

Adjudication and appeals

R. Krishnan

Advocate supreme court

(Customs, excise and service tax)

Adjudication and appeals in indirect taxes

- Procedure in customs/ excise and service tax different from direct taxes
- Indirect taxes are founded on self assessment
- Department does not assess the returns filed
- Any duty/tax short paid is recovered through issue of SCN and recovery

Show cause notice

- Can be based on
- Info available in the return filed
- Info arising out of investigation/enquiry
- Info based on audit observations
- Info based on third party records
- Info based on mischievous employees, customers or even departmental officials

Adjudication process

- Issue of show cause notice
- Filing of reply to SCN
- Personal hearing by the adjudicating officer
- Evaluation of submissions/documents filed
- Passing of the order of adjudication by the officer concerned

Personal hearing

- Is must; but assessee can waive P,H
- Additional submissions can be made at personal hearing
- Only three chances will be given for personal hearing
- Adjournments normally granted by the officer but not beyond the second time

First appeal

- To be preferred to CCE(Appeals) in case of orders passed by officers lower in rank than the CCE
- Appeal filing time is 60 days with grace of another 30 days with reasons for the delay
- In service tax matters such appeal to be filed within 3 months

Appeal filing - procedure

- In proper form(in duplicate) prescribed in the Rules
- Statement of facts and grounds of appeal to be carefully prepared
- Appeal to be verified by authorized signatory
- Supporting documents can be filed later or along with the appeal papers

First appeal -procedure

- Can be filed in person
- Can be sent by Regd. Post ack due
- Stay/ petition for waiver of pre-deposit to be filed with the appeal
- New grounds to be taken with the leave of appellate commissioner
- Personal hearing would be given

Order in appeal

- Order passed by Appellate commissioner is called order in appeal
- Appellate commissioner may simultaneously hear the representative of the department also to know what he has to say on the matter
- Has no power to remand back the matter

Second appeal to Tribunal

- To the tribunal (Customs, Excise and Service Tax Appellate Tribunal (CESTAT))
- Highest fact finding authority
- Appeal to be in the prescribed form
- Signing of appeal ; board resolution
- Affidavit in support of petition for waiver of duty/tax/penalty

Hearing before the Tribunal

- First stay application is listed for hearing
- Normally within one month
- Stay hearing cannot be lengthy
- Prima facie merits and financial difficulty must be shown to exist
- Pre-deposit at the discretion of the tribunal
- Order on stay can be challenged in writ

Stay orders

- Stay orders passed – may waive pre-deposit or seek pre-deposit
- Time given may be 1/3/3 months
- Compliance of the stay order is a must
- If not complied with, appeal is liable to be dismissed
- Application for modification may be made

Appeal filing fee

- Rs.1000 demand upto Rs.5 lacs
- Rs. 5000 upto Rs.1 crore
- Rs. 10000 beyond Rs. 1 crore
- Stay application fee : Rs. 500
- Any other miscellaneous applications, fee is Rs. 500
- P.o. in favour of Asst. Registrar, CESTAT..

Forms of appeal to be used

Before the CCE (A)

EA1 / C. A 1 / ST 4

Before the CESTAT

ST 4

ST 5

Misc. Applications before the Tribunal

- For condonation of delay
- For bringing on record additional documents
- For raising additional grounds of appeal
- For restoration of appeal dismissed for non-prosecution
- To be supported by affidavit

Benches of the Tribunal

- Single member Bench - upto Rs. 10 lakhs where valuation and classification/rate of duty not involved
- Division Bench for all other cases
- Jurisdictional tribunals – chennai, mumbai, calcutta, Delhi, Bangalore, Ahmedabad
- Can sit in other cities too

Arguments before the tribunal

- Court craft
- To be learnt by keen observation
- Study of judges and their approach
- Not to take offensive positions
- Not to show anger and displeasure
- correct body language to be used
- Not to mislead the court

Arguments.....

- Way of addressing
- Way of dressing –professional dress
- Presenting documents/papers during arguments
- Not to intrude while department is arguing
- Not to get irritated when department representative is stating facts wrongly
- Decorum to the court /judges

Beyond the tribunal

- Appeal to high court in all matters other than valuation and rate of duty/tax
- Appeal to supreme court in valuation and rate of duty/tax cases directly
- Appeal to high court within 6 months – jurisdictional court
- Appeal to supreme court within 60 days