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# Detailed Study Report on

  

# Revision Application

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## **Concept of Revision Application under Customs Act, 1962/ Central Excise Act, 1944:**

Normally, against the order passed by the Commissioner (appeals), the appeal lies before Tribunal i.e. CESTAT. However, under following category of cases, appeal against the order passed by the Commissioner (Appeals) lies before the Joint Secretary (Revision Application):-

### **A. In case of Customs (Specified in the first proviso to sub-section (1) to Section 129A of CA, 1962):**

- (i) any goods imported or exported as baggage:
- (ii) 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;
- (iii) payment of drawback as provided in Chapter X, and the rules made thereunder.

### **B. In case of Central Excise Cases (specified in proviso to sub-section (1) to Section 35B of CEA, 1944):**

- (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- © goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of the Central Excise Act or the

rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No.2) Act, 1998].

**C: In case of service tax matters:**

While Government has made applicable the provisions of the Section 35EE of the Central Excise Act, 1944, which deals with revision by the Central Government, to the Finance Act, 1994 dealing with Service Tax. But the Government has not specified the category of cases relating to service tax under section 86 of the Finance Act, 1994, where the appeal against the Commissioner (appeals) order shall lie to JS (RA), not to the Appellate Tribunal. Therefore, in the absence of any specific exclusion of category cases under Section 86 of the Finance Act, 1994, as has been done in the case of section 35B of the Central Excise Act, 1944, the appeal against the Commissioner (appeals) order even in case of rebate of service tax shall lie to CESTAT, not to the JS (RA). In other words, in the matter relating to Service Tax, Revision authority has not been given any power.

**Appeal before JS (RA):**

The following are the essential conditions, which need to be fulfilled, before filing appeal before Joint Secretary (Revision Application):

- (i) The order, which is being appealed against, should be passed by the Commissioner (appeals) and should be relating to issue/ issues mentioned above.
- (ii) If, on the same subject as specified above, the order has been passed by the Commissioner of Customs /Central Excise, then appeal against such orders shall lie to CESTAT, not before JS(RA).
- (iii) The Government i.e. JS (RA) may refuse to admit an application in respect of order where the amount of duty or fine or penalty determined by such order does not exceed five thousands rupees.

**Appeal against order passed by Joint Secretary (RA)**

The Customs Act, 1962/ Central Excise Act, 1944 does not specify any appellate authority against orders passed by the Revision Authority. So as far as the Central

Government is considered, its orders are final and so the only option is writ in the High Court.

### **Filing of Revision Application**

As per Rule 9 & 10 of the Central Excise (Appeals) Rules, 2001/ Rule 8A and 8B of Customs (Appeals) Rules 1982, the revision application under Section 35 EE of Central Excise Act, 1944/ 129DD of the Customs Act, 1962 shall be in **Form E.A.-8 ( in Central Excise) /C.A.-8 ( in Customs)** & presented either in person to the Under-Secretary Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, New Delhi or sent by registered post addressed to such officer.

The revision application sent by registered post is deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer. The grounds of revision application and the form of verification as contained in Form EA-8 /CA-8, shall be signed by the person specified in sub-rule (2) of Rule 3 of Central Excise (Appeals) Rules, 2001/ Customs (Appeals) Rules, 1982.

The revision application is required to be filed in duplicate & should be accompanied by two copies of the following documents, i.e.

- (i) Order referred to in first proviso to Section 35B(1) of the Central Excise Act, 1944/ first proviso to Section 129A (1) of the Customs Act, 1962.
- (ii) Decision or order passed by Central Excise Officer / Custom officer which was the subject matter of the order.

### **Some Historical Back ground:-**

Under the scheme operative till 10.10.1982, the appeal against the orders of the Commissioners (then called Collectors), of Customs & Central Excise lay with the Central Board of Excise & Customs. As far as the appeals against the orders passed by the authorities below the rank of the Collectors (now called Commissioner), were concerned, the same were to be filed before the appellate Collectors of Customs & Central Excise.

Erstwhile Section 131 of the Customs Act, 1962 and Section 36 of the Central Excise & Salt Act, 1944, empowered the Central Government to revise the

orders passed by the CBEC and appellate Collectors in exercise of their appellate jurisdiction. At the Government level, while Secretary (Revenue) or Special Secretary disposed of the Revision Application against orders passed by the CBEC, and the Addl. Secretary or Joint Secretary disposed of the applications against the orders passed by the appellate Collectors of Customs & Central Excise and executive collector of Customs and Central Excise.

In his 1980 Budget Speech, the then Finance Minister R. Venkataraman said,

*I have a major declaim of policy to announce. For the past couple of decades, there has been a persistent public demand for the setting up of an independent Appellate Tribunal for customs and central excise matters, some what similar to the set-up on the Direct Taxes side. This demand has recently been endorsed by the Estimates Committee of Parliament. Government has, in the past, not been in favour of such a system, as it was felt that it would not be appropriate in the case of indirect taxes, and that the present departmental machinery was in fact adopting an objective approach. I think a time has come when we should gracefully accept the common view, which is based on the dictum that justice should not only be done but should also seem to be done. It is in this spirit that provision has been made in the Finance Bill for setting up an Appellate Tribunal to hear appeals in respect of customs, central excise and gold control matters. This Tribunal will be independent of the executive machinery charged with the responsibility of day-to-day administration of revenue laws. I have no doubt that this measure will meet with the whole-hearted approval of Parliament and of trade and industry.*

The Finance (No. 2) Act, 1980 introduced a new system by establishing appellate Tribunal. The appellate jurisdiction of CBEC and Revisionary jurisdiction of the Central Government were abolished w.e.f. 11.10.1982, except a few residual transitional provisions and the Customs, Excise and Gold Appellate Tribunal (now CESTAT) was set up w.e.f. 11.10.1982.

The Finance Act, 1984, revived the Revisionary powers of the Central Government in specified type of cases.

On the Customs side, Section 129 DD read with proviso to Section 129(A) of the Act, empowered Central Government to revise the appellate orders passed by the Commissioner of Customs (Appeals).

On Central Excise side, Section 35EE read with first proviso to sub-section (ii) of Section 35B of the Central Excise Act, 1944 gave review and revisionary powers

to Central Government to revise the orders passed by the Commissioner of Central Excise (Appeals).

### **Revision Application Unit**

The Revision Application Unit of the Department of Revenue, Ministry of Finance, Government of India deals with Revision Applications filed before Central Government in specified Customs and Central Excise matters under section 35 EE of Central Excise Act 1944 and section 129 DD of Customs Act 1962.

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