

# Lesson 8

## Advance Ruling, Settlement Commission and Appellate Procedure

### LESSON OUTLINE

This Part is divided into three parts:

- Advance Ruling
- Settlement Commission
- Appellate Procedure

### LEARNING OBJECTIVES

After completion of this lesson the student will have the understanding of

- Provisions of Advance Ruling
- Who can seek advance ruling and on whom it is binding
- What is the procedure to obtain advance ruling
- Procedure to file appeal before the Settlement Commission
- Cases where the application can be made before the Settlement Commission
- Appellate procedures

## ADVANCE RULING

Appreciating the need for foreign investors to be assured in advance of their likely indirect tax liability, the Central Government has set up an Authority for Advance Rulings, Customs to provide binding ruling on important issues so that intending investors will have a clear-cut indication of their duty liability in advance. The legal provisions relating to advance rulings were introduced in the Finance Act of 1999. The advance rulings scheme has the following advantages:

- (a) It ensures clarity and certainty of the tax liability under the Customs Act in advance in relation to an activity (means import or export under the Customs Act, proposed to be undertaken by the applicant).
- (b) Finality and thereby avoidance of protracted litigation.
- (c) Speedy decisions.
- (d) Inexpensive process.
- (e) Transparency.

The following are the provisions of Customs Law pertaining to advance ruling.

<b>Provisions</b>	<b><i>Custom Law</i></b>
Chapter	Chapter 5B
Definitions	Section 28E
Authority for advance rulings	Section 28F
Vacancies, etc., not to invalidate proceedings	Section 28G
Application for advance ruling	Section 28H
Procedure on receipt of application	Section 28I
Applicability of advance ruling	Section 28J
Advance ruling to be void in certain circumstances	Section 28K
Powers of Authority	Section 28L
Procedure of Authority	Section 28M

### Definitions [Section 28E]

As per section 28E(a) of Customs Act, "activity" means import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be.

(b) "**advance ruling**" means the determination, by the authority of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity proposed to be undertaken, by the applicant;

(c) "**applicant**" means--

- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
  - (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
  - (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India:
- (ii) a joint venture in India; or
  - (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 23C or sub-section (1) of 28H;

The Central Government has specified the following categories of persons as being eligible to seek advance rulings:-

- (a) Any Public Sector Company;
- (b) Residents proposing to import goods under the project import facility (heading 9801 of the Customs Tariff) for seeking rulings under the Customs Act 1962;
- (c) Residents proposing to import goods from Singapore under the Comprehensive Economic Co-operation Agreement for seeking rulings on origin of goods under the Customs Act, 1962;
- (d) Resident Public Limited Company.
- (e) Resident Private Limited Company.
- (f) Resident firm

As per explanation "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement;

(d) "**application**" means an application made to the Authority under sub-section (1) of section 28H of the Customs Act

(e) "**Authority**" means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961

(f) "**non-resident**", "Indian company" and "foreign company" shall have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961(43 of 1961).

#### **AUTHORITY FOR ADVANCE RULINGS (SECTION 28F)**

Authority for advance rulings: Subject to the provisions of this Act, the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be the Authority for giving advance rulings for the purposes of this Act and the said Authority shall exercise the jurisdiction, powers and authority conferred on it by or under this Act:

Provided that the Member from the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the revenue Member of the Authority for the purposes of this Act.

On and from the date on which the Finance Bill, 2017 receives the assent of the President, every application and proceeding pending before the erstwhile Authority for Advance Rulings (Central Excise, Customs and Service Tax) shall stand transferred to the Authority from the stage at which such application or proceeding stood as on the date of such assent.

### **APPLICATION FOR ADVANCE RULING [SECTION 28H]**

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

#### **Questions on which Advance Ruling can be sought**

Particulars	Customs
Classification	(a) classification of goods under the CTA, 1975
Applicability of Exemption Notification	(b) applicability of a notification issued section 25(1), having a bearing on the rate of duty;
Valuation of excisable goods/imported or export goods	(c) the principles to be adopted for the purposes of determination of value of the goods
Applicability of notification	(d) Applicability of notifications issued in respect of duties under this Act, the CTA, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable.
CENVAT Credit	Not applicable
Payment of duty	Not applicable
Origin of goods	(e) determination of origin of the goods in terms of the rules notified under the CTA, 1975

**Fees:** The application shall be made in quadruplicate and be accompanied by a fee of ten thousand rupees

**Withdrawal of application:** An applicant may withdraw an application within thirty days from the date of the application.

### **PROCEDURE ON RECEIPT OF APPLICATION [SECTION 28I]**

On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Customs and, if necessary, call upon him to furnish the relevant records.

However, where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Customs.

**Allow or reject the application:**

The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

However, the Authority shall not allow the application where the question raised in the application is,--

- (a) already pending in the applicant's case before any Custom officer, the Appellate Tribunal or any Court;
- (b) the same as in a matter already decided by the Appellate Tribunal or any Court :

However, no application shall be rejected unless an opportunity has been given to the applicant of being heard.

Where the application is rejected, reasons for such rejection shall be given in the order.

A copy of every order shall be sent to the applicant and to the Commissioner of Customs.

Where an application is allowed, the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

"authorised representative" shall have the meaning assigned to it in sub-section (2) of section 35Q.

The Authority shall pronounce its advance ruling in writing within 6 months of the receipt of application.

A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Customs, as soon as may be, after such pronouncement.

The detailed procedure on receipt of application is contained in Authority for Advance Rulings (Central Excise, Customs and Service Tax) Procedure Regulations, 2005.

**APPLICABILITY OF ADVANCE RULING (SECTION 28J)**

The advance ruling pronounced by the Authority shall be binding only—

- (a) on the applicant who had sought it;
- (b) in respect of any matter referred to in 28H(2);
- (c) on the Principal Commissioner of Customs, or the customs authorities subordinate to him, in respect of the applicant.

The advance ruling shall be binding unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

**ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 28K]**

Where the Authority finds, on a representation made to it by the Principal Commissioner of Customs or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be *void Ab initio* and thereupon all

the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

A copy of the order made shall be sent to the applicant and the Principal Commissioner of Customs.

#### **POWERS OF AUTHORITY [SECTION 28L]**

The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

#### **PROCEDURE OF AUTHORITY [SECTION 28M]**

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

#### **SETTLEMENT COMMISSION IN CUSTOMS LAW**

The disputes under, customs are sought to be settled by the Commission expeditiously without much strain. The provisions were introduced in the Finance Act, 1998. Under this, cases are settled by the Commission at the instance of the assessee who wants to accept liability without contesting the case.

The following are the provisions of Settlement Commission under Custom law:

<b>Provisions</b>	<b>Custom Law</b>
Chapter	Chapter 14A
Definition	Section 127A
Customs, Central Excise and Service Tax Settlement Commission	—
Jurisdiction and powers of Settlement Commission	—
Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances	—
Power of Chairman to transfer cases from one Bench to another	—
Decision to be by majority	—
Application for settlement of cases	Section 127B
Procedure on receipt of application under section 127B	Section 127C
Power of Settlement Commission to order provisional attachment to protect revenue	Section 127D
Power of Settlement Commission to reopen completed proceedings	Section 127E

Power and procedure of Settlement Commission	Section 127F
Inspection etc., of reports	Section 127G
Power of Settlement Commission to grant immunity from prosecution and penalty	Section 127H
Power of Settlement Commission to send a case back to the proper officer	Section 127I
Order of settlement to be conclusive	Section 127J
Recovery of sums due under order of settlement	Section 127K
Bar on subsequent application for settlement in certain cases	Section 127L
Proceedings before Settlement Commission to be judicial proceedings	Section 127M
Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement	Section 127MA

### DEFINITIONS (SECTION 127A)

As per section 127A(b) of Customs Act, 1962, “case” means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a proper officer or the Central Government on the date on which an application under sub-section (1) of section 127B is made :

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;

“**Settlement Commission**” means the Customs, Section 127A(f)]

### CONSTITUTION AND COMPOSITION OF SETTLEMENT COMMISSION

The Central Government has constituted the Customs, Settlement Commission. The commission has principal Bench at Delhi and additional Benches at other three major metros. The principal Bench is headed by the chairman and the others by the vice-chairman. Two other members will be assisting them at each bench.

The commission provides quick and easy settlement of tax disputes involving high revenue stake. The purpose is to save time and energy of both the tax payer and the Department. The procedure followed by the commission is much less costly and is beneficial to the assessee.

### POWERS OF THE COMMISSION

The commission will exercise its powers for settling the cases as a bench consisting of three members, and all decisions will be by majority. The Chairman has the power to constitute a large bench or special bench, wherever necessary. The commission has power to regulate its own procedures and procedures of its benches.

The commission has power to have exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs/excise/service tax.

The commission can grant immunity from prosecution for any offence under Customs Act/. It can also withdraw the immunity granted if the conditions specified under its order are not complied with.

The commission has power to grant waiver either wholly or in part from imposition of any penalty, fine, but NOT interest under excise/customs/service tax in respect of the case covered under the settlement.

It can order provisional attachment of property belonging to the applicant if found necessary to protect the interests of the revenue.

Note: The order of the Commission is conclusive and cannot be re-opened in any proceedings under the Acts.

## **APPLICATION TO THE COMMISSION [SECTION 127B]**

The following categories of people fulfilling the requirements can make an application for settlement commission:

- An importer/exporter or a manufacturer can approach the settlement commission by filing an application in the prescribed form. It may be noted that the department cannot approach the commission for settlement.
- The application can only be made to admit the liability, not to contest it. The admitted liability shall be more than ` 3,00,000.
- The applicant can file an application in the following cases:
  - Admission of short levy on account of misclassification.
  - Under valuation.
  - Inapplicability of exemption notification/input tax credit.

### **Note:**

Application cannot be made in case where no return has been filed.

Application cannot be made if the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer.

The applicant has to deposit the additional duty with interest along with the application.

An application has only one opportunity to avail the settlement in his lifetime.

The exporter under DEEC, EOU/EPZ can approach the commission if he failed to fulfill his export obligation for reasons beyond his control.

The cases involving the valuation dispute can be taken up with the commission.

Cases relating to interpretation of law and notifications can be taken up.

Section 127B has been amended so as to insert a new sub-section (5) therein to enable any person, other than applicant, referred to in sub-section (1) to make an application to the Settlement Commission.

Any person, other than an applicant referred to in sub-section (1), may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified by rules.

*Persons involved in the following cases cannot approach the commission for settlement:*

- *Cases involving narcotic drugs and psychotropic substances under Narcotic Drugs and Psychotropic Substances Act, 1985.*
- *Cases where the revenue has invoked the provisions of Section 123 of the Customs Act (seizure of smuggled goods and burden of proof).*
- *Cases involving interpretation of classification of goods under the Customs Tariff Act or CETA.*
- *Cases pending before the Tribunal/Court.*
- *Cases remanded by the tribunal for fresh adjudication.*

#### **PROCEDURE ON RECEIPT OF AN APPLICATION UNDER SECTION 127B [SECTION 127C]**

Section 127C of the Customs Act contains the provisions regarding procedure on receipt of an application for settlement of cases.

Sub-section (3) of Section 127C has been amended so as to substitute certain words therein. It further seeks to insert a new sub-section (5A) therein to enable the Settlement Commission to amend the order passed by it under sub-section (5), to rectify any error apparent on the face of record.

**Procedure on receipt of an application under Section 127B:** On receipt of an application under section 127B, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with or reject the application, as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection.

*Provided* that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

A copy of every order under sub-section (1) shall be sent to the applicant and to the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction.

Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission:

*Provided* that where the Principal Commissioner or Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner.

Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case :

*Provided* that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

After examination of the records and the report of the Principal Commissioner of Customs or Commissioner of Customs received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the 15[Principal Commissioner of Customs or Commissioner of Customs] having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner of Customs or Commissioner of Customs and Commissioner (Investigation) under sub-section (3) or sub-section (4).

The Settlement Commission may, at any time within three months from the date of passing of the order under sub-section (5), amend such order to rectify any error apparent on the face of record, either *suo motu* or when such error is brought to its notice by the jurisdictional Principal Commissioner of Customs or Commissioner of Customs or the applicant:

Provided that no amendment which has the effect of enhancing the liability of the applicant shall be made under this sub-section, unless the Settlement Commission has given notice of such intention to the applicant and the jurisdictional Principal Commissioner of Customs or Commissioner of Customs as the case may be, and has given them a reasonable opportunity of being heard.

[(6) \* \* \* \*]

Subject to the provisions of section 32A of the Central Excise Act, 1944 (1 of 1944), the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D of the Central Excise Act, 1944 (1 of 1944) shall apply.

The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefore and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts :

*Provided* that the amount of settlement ordered by the Settlement Commission, shall not be less than the duty liability admitted by the applicant under section 127B.

Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the applicant within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of section 142.

Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the proper officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

## APPELLATE PROCEDURES

Decisions made or orders passed by Officers of Central Excise at different levels can give rise to grievances which broadly are of two kinds. First, if the decision denies to the assessee the benefit due, or confers a hardship undue, it can create a grievance to him. Secondly, the decisions can confer on the assessee a benefit undue or deny revenues due to the Government, in which case the Government itself becomes the aggrieved party. There are two parties to every dispute, and it happens at times that satisfaction to one could mean dissatisfaction to the other. There should be mechanism to go into grievances of either kind and the appellate mechanism is meant precisely for that.

<b>APPEALS</b>	Chapter XV of Customs Act
- Appeals to Commissioner Appeals	Section 128
- Procedure in appeal	Section 128A
- Appellate Tribunal	Section 129
- Appeals to the Appellate Tribunal	Section 129A
- Orders of Appellate Tribunal	Section 129B
- Procedure of Appellate Tribunal	Section 129C
- Power of Board Commissioner of Customs to pass certain orders	Section 129D
- Powers of revision of Board or Commissioner of Customs in certain cases	Section 129DA
- Revision by Central Government	Section 129DD
- Deposit, pending appeal, of duty and interest demanded or penalty levied	Section 129E
- Interest on delayed refund of amount deposit under the Proviso to Section 129E or section 35F	Section 129 EE
- Statement of case to High Court	Section 130

- Statement of case to Supreme Court in certain cases	---
- Application to High Court	Section 130A
- Power of High Court or Supreme Court to require statement to be amended	Section 130B
- Case before High Court to be heard by not less than two judges	Section 130C
- Decision of High Court or Supreme Court on the case stated	Section 130D
- Appeal to Supreme Court	Section 130E
- Hearing before Supreme Court	Section 130F
- Sums due to be paid notwithstanding reference, etc	Section 131
- Exclusion of time taken for copy	Section 131A
- Transfer of certain pending proceedings and transitional provisions	Section 131B
- Appearance by authorised representative	---
- Appeal not to be filed in certain cases	Section 131BA
- Definitions	Section 131C [Omitted]

	<b>Orders passed by</b>	<b>Relief at first stage</b>	<b>Relief at second stage</b>
(a)	Superintendent/Assistant Deputy/Additional/Joint Commissioner	Appeal before Commissioner (Appeals)	Appeal before CESTAT
(b)	Commissioner	Appeal before CESTAT	Appeal before CESTAT

### **APPELLATE TRIBUNAL [CUSTOMS LAW]**

To ensure safeguards to citizens' interests in any area of administration, including fiscal administration, it is essential that appellate authorities are totally independent of the administrative authorities. Till a few years back, the appellate mechanism in Central Excise was liable to critical comment in this regard, since the appellate remedies then provided in the statute culminated in the Central Board of Excise and Customs itself acting as an appellate agency. The Board, in this manner, combined the functions of the administrative as well as the appellate authority in the department. Though the Board, manned by very senior officers in the department, maintained the highest standards of objectivity in considering appeals, was still prone to give rise to widespread misgivings in the minds of trade and industry regarding the possibility of a 'revenue bias' in its approach as an appellate body. A number of Committees and Commissions set up by the Government from time to time, such as the Central Excise Reorganization Committee, the Tariff Revision Committee, etc. took stock of the position and suggested the setting up of an independent Tribunal on the lines already available in regard to Income Tax, so that such misgivings may be dispelled, and confidence created in the minds of the assesseees as a whole.

The department eventually decided to set up the Tribunal and the necessary legislation was made in 1980 [Section 50 of the Finance (No. 2) Act, 1980]. The legislation was implemented from 11.10.1982, the date of implementation being announced through Notification No. 214/82-CE dated 10.9.1982.

However, it is not vested with the powers of review.

### **(1) COMPOSITION OF THE TRIBUNAL**

As with the Income Tax Appellate Tribunal, CESTAT comprises technical members and judicial members, the underlying idea being that the former would provide the forum, the benefit of their knowledge and experience in the Department, and the latter will contribute benefits arising from unalloyed judicial approach. At present, the CESTAT functions in Delhi, Kolkata, Chennai, Mumbai and Bangalore.

The CESTAT is presided over by a President, with one or more Vice Presidents. As for members, the technical members are very senior officers of the rank of Commissioners of Central Excise and Customs, whereas the judicial members are senior members of the bench or the bar, selected for appointment.

As indicated in the statement at the very beginning, appellate orders decided by Commissioners (Appeals) can be contested before the CESTAT and in such situations, it functions as a second appellate forum. Original orders passed by Commissioner (including Additional Commissioner) can be contested straightaway before the CESTAT. In such situations, it will function as the first and the only appellate forum within the department. Appeals are normally decided on the basis of majority decision. In case a major decision does not arise, the President can nominate an extra member to the bench, to enable a majority decision arising.

To ensure that the valuable time of a body of this nature is not wasted in examining disputes involving insignificant stakes, it has been provided that the CESTAT may, in its discretion, refuse to admit the appeal in respect of any order if the amount of fine or penalty under contest does not exceed ` 50,000/- (Rupees Fifty Thousand only) [Section 35B(1)]. However, if the issue involved pertains to determination of the rate of duty or valuation, the CESTAT cannot refuse to admit the appeal, whatever be the amount involved. Again, to ensure optimum utilisation of the Tribunal's valuable time, Section 35D(3) provides that if the case involves amounts upto ` 50,00,000/- (Rupees Fifty Lakh only) in duty/fine/penalty, a single Member (instead of a bench) can himself decide the case.

But where the amount involved is more than `10 crore on day to day basis, three member Benches shall be constituted for hearing such cases. All cases involving an amount of `25 crores or more would be listed before the Benches on priority basis and would be heard on day to day basis.

### **(2) FILING APPEAL BEFORE CESTAT**

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order

- (a) A decision or order passed by the [Commissioner] as an adjudicating authority;
- (b) An order passed by the [Commissioner] (Appeals)
- (c) An order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate [Commissioner]
- (d) An order passed by the Board or the [Commissioner], either before or after the appointed day,

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where, the amount of fine or penalty determined by such order does not exceed two lakh rupees.

### **(3) APPEARANCE BY AUTHORISED REPRESENTATIVE**

Both the parties to the dispute will be heard together by the bench. The Department will be represented normally by departmental officers functioning as Departmental Representatives. The assessee can appear in person or through counsel. In this regard, Section 35Q prescribes that any party to a dispute may otherwise than when required by the Tribunal to attend personally for examination on oath, can appear through an authorised representative who may be:

- (a) his relative or regular employee; or
- (b) Custom House Agent; or
- (c) any legal practitioner who is entitled to practice in any civil court; or
- (d) any person who has acquired such qualifications as the Central Government may prescribe by rules made in this behalf. The Central Government has since prescribed the qualifications under Rule 12 of the Central Excise (Appeals) Rules, 2001.

For the purposes of clause (c) of Sub-section (2) of Section 35Q, an authorised representative shall include a person who has acquired any of the following qualifications being the qualifications specified under clause (c) to Rule 12 of the Central Excise (Appeals) Rules, 2001, namely:

- (a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
- (b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or
- (c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980) who has obtained a certificate of practice under Section 6 of that Act; or
- (d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any recognised university; or
- (e) a person formerly employed in the Department of Customs and Central Excise or Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said departments for not less than ten years in the aggregate,

can act as an authorised representative.

### **ADJUDICATION AND APPELLATE PROVISIONS UNDER CUSTOM LAWS**

Orders passed by adjudicating authorities give rise to disputes between the assessee and Customs Department. These generally arise in connection with the classification and valuation of goods or in regard to infraction of legal provisions and/or procedures. In any tax system, disputes are bound to arise howsoever simple a tariff is made to appear. Burkets famous diction that it is difficult to tax and please, is known to all.

An incorrect assessment to a duty might take place on account of various factors. It may arise due to inadvertence, error, collusion, or misconstruction on the part of an officer of revenue, or through mis-statement as to the quantity, description or value in respect of dutiable goods on the part of an assessee. An incorrect assessment is as detrimental to the exchequer as it is to the assessee. There are various factors leading to a mistake which result in an incorrect assessment. The Public Accounts Committee [(5th Lok Sabha) (1972-73) 89th Report at P. 14] identified them as mainly resulting from.

The procedure prescribed for filing appeals and revision applications against orders passed by Customs

officers are described in Sections 128, 130 and 131 of the Customs Act.

The relevant provisions regarding Appeal and Revision are discussed below, Section-wise.

#### **(A) APPEALS TO COMMISSIONER (APPEALS)(SECTION 128)**

- (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within 60 days from the date of communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of thirty days.

- (2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

#### **PROCEDURE IN APPEAL (SECTION 128A)**

- (1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard if he so desires.
- (2) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeal), is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.
- (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.

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order;

Provided further that where the Commissioner (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied and erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in Section 28 to show cause against the proposed order.

- (4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.
- (4A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.
- (5) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Commissioner of Customs.

#### **(B) APPELLATE TRIBUNAL (SECTION 129)**

- (1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Service Tax Appellate Tribunal consisting of as many judicial and technical

members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

- (2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

*Explanation:* For the purposes of this sub-section—

- (i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;
- (ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.
- (2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.
- (3) The Central Government shall appoint—
- (a) a person who is or has been a Judge of a High Court; or
- (b) one of the members of the Appellate Tribunal, to be the President thereof.
- (4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.
- (4A) Omitted by Finance Act, 2003.
- (5) Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

#### **APPEALS TO THE APPELLATE TRIBUNAL (SECTION 129A)**

- (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:
- (a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;
- (b) an order passed by the Commissioner (Appeals) under Section 128A;
- (c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;
- (d) an order passed by the Board or the Principal Commissioner of Customs, either before or after the appointed day, under Section 130, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b), if such order relates to:

- (a) any goods imported or exported as baggage;
- (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;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder;

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or (d) where:

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or

(ii) in any disputed case other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty determined by such order, does not exceed two lakh rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to Sub-section (1), which is pending immediately before the commencement of Section 40 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government under Section 129DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(1B) The Board may, by notification in the Official Gazette constitute such committees as may be necessary for the purpose of this Act, consisting of two Chief Commissioners or Commissioners of Customs.

(2) The Committee of Commissioners of Customs may, if it is of opinion that an order passed by the Appellate Commissioner of Customs under Section 128 as it stood immediately before the appointed day, or by the Commissioner (Appeals) under Section 128A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

*Explanation:* For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Customs, or as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under the section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified

in Sub-section (3).

- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in Sub-section (3) or Sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of:
  - (a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
  - (b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than five lakh rupees, but not exceeding fifty lakh rupees, five thousand rupees;
  - (c) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in Sub-section (2) or a memorandum of cross-objections referred to in Sub-section (4).
- (7) Every application made before that Appellate Tribunal,-
  - (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
  - (b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.

#### **ORDERS OF APPELLATE TRIBUNAL (SECTION 129B)**

- (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.
- (2) The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under Sub-section (1) shall make such amendments if the mistake is brought to its notice by the Commissioner of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.
- (2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

If the appeal is not disposed of within the period specified in the above, the Appellate Tribunal may on an application made in this behalf by a party and on being satisfied that delay in disposing of the appeal is not attributable to such party, extend the period of stay to such

further period, as it thinks fit, not exceeding 185 days and in case the appeal is not disposed of within 365 days, the stay order shall stand vacated.

- (3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Customs and the other party to the appeal.
- (4) Save as otherwise provided in Section 130 or Section 130E, order passed by the Appellate Tribunal on appeal shall be final.

#### **PROCEDURE OF APPELLATE TRIBUNAL (SECTION 129C)**

- (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.
- (2) Subject to the provisions contained in Sub-section (4), a Bench shall consist of one judicial member and one technical member.
- (3) Omitted by Finance Act, 1995.
- (4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where —
  - (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or
  - (b) in any disputed case other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
  - (c) the amount of fine or penalty involved;  
does not exceed 50 Lakh rupees.
- (5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or point by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.
- (6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.
- (7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:
  - (a) discovery and inspection;
  - (b) enforcing the attendance of any person and examining him on oath;
  - (c) compelling the production of books of account and other documents; and

- (d) issuing commissions.
- (8) Any proceedings before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purpose of Section 195 and Chapter XXVII of the Code of Criminal Procedure, 1973 (2 of 1974).

**POWERS OF COMMITTEE OF CHIEF COMMISSIONERS OF CUSTOMS OR COMMISSIONERS OF CUSTOMS TO PASS CERTAIN ORDERS (SECTION 129D)**

- (1) The Committee of Chief Commissioners may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners in its order.

Provided that where the Committee of Chief Commissioners of Customs differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Customs, it shall state the point or points on which it differs and make a reference to the Board. After considering the facts of the decision or order passed by the Commissioner of Customs, if the board is of the opinion that the decision or order passed by the Commissioner of Customs is not legal or proper, it may direct such Commissioner or any other Commissioner to make an appeal to the Appellate Tribunal for the determination of such points arising out of the decision or order.

- (2) The Commissioner of Customs may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.
- (3) Every order under Sub-section (1) or Sub-section (2), shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

Provided that the Board may, on sufficient cause being shown, extend the said period by another thirty days.

- (4) Where in pursuance of an order under Sub-section (1) or Sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Commissioner of Customs, makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of three months from the date of communication of the order under Sub-section (1) or Sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of Sub-section (4) of Section 129A shall, so far as may be, apply to such application.

**REVISION BY CENTRAL GOVERNMENT (SECTION 129DD)**

- (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 128A, where the order is of the nature referred to in the first proviso to Sub-section (1) of Section 129A, annul or modify such order.

Provided that the Central Government may in its discretion refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

*Explanation:* For the purposes of this sub-section. "Order passed under Section 128A" includes an order passed under that section before the commencement of Section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

- (1A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under Section 128A is not legal or proper direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

- (2) An application under Sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

- (3) An application under Sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of:

- (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;
- (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees;

Provided that no such fee shall be payable in the case of an application referred to in Sub-section (1A).

- (4) The Central Government may, of its own motion, annul or modify any order referred to in Sub-section (1).

- (5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this 'section—

- (a) in any case in which an order passed under Section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and
- (b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

- (6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it

within the time limit specified in Section 28.

#### **APPEAL TO SUPREME COURT (SECTION 130E)**

An appeal shall lie to the Supreme Court from—

- (a) any judgment of the High Court delivered in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or
- (b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.

#### **HEARING BEFORE SUPREME COURT (SECTION 130F)**

- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under Section 130E as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this Sub-section shall be deemed to affect the provisions of Section 131.

- (2) The costs of the appeal shall be in discretion of the Supreme Court.
- (3) Where the judgment of the High Court is varied or reversed in the appeal effect shall be given to the order of the Supreme Court in the case of a judgment of the High Court.

#### **DEPOSIT OF CERTAIN PERCENTAGE OF DUTY DEMANDED OR PENALTY IMPOSED BEFORE FILING APPEAL (SECTION 129E)**

The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

- (i) Under section 128(1), unless the appellant has deposited seven and a half per cent of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;
- (ii) against the decision or order referred to in section 129A(1)(a), unless the appellant has deposited seven and a half per cent. of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against;
- (iii) against the decision or order referred to in section 129A(1)(b), unless the appellant has deposited ten per cent of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores. Further the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

#### **INTEREST ON DELAY PAYMENT OF REFUND (SECTION 129EE)**

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the appellate authority, under the first proviso to section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three

months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 27A after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

[Section 130, 130A, 130B, 130C and 130D are omitted by National Tax Tribunal Act, 2005 with effect from a date yet to be notified].

#### **SUMS DUE TO BE PAID NOTWITHSTANDING REFERENCE, ETC. (SECTION 131)**

Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005, sums due to the Government as a result of an order passed under Sub-section (1) of Section 129B shall be payable in accordance with the order so passed.

#### **EXCLUSION OF TIME TAKEN FOR COPY (SECTION 131A)**

In computing the period of limitation, specified for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

#### **TRANSFER OF CERTAIN PENDING PROCEEDINGS AND TRANSITIONAL PROVISIONS (SECTION 131B)**

- (1) Every appeal which is pending immediately before the appointed day before the Board under Section 128, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

- (2) Every proceeding which is pending immediately before the appointed day before the Central Government under Section 131, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it:

Provided that, if any such proceeding or matter relates to an order where—

- (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or
- (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (c) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said Section 131 had not been substituted:

Provided, further that the applicant or the other party may make a demand to the Appellate

Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

- (3) Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Customs under Section 130, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Customs, as the case may be, as if the said section had not been substituted.
- (4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under Sub-section (1) or Sub-section (2) shall, notwithstanding anything contained in Section 146A, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

### **APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 131BA)**

Section 131BA provides that notwithstanding the fact that no appeal, application, revision or reference has been filed by the Commissioner of customs against any decision or order passed under the provisions of the act pursuant to the order or instruction or direction issued by the board. Then—

- (a) no person, being a party in appeal, application, revision or reference shall contend that the commissioner of customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference; and
- (b) The Commissioner (Appeals) or the Appellate Tribunal or the Court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the commissioner of customs in pursuance of order or instruction or direction by the board.

### **LESSON ROUND UP**

- Under this lesson we have discussed the remedies available for the disputes arises under the Customs Law.
- To give binding rulings in advance on, Customs matters pertaining to an investment venture in India. Authority for Advance Ruling was set up.
- The procedure for obtaining advance ruling is simple, inexpensive and transparent.
- Settlement commission also provides quick and easy settlement of tax disputes involving high revenue stake. The specified person can make application before the settlement commission.
- Appeal against the orders of Customs officers can be made to the (Customs (Appeals) then against these orders appeal can be made before the Appellate Tribunals and then before the High Court and Supreme Court.

### **SELF TEST QUESTIONS**

1. What is the procedure for filing Appeal before Commissioner (Appeals)?
2. Discuss the circumstances under which Department may order for re-opening of its original orders/decisions and the procedure it has to follow in this regard.
3. What is the mechanism provided in the Customs Act for adjudication of disputes between the assessee and the department?
4. When can an appeal be filed before the Commissioner (Appeals)?

5. What is Customs, Excise and Service Tax Appellate Tribunal (CESTAT)?
6. What are the matters in respect of which an appeal can be made before CESTAT?
7. What is the procedure of filing and disposal of stay petitions under CESTAT Rules?
8. What are the revisionary powers of the Central Government on adjudicated matters under Customs Act?
9. When does an appeal lie before Supreme Court under appellate provisions of Customs Act, 1962?
10. What is the procedure of filing a revision application to the Central Government under appellate provisions of Customs Act?
11. Who can act as an 'authorised representative' in adjudication of disputes and appeals under the Customs Act and Rules?
12. Explain briefly the concept of Settlement Commission.
13. What provisions are made under the Customs Act, 1962 to deal with various kinds of offences of Customs?
14. Can a mere preparation towards an act of offence of Customs laws be punished under the Act? State the circumstances.
15. What are the provisions under Customs Act, regarding the power of Court to publish name, place of business, etc. of persons convicted under the Act?
16. When can a Court take cognizance of an offence committed under the Customs Act, 1962?
17. What are the provisions under the Customs Act, with regard to use of Statements, and documents as evidence during prosecution for an offence of Customs?
18. What powers the officers of Customs have in respect of recovery of sums due to the Government on account of duties of Customs?
19. When can an import of material be cleared without payment of duty leviable thereon?
20. State the requirements laid down under the Customs Act with regard to the 'eligibility to function' as an import or export agent.
21. Who is an 'authorised representative' for the purpose of appearance before an officer of Customs or Customs Tribunal.

### SUGGESTED READINGS

- (1) Customs Law Manual — *R. K. Jain*
- (2) Indirect Taxes—Law and Practice — *V.S. Datey*

