Chapter 9: **Appeals to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT)**

9.0 Appeals to CESTAT under Section 129 Customs Act, 1962

(1) CESTAT hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals).

(2) CESTAT is final fact-finding authority

(3) Appeal should be in prescribed Form EA-3

(4) Appeal should be filed within 3 months from the date of receipt of order in the prescribed Form EA 3.

(5) The Tribunal shall hear and decide every appeal within a period of 3 years.

(6) If stay is granted by Tribunal for recovery, appeal shall be decided within 180 days.

W.e.f. 10-5-2013 CESTAT may further extend the period of stay, by not more than 185 days in the following cases:

(i) on an application made in this behalf by a party and

(ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party

In case the appeal is not disposed of within the total period of 365 days from the date of the stay order, the stay order shall, on the expiry of 365, stand vacated.

(7) Fee for filing an appeal

Amount, interest and penalty demanded	Fee for filing an appeal
≤ ₹5,00,000	₹1,000
>₹5,00,000 ≤₹50,00,000	₹5,000
>₹50,00,000	₹10,000

(8) Monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals enhanced from ₹10 lakh to ₹50 lakhs [Section 35D(3)] (w.e.f. 10-5-2013)

(9) Tribunal can condone the delay for any number of days.

(10) Tribunal can refuse petty appeals below ₹2 lakhs.

(11) CEB&C can extend time limit for sanctioning departmental appeal by 30 days in Customs (w.e.f. 6-8-2014):

The Committee of Principal Commissioner or Commissioners or Principal Chief Commissioner/Chief Commissioners is required to take decision regarding filing of departmental appeal within 3 months. this period can be extended upto 30 days by CBE&C, on sufficient cause being shown (presumably by the Committee itself)- proviso to section 129D(3) of Customs Act 1962.

Case Law:

***Amidev Agro Care Pvt. Ltd.* v *Union of India* 2012 (279) ELT 353 (Bom)**

ASSESSEE CLAIM: the copy of the order passed by the Commissioner of Central Excise (appeals) was not served upon the assessee. It was only when the recovery proceedings were initiated, the assessee sought a copy of the order dated 31st March 2008 and the same was made available to the assessee on 26th February 2010. Immediately thereupon the assessee filed an appeal before the CESTAT on 17th May 2010.

DEPARTMENT CONTENTION: The appeal was not filed within the stipulated time of 3 months from 31st mar 2008.

DECISION: As per sec 37C(1)(a) of the C.E.A. 1944, it was obligatory on the part of the revenue, either to tender a copy of the decision to the assessee or to send it by registered post with due acknowledgment to the assessee or its authorised agent. In the present case neither of the above had been complied with by the revenue. Therefore, assessee claim is justifiable.

Note: w.e.f. 10-5-2013 speed posts with proof of delivery or courier approved by the CBIC is also a valid communication.

Case Law:

***Milkmil Network* v *CCus. &Cex.* 2012 (285) ELT 182 (MP)**

STATEMENT OF FACTS: The assessee had filed an appeal along with an application for stay before the CESTAT. However, since there had been a delay in filing the appeal, the assessee also filed an application for condonation of delay.

The CESTAT ordered that the delay would be treated as condoned, if the assessee deposits 50% of the amount of tax.

DECISION: There is no legal provision which provides for condoning the delay in filing the appeal on a condition of depositing 50% of tax amount.

Case Law:

***Thakker Shipping P. Ltd.* v *CC (General)* 2012 (285) ELT 321 (SC):**

Statement of facts: The proceedings were initiated against the assessee under the Customs Act, 1962. However, Commissioner of Customs (General), in his **order-in-original**, dropped the said proceedings.

The Committee of Chief Commissioners of the Customs constituted under section 129A(1B) of the Customs Act, 1962 reviewed his order and directed him to apply to the Tribunal for determination of certain points.

Since, the application not made within the prescribed period and was delayed by 10 days.

Tribunal rejected the application for condonation of delay on the ground that Tribunal had no power to condone the delay caused in filing application under section 129A(4) by the Department beyond the prescribed period of 3 months.

DECISION: Tribunal was competent to admit an appeal or permit the filing of a memorandum of cross-objections after expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting it within that period.

Order-in-original means: The Customs Officer after considering the submission made in reply to show cause notice as well as during personal hearing shall pass the order called Order-In-Original either confirming the demand or dropping the demand or partly confirming the demand and levy of penalty and interest.
The aggrieved person can file an appeal, against order-in-original.

Case Law:

***Margara Industries Ltd.* v *Commr. of C. Ex. &Cus. (Appeals)* 2013 (293) ELT 24 (All)**

Statement of facts: The CESTAT rejected the appellant's application for condonation of delay in filing the appeal before CESTAT on the ground that the reasons given for filing the appeal beyond time were not convincing. The Counsel of the appellant filed his personal affidavit stating that the appeal had been filed with a delay due to his mistake.

Decision: The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.

Case Law:

***Excellence Overseas* v *Union of India* 2013 (293) ELT 496 (Guj)**

Facts of the case: The petitioner was granted a refund by way of order-in-original and the same was also upheld by the CESTAT.

However, a fresh show cause notice was issued on the ground that refund was erroneously granted. The show cause notice, this time was adjudicated in favour of the Department. The petitioner challenged this order before Commissioner (Appeals) five months after the said order was passed.

Therefore, the Commissioner (Appeals) and Tribunal (when the matter was brought before it) rejected the appeal on the grounds of limitation as the same was filed beyond three months from the date of the said order.

Decision: The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to the petitioner.

Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.

Case Law:

***CCE* v *RDC Concrete (India) Pvt. Ltd.* 2011 (270) ELT 625 (SC)**

Question: Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?

Statements of Fact: the arguments not accepted at an earlier point of time were accepted by CESTAT while hearing the application for rectification of mistake and it arrived at a conclusion different from earlier one. (CA Final May 2014 RTP)

Decision: No. The Apex Court elucidated that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. The Supreme Court observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

Note: As per section 35C(2) of the Central Excise Act, 1944, the Appellate Tribunal may amend the order passed by it earlier provided the parties to the appeal bring to the notice of the Tribunal for rectification of any mistakes apparent from the records within six months from the date of issuing such earlier order.

Case Law:

***CCE* v *Gujchem Distillers* 2011 (270) ELT 338 (Bom)**

Is the CESTAT order disposing appeal on a totally new ground sustainable?

Decision: No. The High Court explained that had the CESTAT not been satisfied with the approach of the adjudicating authority, it should have remanded the matter back to the adjudicating authority. However, it could not have assumed to itself the jurisdiction to decide the appeal on a ground which had not been urged before the lower authorities.

Case Law:

***Commissioner of Central Excise, Delhi* v *Brew Force Machine Pvt. Ltd.* 2015-TIOL-1873-HC-DEL-CX-LB**

Hon'ble Delhi High Court was held that CESTAT, while dealing with an application for stay, has the power and jurisdiction to grant stay beyond 365 days, when the assessee is not responsible for delay in disposing of the appeal, under Section 35C(2A) of the Central Excise Act.