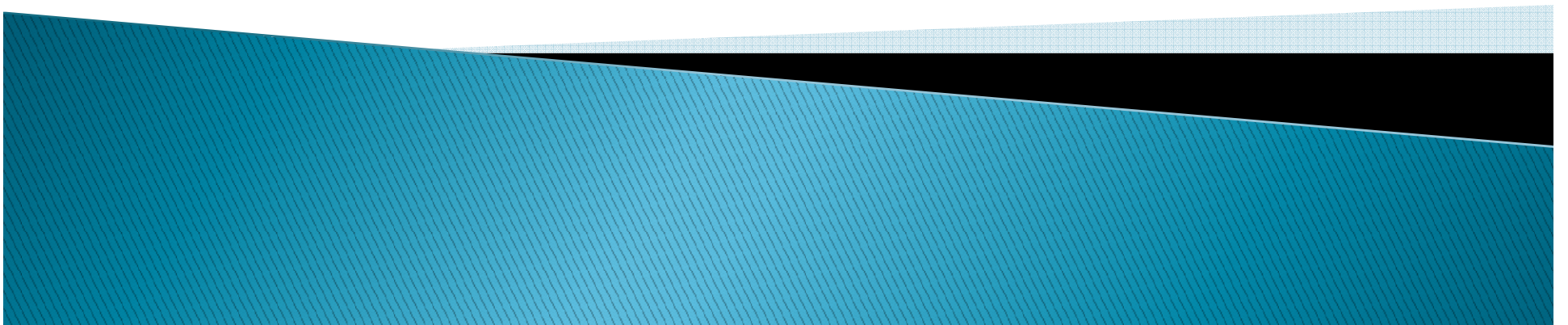
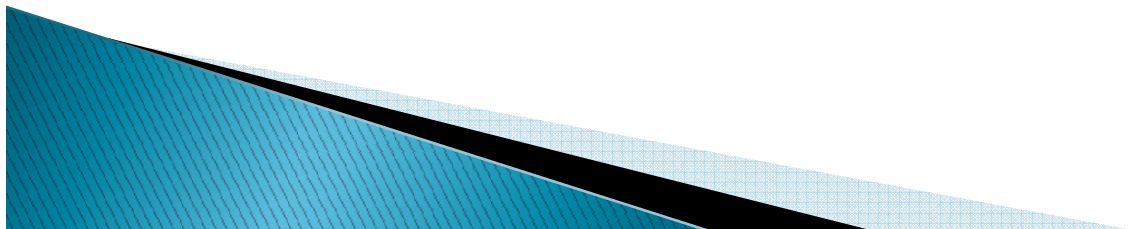


APPEARANCE BEFORE HON'BLE CESTAT

Bharat Raichandani
Advocate

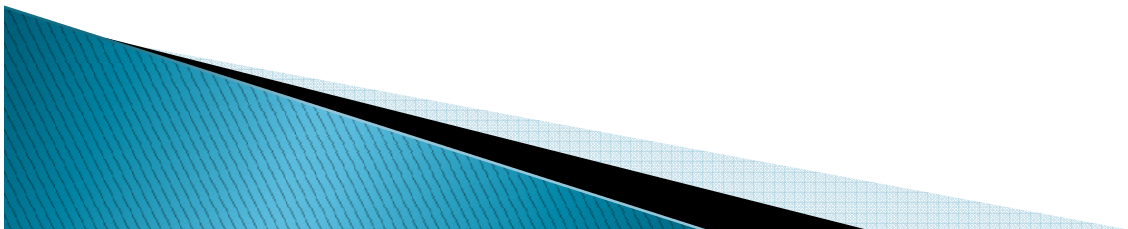


Sr. No.	Particulars
1	Background
2	Appeals before the CESTAT
3	Issues/ Instruments pertaining to representation before the CESTAT
4	Applications before the CESTAT – Nature and issues
5	Other issues in relation to litigation before the CESTAT



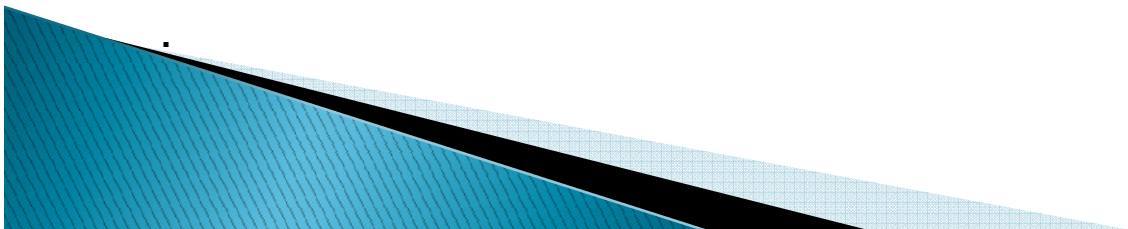
Background

- The Customs, Excise & Service Tax Appellate Tribunal (“CESTAT”) was formerly the Customs, Excise & Gold (Control) Appellate Tribunal (“CEGAT”).
- The Tribunal was constituted with effect from 11.10.1982 attached with Ministry of Finance (Department of Revenue) Notification. 223/82.
- The Tribunal, is headed by its President. There is a provision for a Senior Vice-President & Vice-Presidents besides Judicial Members & Technical Members.
- The work of the Tribunal has been distributed among 6 Special benches located at Delhi & other Regional Benches located at Mumbai, Kolkata, Bangalore , Chennai and Ahmedabad.



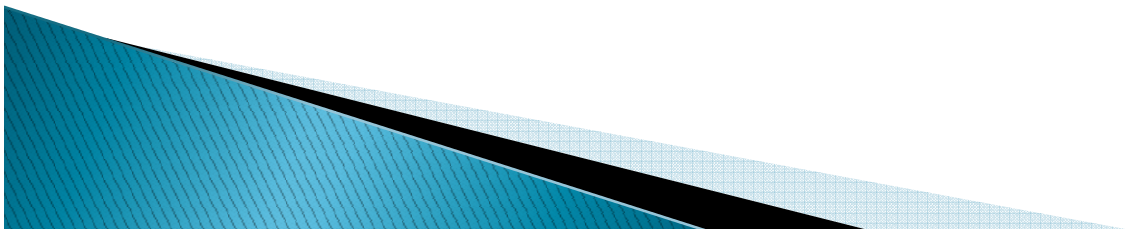
Jurisdiction

- The Regional Benches deal with matters other than those falling within the jurisdiction of the Special Benches, & consist of either two members – one a Judicial Member & one a Technical Member, or, a Single Member if it is competent enough to dispose of cases within the specified monetary limits.
- Service Tax Appeal – 35C not borrowed? (Asiatic Enterprises 2007 (5) STR 93)
- Conflicting judgments of the different High Courts – which to follow? (Kashmir Conductors 1997 (96) ELT 257 (T-LB))
- Tribunal - Final fact finding authority – (Standard Radiators 2002 (143) ELT 24 (SC))



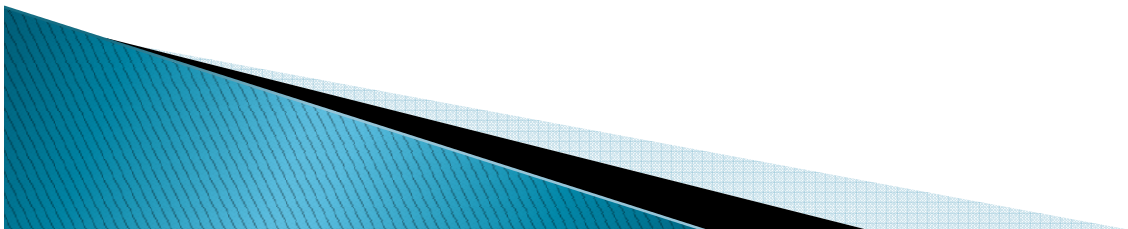
Jurisdiction.... cont

- Destruction by fire of work-in-progress? Loss in transit or storage – appeal to Joint Secretary? (Glenmark Generics Ltd 2009 (248) ELT 345)
- Can Tribunal transfer files to Govt of India? (India Pistons 1987 (27) ELT 651 (Mad))



Appeals – Procedure for filing & Date of Presentation of Appeals

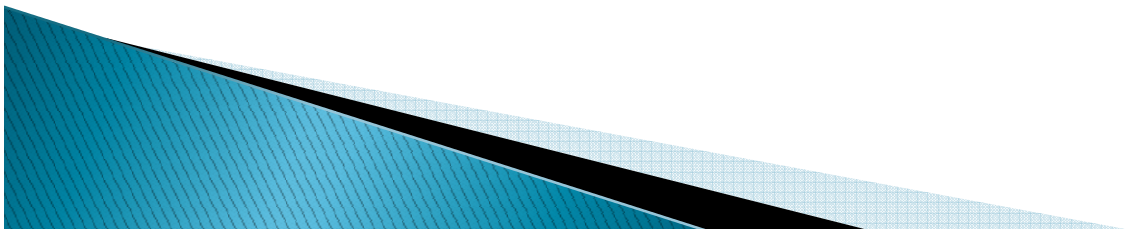
- Appealable order?
- Defects - An appeal may contain defects for which sufficient opportunity is provided to the appellants for clearing the same (Rule 11). A date is fixed for hearing of the SCN wherein the defect is examined by the bench.



Cont...

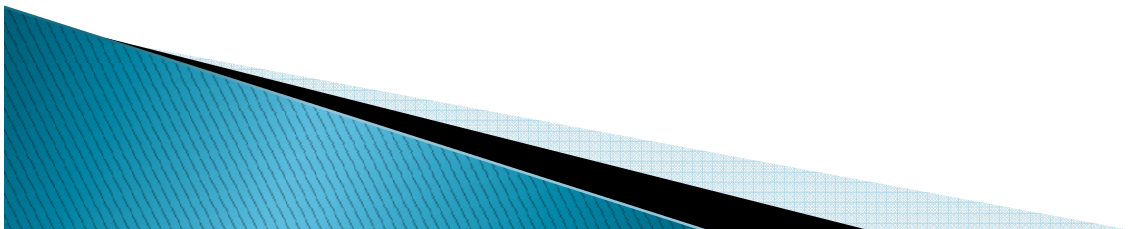
Number of Appeals to be filed

- Rule 6A
- Eicher Motors Limited 2000 (116) E.L.T. 306 – show cause notice or order-in-original
- Satake India Engineering P. Ltd. 2014 (303) E.L.T. 451 – In certain cases distinct numbers are given to a composite adjudication order, passed in respect of a several show cause notices, and against such adjudication order, how ,many appeals to be filed?



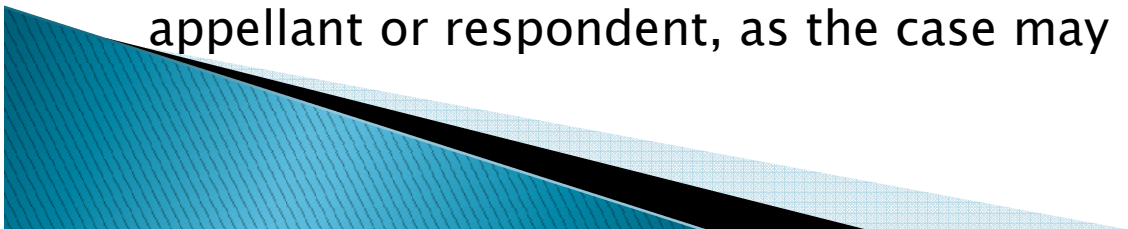
Issues/ Instruments

- Authorized representatives (Section 35Q read with Rule 2c) –
 - Mr. X has filed appeal before CESTAT. Can Mr. Y, Mr. X's friend, philosopher and guide appear before CESTAT?
- Documents authorizing representatives to appear on the party's behalf shall be appended to the memorandum of appeal (Rule 13) or filed at any time before the hearing (Rule 14)



Continued ...

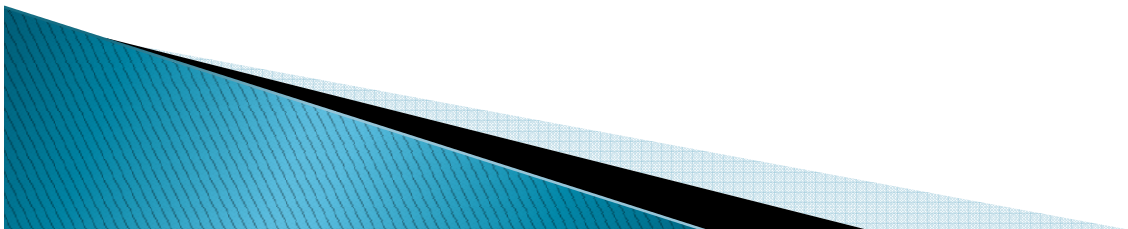
- Facts to be stated
- Copies of case law/circulars must be filed in advance, with copy to respondent
- Filing of paper book (Rule 16) – Paper book – Evidence in support of the appeal
- Dismissal for default or non-appearance – Rule 20 – (Viral Laminates 1998 (100) ELT 335 (Guj))
- Abatement of Appeal (Rule 22) – Where in any proceedings the appellant or respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or respondent, as the case may be.



Continued ...

Production of Additional Evidence

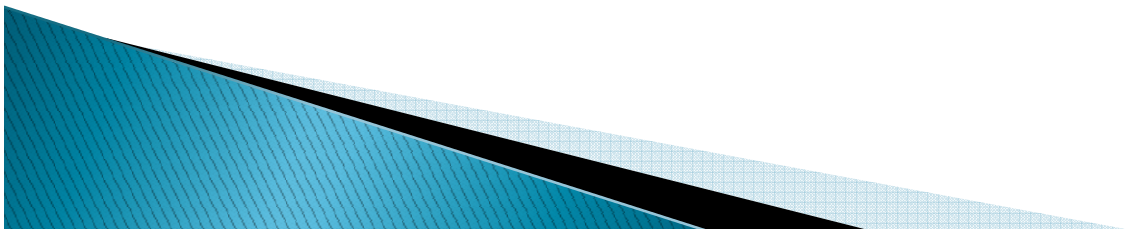
- The parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Tribunal.
- Additional evidence admissible only when it is necessary for determination of issue in hand - Siemens Ltd. 2014 (307) ELT 123
- Leave of the Tribunal is to be sought – Rule 10



Continued ...

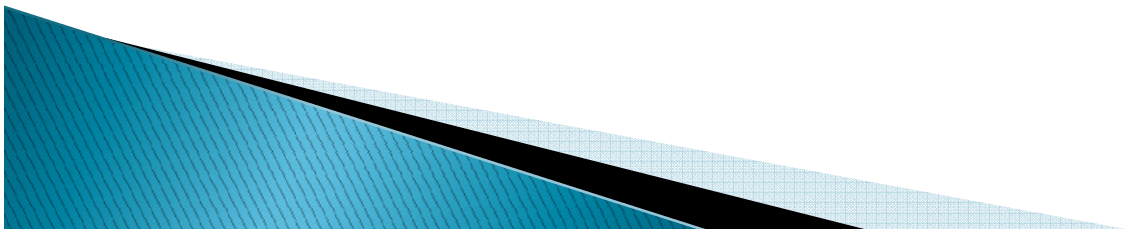
Pre-deposit (section 35 F of the Central Excise Act, 1944 & Section 129E of the Customs Act, 1962)

- Recent amendment in section 35F/129E
- Powers of the tribunal to grant stay withdrawn - mandatory pre-deposit in consonance with the VAT provisions under the State laws.
- The pre-deposit has to be made at the time of hearing. However, the registry is reading “time of hearing” as “time of filing”.
- CBEC Circular No.984/08/2014-CX dated 16th September, 2014 though clarifies aspects pertain to grant of stay but leaves the following unanswered:
 - Second appeal – 10% or 17.5% (i.e. 7.5 % + 10%)?
 - Earlier period stay granted – subsequent pre-deposit to be made?

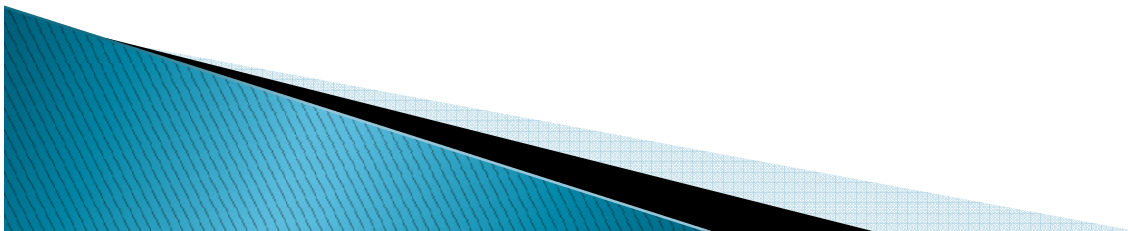


Applications before the CESTAT

- An application for rectification of mistake - section 35C(2) - The same is to be heard by the same bench, unless otherwise directed by the President.
- Rule 41 – The Tribunal has inherent power to make such orders or give such directions as may be necessary or expedient to give effect or in relation to its order or to prevent abuse of its process or to secure ends of justice – extent and scope?
 - Grant stay of operation of impugned order to the department?
 - Call for original records?
 - Direct Commissioner to appear in person?
 - Award costs?



Q & A?



Thank you

Bharat Raichandani
Advocate

