEA, 1944/ Section 128A(4A) of Customs Act, 1962**]
- 5.5 On the disposal of the appeal, the Commissioner (Appeals) is required to communicate the order passed by him to the appellant, the adjudicating authority, the Principal Chief Commissioner or Chief Commissioner and the Principal

Appeals before the Commissioner (Appeals)

Commissioner or Commissioner of Central Excise. [Ref: Section 35A (5) of CEA, 44/ Section 128A(5) of Customs Act, 1962]

- 5.6 In section 85 (5) of the Finance Act, 1994, the provisions have been incorporated to provide that the Commissioner of Central Excise (Appeals) will exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944. While in Central Excise Act, 1944, the section 35 A specifically deals with the Procedure in Appeals, no such separate section exists in Service Tax. The section 35 A of the Central Excise Act, 1944 has been made applicable to Service tax matters by virtue of Section 85(5) of the Finance Act, 1994 subject to modification as mentioned in Section 84 and 85 of the Finance Act, 1994.

6. Other Important Issues

(A) Service of Copy of Appeal to the Respondent Adjudicating Authority is mandatory.

- 6.1 As per CBEC Instruction issued vide letter F. No. 275/42/2004-CX 8A dated 05.09.2005, the following directions have been issued to the field formations:-

- (i) The appellant must serve a copy of the appeal on the respondent adjudicating authority, so that, he can take appropriate timely action for defending the case including engagement of an advocate, in important cases, involving substantial question of law and/ or high revenue stake; and
- (ii) The office of the Commissioner (Appeals) must send a copy of the hearing intimation memo to the respondent Adjudicating Authority, simultaneously with the appellant.

As such, now all the appellants are required to serve a copy of the appeal, to the respondent Adjudicating Authority and to submit a proof of service before the Commissioner (Appeals), before the appeal is heard.

(B) Production of Additional Evidence before Commissioner (Appeals)

- 6.2 As per Rule 5 of the Central Excise (Appeals) Rules, 2001, the appellant shall not be entitled to produce before the Commissioner (Appeals) 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 circumstances given in said Rule 5(1).
- 6.3 It has also been provided that no evidence shall be admitted under Rule 5(1) unless the Commissioner (Appeals) records in writing the reasons for its admission.
- 6.4 It has also been provided that the Commissioner (Appeals) shall not take any evidence produced under Rule 5 (1) unless the adjudicating authority or an officer authorized in this behalf by the said authority has been allowed a reasonable

Appeals before the Commissioner (Appeals)

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

- 6.5 However, it is pertinent to mention here that nothing contained in this rule shall affect the power of the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

(C) Remand of Cases by Commissioner (Appeals)- Not allowed

- 6.6 Section 35A(3) of the Central Excise Act, 1944 / Section 128A(3) of the Customs Act, 1962, as it existed before 11.5.2001, provided that Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling decision or order appealed against **or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary.**

- 6.7 An amendment was brought out in the aforesaid sections vide Finance Act, 2001 w.e.f. 11.5.2001 deleting the phrase as mentioned in bold above with an intention to withdraw the powers to Commissioner (Appeals) to remand the cases for fresh adjudication to the original adjudication authorities. After the amendment in 2001, the said Sections read as follows: -

“The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against.”

- 6.8 The matter whether the Commissioner (Appeals) continues to have powers to remand beyond 11.5.2001 came up before the Gujarat High Court in the case of M/s. Medico Lab. The Hon’ble High Court of Gujarat, vide order dated 21.9.2004 in the case of CCE, Ahmedabad-I Vs. Medico Lab [2004(173) ELT 117 (Guj.)], held that the Commissioner (Appeals) continues to have the power to remand even after the amendment. (Para 14 of the Order refers).

- 6.9 Later, Hon’ble Punjab & Haryana High Court in the case of CC, Amritsar Vs. M/s. Enkay (India) Rubber Co. Pvt. Ltd. vide order dated 8.3.2007 and in the case of CCE, Jalandhar Vs. B.C. Kataria[2008(221) ELT.508 P&H] vide order dated 6.9.2007 had held that the Commissioner(Appeals) have been divested of the powers to remand the cases back to adjudicating authority after deletion of that power from Section 35A(3) of Central Excise Act vide amendment made in 2001. Hon’ble High Court has distinguished the judgement of the Gujarat High Court in the case of Medico Labs in this case.

- 6.10 Finally, Hon’ble Supreme Court in its judgement dated 1.3.2007 in Civil Appeal No. 6988/2005 in the case of MIL India Ltd. [2007(210) ELT.188(SC)] has observed that “in fact, the power of remand by the Commissioner (Appeals) has

Appeals before the Commissioner (Appeals)

been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner(A) to remand matters back to the adjudicating authority for fresh consideration.”

6.11 In light of the above backdrop, CBEC issued instruction vide F. No. 275/34/2006-CX.8A dt. 18.02.2010 wherein it was instructed that the Commissioner (Appeals) should follow the said judgments strictly. It may also be brought to their notice that Hon’ble Supreme Court in the case of MIL India Ltd., while noting that the powers of remand had been taken away, has also categorically stated that the Commissioner (A) continues to exercise the power of adjudicating authority in the matter of assessment and the Commissioner(A) can add or subtract certain items from the order of assessment made by the adjudicating authority and the order of Commissioner (A) could also be treated as an order of assessment. **Board’s instructions issued vide F. No. 275/34/2006-CX.8A dated 25.7.2008** in this regard were reiterated wherein Commissioners (Appeals) were advised to **resort to enquiry in such appeals as may be necessary in the facts and circumstances of the case before passing a just and fair order in accordance with the provisions of the Act.**

(D) Mandatory pre-deposit for filing Appeal by the Appellant before the Commissioner (Appeals)

6.12 After enactment of the Finance Act (No.2), 2014 w.e.f. 06.08.2014, Section 35F of the Central Excise Act, 1944 (also applicable to Service Tax matters vide Section 83 of Finance Act, 1994) and Section 129E of the Customs Act, 1962 have been substituted with new sections to prescribe mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute. Where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed.

6.13 The amended provisions apply to appeals filed after 6th August, 2014. At present, the quantum of pre-deposit is 7.5%. *To know more about the concept of pre-deposit while filing appeal before Commissioner (Appeals) and CESTAT, please refer to e-book on “pre-deposit for filing appeals” at*

[Pre-Deposit for Filing Appeals \(nacin.gov.in\)](http://nacin.gov.in)

(E) Principle of Natural Justice

6.14 The principle of natural justice forms the basis of the provisions relating to appeals under Central Excise Act, 1944 or Customs Act, 1962 or Finance Act, 1994. It is now firmly established that the principles of natural justice have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties. Principles of natural justice are those rules which have been laid down by the Courts over a period of time as being the minimum protection of the rights of the individual against the arbitrary procedure that may

Appeals before the Commissioner (Appeals)

be adopted by a judicial, quasi-judicial and administrative authority while issuing an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

- 6.15** The purpose of following the principles of natural justice is the prevention of miscarriage of justice either by way of non-application of mind or by way of showing any bias. Though bias may be of many types, still total elimination of official bias is desirable in departmental adjudication and appellate mechanism. *To know more about the principles of natural justice, refer to e-book on principles of natural justice at*

[Principles of Natural Justice \(nacin.gov.in\)](http://nacin.gov.in)

7. Text of Relevant Statutory Provisions/Circulars/Instructions

7.1 Text of Relevant Sections/Rules of Customs/Central Excise/Service Tax laws

- 7.1.1 For the sake of brevity, the text of sections i.e. 35, 35 A and 35 E of the Central Excise Act, 1944; Section 128, 128A and 129 D of the Customs Act, 1962 and Section 84 & 85 of the Finance Act, 1994 has not been reproduced here. The same may be downloaded from the Website of CBIC i.e. www.cbic.gov.in.
- 7.1.2 Similarly, the text of Relevant Rules namely, Rule 3 of the Central Excise (Appeals) Rules, 2001; Rule 3 of the Customs (Appeals) Rules, 1983 and Rule 8 of the Service Tax Rules, 1994 have also not been reproduced here. The same may be downloaded from the website of CBIC i.e. www.cbic.gov.in

7.2 Text of Relevant Circulars

7.2.1 Circular No.984/08/2014-CX dated 16.09.2014

Sub: Amendments to the Appeal provisions in Customs, Central Excise and Service Tax made by Finance Act, 2014- Issue of clarifications - reg.

Sir / Madam,

The Finance Act (No.2), 2014 has been enacted on 06.08.2014. Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 have been substituted with new sections to prescribe mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute. Where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed.

1.2 The amended provisions apply to appeals filed after 6th August, 2014. Sections 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 contain specific saving clause to state that all pending appeals/stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions.

1.3 Section 35FF of the Central Excise Act, 1944 and Section 129EE of the Customs Act, 1962 have also been substituted to provide for payment of refund along with interest at the prescribed rate on the amount pre-deposited from the date of such payment till the date of refund. In exercise of the powers conferred under the new Section 35FF of the Central Excise Act, 1944 and Section 129EE of the Customs Act, Notification Nos 24/2014-CE(NT) and 70/2014-Cus(NT), both dated 12.08.2014 have been issued

Appeals before the Commissioner (Appeals)

specifying six percent as rate of interest on refunds made under those sections.

1.4 Various doubts / issues have been raised by trade bodies, industry associations and field formations etc. on the implementation of the new provisions. With a view to implement the scheme smoothly, the following clarifications are issued.

2. Quantum of pre-deposit in terms of Section 35F of Central Excise Act, 1944 and Section 129E of the Customs Act, 1962:

2.1 Doubts have been expressed with regard to the amount to be deposited in terms of the amended provisions while filing appeal against the order of Commissioner (Appeals) before the CESTAT. Sub-section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeal). It is, therefore, clarified that in the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal). This need not be the same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

2.2 In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.

2.3 In case of any short payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.

3. Payment made during investigation:

3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35 F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.

3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.

3.3 In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection.

4. Recovery of the Amounts during the Pendency of Appeal:

4.1 Vide Circular No.967/1/2013 dated 1st January, 2013, Board has issued detailed instructions with regard to recovery of the amounts due to the Government during the pendency of stay applications or appeals with the appellate authority. This Circular would not apply to cases where appeal is filed after the enactment of the amended Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

4.2 No coercive measures for the recovery of balance amount i.e., the amount in excess of 7.5% or 10% deposited in terms of Section 35F of Central Excise Act, 1944 or Section 129E of Customs Act, 1962, shall be taken during the pendency of appeal where the party / assessee shows to the jurisdictional authorities:

- (i) proof of payment of stipulated amount as pre-deposit of 7.5% / 10%, subject to a limit of Rs.10 crores, as the case may be; and

Appeals before the Commissioner (Appeals)

(ii) the copy of appeal memo filed with the appellate authority.

4.3 Recovery action, if any, can be initiated only after the disposal of the case by the Commissioner (Appeal) / Tribunal in favour of the Department. For example, if the Tribunal decides a case in favour of the Department, recovery action for the amount over and above the amount deposited under the provisions of Section 35F / 129E may be initiated unless the order of the Tribunal is stayed by the High Court/Supreme court. The recovery, in such cases, would include the interest, at the specified rate, from the date duty became payable, till the date of payment.

5. Refund of pre-deposit:

5.1 Where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.

5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.

5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.

5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.

5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

5.6. It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 *supra* .

6. Procedure and Manner of making the pre-deposits:

6.1 E-payment facility can be made use of by the appellants, wherever possible.

6.2 A self-attested copy of the document showing satisfactory proof of payment shall be submitted before the appellate authority as proof of payment made in terms of Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

6.3 Column 7 of EA.1, column 6 of CA.1 and column 6 of ST.4 for filing appeal before Commissioner (Appeals), seek details of the duty/penalty deposited. The same may be used for indicating the deposits made under amended Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962.

6.4 The appeal filed before the CESTAT are filed along with the appeal memo in prescribed format (Form EA-3 for Central Excise Appeals and Form CA-3 for the Customs Appeals). Column 14(i) of the said appeal forms seeks information of payment of duty, fine, penalty, interest along with proof of payment (challan). These columns may, therefore, be used for the purpose of indicating the amount of deposit made, which shall be verified by the appellate authority before registering the appeal.

6.5 As per existing instructions, a copy of the appeal memo along with proof of deposit made shall be filed with the jurisdictional officers.

Appeals before the Commissioner (Appeals)

7. Procedure for refund:

7.1 A simple letter from the person who has made such deposit, requesting for return of the said amount, along with a self-attested Xerox copy of the order in appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the document evidencing payment of such deposit, addressed to Jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of the amount deposited along with interest at the rate specified.

7.2 Record of deposits made under Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 should be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.

8. Amendment to Preamble of Orders:

8.1 In order to make the new provisions known to the assessee / trade every adjudicating authority lower in rank to the Commissioner is directed to incorporate the following sentence in the Preamble to the order being issued by them -

"An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute. "

8.2 The following may be added in the preamble of the orders issued by the Commissioner (Appeals) -

"An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8.3 The following may be added in the preamble of the orders issued by the Commissioner as original adjudicating authority -

"An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

9. Receipt of the Circular may please be acknowledged.

10. Hindi version follows.

(Sunil K. Sinha)
Director (Judicial Cell)

7.2.2 Instructions issued vide F.No.275/34/2006-CX.8A, dated 08.02.2010

Sub: - **Powers of Commissioner (Appeals) to remand cases – Reg.**

Section 35A(3) of the Central Excise Act, 1944 / Section 128A(3) of the Customs Act, 1962 as it existed before 11.5.2001 provided that Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling decision or order appealed against **or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary.**

2. An amendment was brought out in the aforesaid sections vide Finance Act, 2001 w.e.f. 11.5.2001 deleting the phrase as mentioned in bold above with an intention to withdraw the powers to Commissioner (Appeals) to remand the cases for fresh adjudication to the original adjudication authorities. After the amendment in 2001, the said Sections read as follows: -

“The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against.”

Appeals before the Commissioner (Appeals)

3. The matter whether the Commissioner (Appeals) continues to have powers to remand beyond 11.5.2001 came up before the Gujarat High Court in the case of M/s. Medico Lab. The Hon'ble High Court of Gujarat, vide order dated 21.9.2004 in the case of CCE, Ahmedabad-I Vs. Medico Lab, held that Commissioner (Appeals) continues to have the power to remand even after the amendment.

4. Hon'ble Punjab & Haryana High Court in the case of CC, Amritsar Vs. M/s. Enkay (India) Rubber Co. Pvt. Ltd. vide order dated 8.3.2007 and in the case of CCE, Jalandhar Vs. B.C. Kataria [2008(221) ELT.508 P&H] vide order dated 6.9.2007 had held that the Commissioner (Appeals) have been divested of the powers to remand the cases back to adjudicating authority after deletion of that power from Section 35A(3) of Central Excise Act *vide* amendment made in 2001. Hon'ble High Court has distinguished the judgement of the Gujarat High Court in the case of Medico Labs in this case and also stated that the reliance on the Hon'ble Supreme Court judgement in the case of Umesh Dhaimonde (1998(98) ELT 584) cannot be made as in that case Hon'ble Supreme Court was not dealing with the provisions where earlier power of remand was specifically conferred and subsequently taken away by amendment carried by Finance Act, 2001.

5. The Hon'ble Supreme Court in its judgement dated 1.3.2007 in Civil Appeal No. 6988/2005 in the case of MIL India Ltd. [2007(210) ELT.188(SC)] has observed that **“in fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner(A) to remand matters back to the adjudicating authority for fresh consideration.”** The said decision of the Supreme Court was brought to the notice of CESTAT in the case of CCE, Jalandhar Vs. Hawkins Cookers Ltd. reported in 2007(8)RLT.7, but the Tribunal held that the Supreme Court in the said case had only noted the provisions of amended law whereas the specific issue whether Commissioner(A) has power to remand after amendment to provisions of Section 35A has been considered by the Hon'ble Gujarat High Court in the case of Medico Lab and the High Court has held that the Commissioner (A) has power to remand under the amended provisions also. The appeal (CEA No.29/2008) filed by the Commissioner of Central Excise, Jalandhar against the said order in the Hawkins Cookers case stating that the said observations as quoted above are part of the ratio decidendi of the decision of the Hon'ble Supreme Court, has been allowed by the Punjab & Haryana High Court vide order dated 14.7.2008 relying upon its own judgement in the case of CCE, Jalandhar Vs. B.C. Kataria [2008(221) ELT.508].

6. In the light of the observations of Hon'ble Supreme Court in the case of MIL India Ltd. and the judgement of Hon'ble High Court of Punjab & Haryana in the case of M/s. Enkay (India) Rubber Co. Pvt. Ltd., M/s. B.C. Kataria and M/s. Hawkins Cookers Ltd., you are requested to issue suitable instructions to the Commissioners(A) working under your jurisdiction to follow the said judgments strictly. It may also be brought to their notice that Hon'ble Supreme Court in the case of MIL India Ltd., while noting that the powers of remand had been taken away, has also categorically stated that the Commissioner (A) continues to exercise the power of adjudicating authority in the matter of assessment and the Commissioner(A) can add or subtract certain items from the order of assessment made by the adjudicating authority and the order of Commissioner (A) could also be treated as an order of assessment. Board instructions dated 25.7.2008 (copy enclosed) may be referred in this regard.

7. The receipt of this instruction may please be acknowledged. A copy of the instruction issued to the Commissioners (Appeals) under your jurisdiction may also be endorsed to the Board. The issue may also be monitored at your level.

7.2.3 Instruction issued vide F.No. 275/34/2006-CX.8A, dated 25.07.2008

Subject: Procedure in Appeal under Sec.35A of the Central Excise Act/Section 128A of Customs Act /Sec.85 of the Finance Act, 1994 – reg.

Section 35A of the Central Excise Act, 1994 prescribes the procedure in appeal to be followed by Commissioner (Appeals) while deciding the appeals filed before him under Section 35/35E of the Central Excise Act 1944. Similar provisions exist under Section 128A of the Customs Act, 1962 and Section 85 of the Finance Act, 1994.

2. Sub-Section (3) of the Section 35A of Central Excise Act, 1994 reads as follows-

The Commissioners (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against;

Appeals before the Commissioner (Appeals)

3. The Board has noted that Commissioner (Appeals) do not resort to the mechanism of further enquiry as provided to them under the appeal procedure as above in such cases where it may be necessary before passing the order. Sub-Rule 4 of Rule 5 of Central Excise (Appeals) Rules, 2001 provides that nothing contained in said rule shall affect the power of the Commissioner (Appeals) to direct the production of any document, or the examination of any witness to enable him dispose of the appeal.

4. In the light of the provisions as contained in the statute and the rules made there under, I am directed to request you to advise Commissioners (Appeals) working in your jurisdiction to resort to enquiry in such appeals as may be necessary in the facts and circumstances of the case before passing a just and fair order in accordance with the provisions of the Act.

7.2.4 Instruction issued vide F.No.390/Misc/116/2017-JC dated 04.04.2018

Subject: Reduction of litigation in Central Excise and Service Tax by omission of Exclusion Subclause 'c' in para 3 of the Instruction dated 17.08.2011 by amending instruction dt 17.12.2015 from F No 390/Misc/163/2010-JC for legacy matters and approval to extend withdrawal on the basis of identical matters (as per Instruction dt 18.12.2015, from F No 390/Misc/67/2014-JC) to Commissioner (Appeals) : Regarding

1. Deletion of sub clause 'c' of para 3 of the Instruction dated 17.08.2011, introduced vide Instruction dated 17.12.2015.:

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 and Section 131BA of the Customs Act, 1962 and in partial modification of earlier Instruction dated 17.12.2015 from F No 390/Misc/163/2010-JC the Central Board of Excise & Customs has decided to omit para 2 of the instruction dt 17.12.2015 from F No 390/Misc/163/2010. This para introduced a sub clause 'c' in the instruction dt 17.08.2011 from F No 390/Misc/163/2010-JC that was an exclusion clause that operated as an exception to the general monetary limits instruction. By this exception, adverse judgements pertaining to "classification and refunds issues which are of legal and/or recurring nature", were to be contested irrespective of the amount involved. This sub clause 'c' stands withdrawn with effect from the date of this instruction.

2. Withdrawal of Departmental cases from Commissioner (Appeals) on the basis of decision of the Supreme Court upon an identical matter

As per Instruction dt 18.12.2015, from F No 390/Misc/67/2014-JC field formations had been directed to withdraw cases pending in High Court/Cestat, where the Supreme Court has decided on an identical matter and the decision has been accepted by the Department. This was only in respect of High Court and CESTAT cases. The Central Board of Excise & Customs has decided to extend this decision to Departmental cases with the Commissioner (Appeals) as well.

3. Other conditions:

Para 1 above, is applicable to legacy matters only. Both paras 1&2 would be applicable to pending matters as well. Except for above mentioned changes, all other terms and conditions of concerned earlier instructions continues.

4. Monthly reports in MPR:

Since withdrawal of Departmental Appeals is a long drawn activity requiring routine and constant monitoring, formats have been introduced in the Monthly Performance Report for all field formations to send monthly reports regarding status of withdrawal of appeals to Directorate of Data Management (refer table A to C). Details of the said cases should also be available in a separate register for further perusal by the Board as and when required. Tables are in the **Annexure –A** attached. The description of the Tables in brief is provided below:

i. Table A

Position of withdrawal of Departmental cases within monetary limits but excluding clause c cases in the HC (0-20 Lakh/Cestat (0-10 Lakhs)

ii. Table A- 1

Position of withdrawal on account of removal of clause 'c' cases only .

iii. Table A-2

Combined position (tables A plus A-1)

Appeals before the Commissioner (Appeals)

iv. Table A-3

Remaining to be filed and withdrawn (wrt Table A-2).

v. Table -B

Position of withdrawal of Departmental Appeals on Identical matters in HC/CESTAT /Commissioner (A).

vi. Table B 1

Analysis of Cases Remaining to be filed/withdrawn in Departmental Appeals on identical matters in HC/CESTAT/Commissioner (A).

vii. Table C

Overall Position of all cases identified, filed and withdrawn by the Department in SC/HC/CESTAT and Commissioner (A) on monetary Limits/exclusion clause 'c'/ Identical matters.

5. Difficulties faced any in implementation of the above Instruction may be brought to notice of the Board.

(Ranjana Jha)
JS (Judicial Cell)

Annexure –A

Table A Existing limits

As on (Last working day)--/--/--

Position of withdrawal in Departmental Cases existing limits (excluding clause c cases) in High Court(0 to 20 lakh)/CESTAT(0 to 10 lakhs)(as per instructions dated 17/12/2015, 30/12/2016 and 08/02/2017)										
S No	I. Zones (in alphabetical order)	II. Identified			III. Filed			IV. Withdrawn		
		HC	CESTAT	TOTAL	HC	CESTAT	TOTAL	HC	FILED	WITHDRAWN
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Table A-1 of clause "c" within existing monetary limits only

As on (Last working day)--/--/--

Position of withdrawal on account of removal of sub clause "c" (existing monetary limits only) of para 3 of the instruction dated 17/08/2011										
S No	I. Zones (in alphabetical order)	II. Identified			III. Filed			IV. Withdrawn		
		HC	CESTAT	TOTAL(a+b)	HC	CESTAT	TOTAL(d+e)	HC	CESTAT	TOTAL(g+h)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Table A-2 Combined position (Tables A plus A-1)

As on (Last working day)--/--/--

Total Position of withdrawal in Departmental Cases (existing limits Table A and exclusion sub clause c cases Table A1)										
S No	I. Zones (in alphabetical order)	II. Identified			III. Filed			IV. Withdrawn		
		HC	CESTAT	TOTAL(a+b)	HC	CESTAT	TOTAL(d+e)	HC	CESTAT	TOTAL(g+h)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Table A-3 Remaining to be Filed/Withdrawn

As on (Last working day)--/--/--

Cases remaining to be filed and withdrawn vis a vis Table A-2							
S No	I. Zones (in alphabetical order)	II. Remaining to be filed*			III. Remaining to be withdrawn**		
		HC	CESTAT	TOTAL	HC	CESTAT	TOTAL
		(a)	(b)	(c)	(d)	(e)	(f)

*Identified minus filed in Table A-2

**filed minus withdrawn in Table A-2

Table B Identical Matters

As on (Last working day)--/--/--

Position of Withdrawal in High Court/CESTAT/Commissioner of Appeal(as per instructions dated 18/12/2015 and current instruction)													
S. N o	I. Zones (in Alphabetical order)	I. Identified				II. Filed				III. Withdrawn			
		High Court	CESTAT	Commr (A)	Total	High Court	CESTAT	Commr (A)	Total	High Court	CESTAT	Commr (A)	Total
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)

Appeals before the Commissioner (Appeals)

Table B-1

As on (Last working day) --/--/---

Remaining to be Filed /Withdrawn in Identical matters									
S No	I. Zones (in alphabetical order)	I. Remaining to be filed*				II. Remaining to be withdrawn**			
		High Court	CESTAT	Commr(A)	Total	High Court	CESTAT	Commr(A)	Total
		(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)

*Identified minus filed in Table B

**filed minus withdrawn in Table B

Table C Overall Position

At- A- Glance as on --/--/----

S. No	I. Forum	II. Identified				III. Filed				IV. Withdrawn				V. Remaining							
		Below Monetary limit	Identical matters	Clause C	Total	Below Monetary limit	Identical matters	Clause C	Total	Below Monetary limit	Identical matters	Clause C	Total	To be Filed *				To be Withdrawn **			
														Below Monetary limit	Identical matters	Clause C	Total	Below Monetary limit	Identical matters	Clause C	Total
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)		
	SC																				
	HC																				
	CESTAT																				
	Commr(A)																				
	Total																				

*Identified minus filed in Table C

**filed minus withdrawn in Table C

7.2.5 Instruction issued vide F.No.390/Misc/390/2017-JC dated 15.05.2018

Subject: Reduction of Government litigations- Introduction of monetary limits at the level of Commissioner (Appeals), in legacy Central Excise & Service Tax matters only. : regarding

1. Introduction of monetary limits at the level of Commissioner (Appeals) :

a. In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 the Central Board of Indirect Taxes fixes a monetary limit of **Rs.2,50,000/-** below which appeal shall not be filed with the Commissioner (A).

b. This limit would apply for legacy matters only and would also be applicable to cases currently pending at the level of Commissioner (Appeals) as well.

c. Withdrawal process in respect of pending cases in Commissioner (A), will follow the current practice that is being followed in the withdrawal of Departmental cases from the CESTAT and HC. The monetary limit shall be determined as per the Instruction dated 17.08.2011. All other terms and conditions of concerned earlier instructions apply

2. Amendment of earlier Instruction dated 04.04.2018:

The following phrase in the earlier instruction dated 04.04.2018 para 1 is hereby withdrawn:

“and Section 131BA of the Customs Act 1962”

3. Monthly reports in MPR:

Since withdrawal of Departmental Appeals is a long drawn activity requiring routine monitoring, there would be a format introduced in the MPR for reporting upon the action taken in this regard. Details of the said cases should also be available in a separate register for further perusal by the Board as and when required. The format of the Tables is in Annexure. The description of the Tables in brief is provided below:

a. Table X

Withdrawal of Departmental appeals at Commissioner (Appeals) Other than clause ‘c’ cases

b. Table X -1

Withdrawal of Departmental appeals at Commissioner (Appeals) Clause ‘c’ cases

c. Table X-2 Combined position of withdrawals of Departmental Appeals at Commissioner(Appeals)

6. Difficulties faced any in implementation of the above Instruction may be brought to notice of the Board.

(Ranjana)ha
JS (Judicial Cell)

Appeals before the Commissioner (Appeals)

Annexure

Table X

**Withdrawal of Departmental appeals at Commissioner (Appeals) Other than clause 'c' cases
As on (Last working day) --/--/--**

Position of withdrawal of Departmental appeals at the level of Commissioner (appeals)				
S No	I. Zones (in alphabetical order)	II. Identified	III. Filed	IV. Withdrawn
	Total			

Table X -1

Withdrawal of Departmental appeals at Commissioner (Appeals) Clause 'c' cases

As on (Last working day) --/--/--

Position of withdrawal of Departmental appeals at the level of Commissioner (appeals)				
S No	I. Zones (in alphabetical order)	II. Identified	III. Filed	IV. Withdrawn
	Total			

Table X-2

Combined position of withdrawals of Departmental Appeals at Commissioner (Appeals) (Tables X plus X-1)

As on (Last working day) --/--/--

Total Position of withdrawal in Departmental Cases (existing limits Table A and exclusion sub clause c cases Table A1)										
S No	I. Zones (in alphabetical order)	II. Identified			III. Filed			IV. Withdrawn		
		Other than clause 'c'	Clause 'c'	TOTAL(a+b)	Other than clause 'c'	Clause 'c'	TOTAL(d+e)	Other than clause 'c'	Clause 'c'	TOTAL(g+h)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
	Total									

Table S-3

Remaining to be Filed/Withdrawn

As on (Last working day) --/--/--

Cases remaining to be filed and withdrawn vis a vis Table X-2							
S No	I. Zones (in alphabetical order)	II. Remaining to be filed*			III. Remaining to be withdrawn**		
		Other than clause 'c'	Clause 'c'	TOTAL(a+b)	Other than clause 'c'	Clause 'c'	TOTAL(a+b)
		(a)	(b)	(c)	(d)	(e)	(f)
	Total						

*identified minus filed in Table X-2

**filed minus withdrawn in Table X-2

Appeals before the Commissioner (Appeals)

8. Form and Formats

FORM NO. E.A. 1

**[See Rule 3 of Central Excise (Appeal) Rules,2001]
Form of Appeal to the [Commissioner] (Appeals) under
Section 35 of the Act**

- (1) No.....of.....2001
- (2) Name and address of the appellant.
- (3) Designation and address of the officer passing the decision or order appealed against and the date of the decision or order.
- (4) Date of communication of the decision or order appealed against to the appellant.
- (5) Address to which notices may be sent to the appellant.

- (6)(i) Description and classification of goods
- (ii) Period of dispute
- (iii) Amount of duty, if any, demanded for the period mentioned in item (ii)
- (iv) Amount of refund, if any claimed for the period mentioned in item (ii)
- (v) Amount of fine imposed.
- (vi) Amount of penalty imposed
- (vii) Market value of seized goods

- (7) Whether duty or penalty or both is deposited; if not whether any application for dispensing with such deposit has been made. (A copy of the challan under which the deposit is made shall be furnished).

- (8) Whether the appellant wishes to be heard in person ?

- (9) Reliefs claimed in appeal.

**Statement of facts
Grounds of appeal**

Signature of the authorised representative, if any

Signature of the applicant

Verification

I,.....the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the.....day of.....

Place.....

Date.....

Signature of the authorised representative, if any.

Signature of the applicant

NOTES: (1) The grounds of appeal and the form of verification shall be signed by the appellant in accordance with the provisions of rule 3 .

(2) The form of appeal including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

Appeals before the Commissioner (Appeals)

FORM NO. E.A.-2

(See Rule 4 of Central Excise (Appeals) Rules, 2001)
Form of Application to the Commissioner (Appeals)
[under Sub Section (4) of Section 35E of the Act]

No.....of.....-200.....

.....Applicant

Vs.

.....Respondent

(1) Designation and address of the applicant (If the applicant is not the adjudicating authority, a copy of the authorisation from the [Commissioner] of Central Excise to make the application should be enclosed).

(2) Name and address of the respondent.

(3) Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.

(4) Date on which order under sub-section (1) of Section 35E has been passed by the Board.

(5) Date of communication of the order referred to in (3) above to the adjudicating authority.

(6) (i) Description and classification of goods

(ii) Period of dispute

(iii) Amount of duty, if any, demanded for the period mentioned in column (ii)

(iv) Amount of refund, if any, claimed for the period mentioned in column (ii)

(v) Amount of fine imposed

(vi) Amount of penalty imposed

(vii) Market value of seized goods.]

(7) Reliefs claimed in the application.

Statement of facts
Grounds of application

Signature of the applicant.

NOTE : The form of application including statement of facts and grounds of application shall be filed in duplicate and accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order of the [Commissioner] /Principal Commissioner of Central Excise under sub-section (2) of Section 35E of the Act.

Appeals before the Commissioner (Appeals)

FORM NO. C.A.-1

[Refer Rule 3 of the Customs (Appeal) Rules, 1982]

Form of Appeal to the Commissioner (Appeals) under Section 128 of the Customs Act, 1962

- (1) No..... of19.....
- (2) Name and Address of the appellant.
- (3) Designation and address of the officer passing the decision or order appealed against and the date of the decision or order.
- (4) Date of communication of the decision or order appealed against to the appellant.
- (5) Address to which notices may be sent to the appellant
- (6) Whether duty or penalty or both is deposited : If not, whether any application for dispensing with such deposit has been made. (A copy of the Challan under which is deposit is made shall be furnished).
- (6A) Whether the appellant wishes to be heard in person.
- (7) Reliefs claimed in appeal.

Statement of Facts Grounds of appeal

- (i)
- (ii)
- (iii) etc.

Signature of authorised
representative, if any.

Signature of the
appellant.

Verification

I, the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the..... day of.....19.....

Place.....

Date.....

Signature of authorised
representative, if any.

Signature of the
appellant.

- Notes :
- (1) The grounds of appeal and the form of verification shall be signed by the appellant in accordance with the provisions of Rule 3 of the Customs (Appeals) Rules, 1982.
 - (2) The form of appeal, including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

Appeals before the Commissioner (Appeals)

FORM NO. C.A.-2

[Refer Rule 4 of the Customs (Appeal) Rules, 1982]

Form of Application to the Commissioner (Appeals) under Section 129D(4) of the Customs Act, 1962

Appeal No..... of19.....

.....Applicant

Vs.

.....Respondent

- (1) Designation and address of the applicant (If the applicant is not the adjudicating authority, a copy of the authorisation from the Commissioner of Customs to make the application should be enclosed).
- (2) Name and address of the respondent.
- (3) Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.
- (4) Date on which the order under sub-section (2) of Section 129D has been passed by the Commissioner of Customs.
- (5) Date of communication of the order referred to in (4) above to the adjudicating authority.
- (6) Relief claimed in the application.

Statement of facts Grounds of application

- (i)
- (ii)
- (iii) etc.

Signature of the applicant

Note : The form of application, including the statement of facts and the grounds of application shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order of the Commissioner of Customs under sub-section (2) of section 129D of the Act.

Appeals before the Commissioner (Appeals)

FORM ST-4

Form of Appeal to the Commissioner of Central Excise (Appeals) under section 85 of the Finance Act,1994 (32 of 1994)

1. No. _____ of _____ 20__ :
2. Name and address of the appellant :
3. Designation and address of the officer passing the decision or order appealed against and the date of decision or order :
4. Date of communication of the decision or order appealed against to the appellant :
5. Address to which notices may be sent to appellant :
- 5A. (i) Period of dispute :
- (ii) Amount of service tax, if any, demanded for the period mentioned in column (i) :
- (iii) Amount of refund, if any, claimed for the period mentioned in column (i) :
- (iv) Amount of interest :
- (v) Amount of penalty :
- (vi) Value of the taxable service for the period mentioned in column (i) :
6. Whether service tax or penalty or interest or all the three have been deposited? :
- 6A. Whether the appellant wishes to be heard in person? :
7. Relief claimed in appeal :

STATEMENT OF FACTS Grounds of appeal

Signature of the authorized representative, if any

Signature of the appellant

Verification

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the _____ day of _____ 20__

Place:

Date :

Signature of the authorized representative, if any

Signature of the appellant or his authorized representative

Note : The form of appeal including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.