

# **CUSTOM EXCISE & SERVICE TAX APPELLATE TRIBUNAL**

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# Introduction

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- 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

# Background

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- 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.

# Procedure for Appeal to CESTAT

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**Filing of Appeal Sec 35B(1) of CEA [Parallel Sec 129A(1) of Customs Act and Sec 86(1) of Finance Act, 1994] provided that person aggrieved by ,**

1. Decision or order of Principal Commissioner/ Commissioner of Central Excise as adjudicating authority
2. Order of commissioner(Appeals)

## **Parties to an Appeal**

- Assessee
- Revenue authority

# Procedure for Appeal to CESTAT

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**Form in which an appeal to is to be filed.**

In case of CESTAT                      Form EA-3

In case of Customs                      Form CA-3

In case of Service Tax                      Form ST-5

**Appeal can be filed only against decision or order.**

No appeal can be filed against the trade notice as the same is not an order.

# **Procedure for Appeal to CESTAT**

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**No appeal in respect of duty drawback, baggage, rebate on export etc, if order is by commissioner (Appeal).**

Appeal in the above case doesn't lie with CESTAT, but revision application is required to be made to Central Government

**Niraj Kejariwal Vs CCE 279 ELT 550 (CESTAT)**

However in case of the refund of Cenvat Credit pursuant to export the appeal lies with CESTAT and revision with the government is not maintainable.

**Polynova Industries Ltd 74 ELT 466 (GOI)**

# **Procedure for Appeal to CESTAT**

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**NO Appeal against executive orders.**

Executive orders passed by excise authorities are not appealable under Central Excise Act

**Kisan Sahkari Chinni Mills Vs CCE 236 ELT 717**

**Appeal can be filed only against the final order of Commissioner (Appeal)**

# Procedure for Appeal to CESTAT

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## How many appeals to be filed??

- 5 SCNs – 1 Common OIO – 1 Common OIA  
**1 Appeal to be filed**
- 5 SCNs – 5 Separate OIOs – 5 Separate OIA  
**5 Appeals to be filed**
- 5 SCNs – 5 Separate OIOs – 1 Common OIA  
**5 Appeals to be filed**



# Procedure for Appeal to CESTAT

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Appeal to tribunal shall be made in [Form no.E.A-3/CA-3/ST-5](#) in **quadruplicate** with copy of order appealed against.

The memorandum of cross objection should be filed in [Form no. E.A.-4/CA-4/ST-6](#) in **quadruplicate within 45 days** of receiving of notice of such appeal.

Departmental appeal should be filed in [Form no.E.A-5/CA-5/ST-7](#) in quadruplicate accompanied with copy of order appealed against and a copy of the order passed by the Board directing such Commissioner to apply to the Appellate Tribunal.

# Procedure for Appeal to CESTAT

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## Statement of Facts (SOF)

### **In case of order in Original**

SOF similar to how filed before Commissioner Appeals

### **In case of Order in Appeal**

- SOF - Addition to facts before Commissioner Appeals
- Order in Original No. & Date – Impugned Order
- Findings of the Order in Original

# Procedure for Appeal to CESTAT

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## **Time Limit for filling an appeal.**

### **For the Assessee**

3 Months from the date of service of Order in Original (OIO)/ OIA(Order in Appeal).

### **For the Department**

4 Months from the date of service of Order in Original (OIO)/ OIA(Order in Appeal).

# Procedure for Appeal to CESTAT

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## Where Appeal should be filed??

To be filed within the jurisdiction of CESTAT bench where the **factory is situated** or **where its head office**, or **registered office** or **place of residence** is situated irrespective of the place where the authority which has passed the order is situated.

# Procedure for Appeal to CESTAT

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The appeal must be accompanied by a fee. The fee is payable according to the amount of duty, interest demanded and penalty levied.

Amount of duty, interest , and penalty levied	Fees for filling Appeal
Less than or equal to Rs 5 Lakhs	Rs 1,000/-
Between Rs 5 Lakhs to Rs 50 Lakhs	Rs 5,000/-
Exceeds Rs 50 Lakhs	Rs 10,000/-

Rs 500/- as fees for miscellaneous application.

**No fees is payable for appeals relating to refund, rebate etc.**

# Monetary Limits - Adjudication

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The Board has prescribed that the powers of adjudication and determination of duty shall be exercised, based on monetary limit (duty involved in a case) as under:-

<b>Central Excise Officers</b>	<b>Powers of Adjudication (Amount of duty involved)</b>
Superintendents	Upto Rs. 1 Lakh (excluding cases involving determination of rate of duty or valuation and cases involving extended period of limitation)
Deputy/Assistant Commissioners	upto Rs. 5 Lakh (except the cases where Superintendents are empowered to adjudicate).
Joint Commissioners/ Additional Commissioners	Above Rs.5 lakhs and up to Rs.50 lakhs
Commissioners	Without limit

# Procedure after filing appeal

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- Tribunal on its own can **call for any document** or examine any witness or ask for filing of affidavit.
- **Additional evidence** can also be permitted, after recording the reasons in writing, if adjudicating authority had not given sufficient opportunity to party to produce the evidence.
- Tribunal **will scrutinize the appeal** and any defects found are informed to the party concerned for removal of defects.
- Opportunity of being heard.

# Order of Tribunal

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Section 35C(1) of CEA [parallel section 129B(1) of Customs Act] [Service Tax 86(7)] provides that Tribunal can pass such order as it thinks fit

**Confirming,**

**Modifying or**

**Annuling** the decision or order appealed against.

Or **Refer it back to the authority** which passed such order with such directions as it may think fit.

Order must be **signed and dated** by members constituting the bench.

Must be **communicated to appellant and respondent.**



# Order of Tribunal

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**Tribunal cannot make a new case.**

Tribunal cannot pass an order on the basis which was never canvassed by the revenue and which the assessee was never required to meet.

**Reckitt & Colman of India Ltd 88 ELT 641 (SC)**

**Order of CESTAT should be complete with reasons.**

Tribunal announce **operative part of the order first** and the **reasons are given later**. However the same need to be passed in **single order only**.

# Order of Tribunal

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## **Rectification of own mistake by Tribunal**

Tribunal has **no power to review** its orders. However as per Sec 86(7) of Finance Act ,1994 tribunal may rectify the order within 6 months.

## **Fairline Worldwide Express Vs. CCE 48 GST 805 (Mad)**

**Mistakes apparent from records can be rectified.**

The purpose of “**Rectification of Mistake**” is based on the fundamental principle that **no party** , be it assessee or department **should suffer** on account of **any mistake committed by the Tribunal.**

# Order of Tribunal

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## **Point raised but not considered**

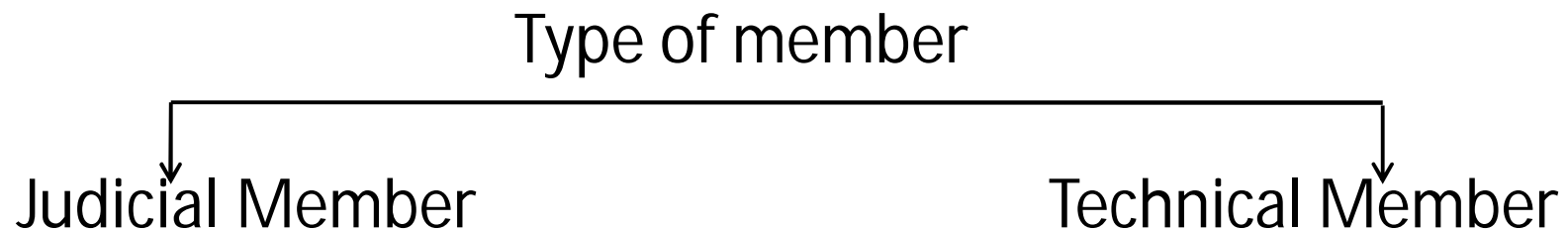
If a point is raised in appeal , but not considered by Tribunal while delivering the order it is a mistake apparent from the record and can be rectified.

## **NRC Vs. CCE 17 STT 42 (CESTAT)**

Appeal against the order of Tribunal in respect of matters relating to valuation and classification can be made before Supreme Court

# Constitution of Tribunal

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The members are appointed for 5 years. The period can be extended by 5 years, however retirement age is 65.

## **Judicial member shall be**

1. A person who has held judicial office for 10 years in India.
2. Has been a member of Indian Legal Service and has held grade I or higher for at least three years.
3. Has been advocate for at least 10 years.

# Constitution of Tribunal

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## Technical Member

- A technical member shall be a person who has held post of Commissioner of Customs or Central Excise or higher post for at least 3 years.
- Should have attained age of 45 years.

# **Authorized representatives (Section 35Q read with Rule 2c)**

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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)

# **Powers and Limitation of CESTAT S-129C(7)**

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Decision of Tribunal is binding on the lower authority.

**CIT Vs. Raison Industries Ltd 7 STR 497 (SC)**

However if the SC admits appeal against a decision of Tribunal its finality and correctness is in jeopardy.

**CCE Vs. BOC India 212 ELT 222 (CESTAT)**

In case of contest between judgment of CESTAT and circular of Board , quasi judicial decision of CESTAT prevails.

**Century Rayon Vs UOI 164 ELT 319 (Bom)**

# **Powers and Limitation of CESTAT S-129C(7)**

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Personal Penalty on Commissioner for delay in refund

**Greenply Industries Vs CCT 37 VST 536 (Kar)**

**Proceedings are judicial proceedings**

Proceedings before the Tribunal are deemed to be judicial proceedings within meaning of Sec 193 and 228 of Indian Penal Code.



# **Powers and Limitation of CESTAT S-129C(7)**

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## **Grant Interim relief and stay orders.**

Tribunal can pass interim orders as it deems fit to 'secure ends to justice'

## **IPCL Vs. CCE 169 ELT 267 (CESTAT)**

## **Award Interest if Tribunal's order is not implemented.**

Tribunal has inherent powers to order payment of interest, if its order is not implemented by the department within reasonable time.

## **HBL Nife Power System Vs. CC 156 ELT 407 (CESTAT)**

# **Powers and Limitation of CESTAT S-129C(7)**

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## **Tribunal is Final Fact Finding Authority**

Tribunal is the final fact finding authority as High Court and Supreme Court cannot go behind the facts found by Tribunal , unless there is reason to interfere.

**Bhilai Casting Vs. CCE 179 ELT 16 (SC)**

**CCE Vs. Dinesh Kumar Aggarwal 256 ELT 397 (P & H)**

**Tribunal bound by judgments of High Court.**

Tribunal is bound by judgments of High Court ( and of course Supreme Court).

# **CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982**

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**RULE 3 Sittings of Bench**:- A Bench shall hold its sittings either at Headquarters or at such other place falling within its jurisdiction as it may consider expedient.

**RULE 4 Powers of Bench**:- A Bench shall hear and determine such appeals and applications made under the Acts as the President may by general or special order direct.

**RULE 5 Language of the Tribunal**:- The language of the Tribunal shall be English.

However tribunal can pass such orders in Hindi, as and when it deems fit.

# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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## **RULE 6 Procedure for filing appeals :-**

A memorandum of appeal in the relevant form shall be presented to Tribunal by the appellant in person or by an agent to the concerned officer. **Prayers to be mentioned clearly and concisely**

Or Sent by registered post addressed to the concerned officer.

## **RULE 7 Date of presentation of appeals :-**

The Registrar shall endorse on every memorandum of appeal the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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## **RULE 8 Contents of a memorandum of appeal:-**

Every Memorandum of Appeal shall set forth concisely and under distinct heads, the grounds of appeals numbered consecutively and shall be typed in double space of the paper.

Every memorandum of appeal, cross-objection, reference applications, stay application or any other miscellaneous application shall be typed neatly in **double spacing on the fool-scape paper** and the same shall be duly paged, indexed and tagged firmly with each paper book put in a separate folder.

# **CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982**

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## **RULE 10 Grounds which may be taken in appeal:-**

The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any grounds not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or those taken by leave of the Tribunal.

**CIT Vs S Nelliappan 66 ITR 722 (SC)**

**Devangere Cotton Mills Vs CCE 198 ELT 482 (SC)**

# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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**RULE 13. Document authorizing representative to be attached to the memorandum of appeal**

**RULE 15. Filing of memorandum of cross-objection, application or replies to appeals/applications:-** and every application made, under the provisions of the Acts, shall be registered and numbered.

**RULE 15A Reply to appeal:-** After a copy of the appeal has been served the respondents may file a reply within one month and on the receipt thereof, the appellant may file a rejoinder within one month or within such time as may be specified / extended.

# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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## RULE 16. Preparation of paper book:-

- The appellant shall, **along with the appeal or within one month of filing of the appeal**, a paper book containing copies of the documents, statements of witnesses and other papers on the file of, or referred to in the orders of, the departmental authorities, which he proposes to rely upon at the hearing of the appeal.
- All paper books shall contain clearly **legible documents** duly paged, **indexed and be tagged firmly**.



# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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## **RULE 18 Date and place of hearing to be notified :-**

The Tribunal shall notify to the parties the date and place of hearing of the appeal or application.

## **RULE 19 Hearing of appeal:-**

- On the day fixed, or on any other day to which the hearing may be adjourned, **the appellant shall be heard in support of the appeal.**
- The Tribunal shall then, if necessary, **hear the respondent against the appeal** and in such a case the appellant shall be entitled to reply.

# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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## RULE 21. Hearing of appeals ex parte:-

On the day of hearing of the appeal the **appellant appears** and the **respondent does not appear**, the Tribunal may hear and decide the appeal **ex parte**.

## RULE 23. Production of additional evidence:-

Additional evidence only at the **discretion Tribunal** be filed to enable it to pass orders or for any sufficient cause, or if adjudicating authority or the appellate or authority has **decided the case without giving sufficient opportunity to any party**.

# **CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982**

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## **RULE 25 Proceedings to be open to public:-**

The proceedings before the Tribunal shall be open to the public

## **RULE 26 Order to be signed and to dated:-**

Every order of the Tribunal shall be in writing and shall be signed and dated by the Members constituting the Bench concerned.

## **RULE 27 Publication or orders:-**

Tribunal if deemed fit for publication in any authoritative report or the press, may be released for publication on such terms and conditions as the Tribunal may lay down.

# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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## RULE 28A Procedure for filing and disposal of stay petitions:-

Every application preferred for stay shall be presented in quadruplicate **by the appellant**, at the Headquarters of the Bench having jurisdiction to hear the appeal in respect of which the application for stay arises.

### **An application shall state**

- The **facts regarding the demand** of duty or penalty, the deposit whereof is sought to be stayed;
- The exact **amount of duty** or penalty and the amount undisputed there from and the amount outstanding;
- The **date of filing of the appeal** before the Tribunal.

# **CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982**

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## **RULE 29 Reference to High Court:-**

An application to the High Court shall be filed **in quintuplicate** and shall be accompanied by a list of documents which, in the opinion of the applicant, should form part of the case and **five copies of the order passed by the Tribunal.**

## **RULE 30 Reference to Supreme Court in case of conflict in decisions of High Courts:-**

The Tribunal, **can refer to Supreme Court** on account of **conflict in the decisions of High Courts** in respect of any particular question of law, such reference shall inter alia set out concisely the decisions of the High Court and the points of conflict in the decisions.

# **CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982**

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**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**

- Grant stay of operation of impugned order to the department.
- Call for original records.
- Direct Commissioner to appear in person.
- Award costs.

# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982

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## **RULE 47 Dress for the Members:-**

The dress for the Members shall be such as the President may prescribe.

## **RULE 48 Dress for the parties:-**

Every authorized representative other than a relative or regular employee of a party shall appear before the Tribunal in his professional dress.

**For Male** : A close or open -collared black coat, with white shirt and black tie;

**For Female** : A black coat over a white sari or any other white dress

## Circular No 984/08/2014-CX 16-09-14

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**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 before filling an appeal.**

In case of only duty - 10% of Duty so demanded.

In case duty and penalty - 10% of duty so demanded.

In case of only penalty - 10% of penalty so demanded.

**However the amount of Pre deposit should not exceed Rs 10 crores.**



*Any Questions*  
*???*

*THANK YOU*