

# Appeals to Appellate Tribunal

## Introduction

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The Tribunal is a quasi judicial body which hears appeals against orders of the Commissioner as adjudicating authority and Commissioner (Appeals). Its orders are binding on lower authorities. The Tribunal is the final fact finding authority and consists of judicial persons as well as people from an administrative background.

## Form of Application

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As per Rule 6 of the Appeal Rules, an appeal under sub-section (1) of section 35B to the Appellate Tribunal shall be made in Form No.E.A.3 and the following shall be observed:

- Where an appeal under sub-section (1) of section 35B or a memorandum of cross-objections (under sub-section (4) of that section) is made by any person other than the Commissioner of Central Excise, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos.E.A.3 and E.A.-4, as the case may be respectively, shall be signed by the persons listed above in case of appeal to Commissioner (Appeals).
- A memorandum of cross objections to the Appellate Tribunal shall be made in Form No.E.A.4.
- The form of appeal in Form No.E.A.-3 and the form of memorandum of cross-objections in Form No.E.A.-4 shall be filed in quadruplicate and accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

### [Appeal made by board](#)

As per Rule 7, of the Appeal Rules an Application under sub-section (1) of section 35E (to be made by the Board on its own motion to the Appellate Tribunal) shall be made in Form No.E.A.5 accompanied by an equal number of copies of the decision or order passed by the Commissioner of Central Excise (one of which at least shall be a certified copy) and a copy of the order passed by the Board directing such Commissioner to apply to the Appellate Tribunal.

## Appeal against order of Commissioner/Commissioner (Appeals)

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

- a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;
- an order passed by the Commissioner (Appeals) under section 35A;

**There are two parties to an appeal:** one the assessee and the other, the excise department. If one party files an appeal, another can raise cross objections, in the nature of cross appeals.

However, no appeal shall be made 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)

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if such order relates to, -

- 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;
- 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;
- credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of Central Excise Act or the rules made thereunder.

### Refusal of appeal

The Tribunal may at its discretion, refuse to admit an appeal if the duty involved or difference of duty involved or penalty involved is less than Rs. 50,000/-. However such appeal cannot be refused if the issue pertains to valuation or rate of duty.

However in service tax there is no threshold limit set, so appeal cannot be refused even if amount is less than Rs. 50,000/-

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## **Tribunal Bench**

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Generally tribunal sits in benches which shall have minimum two members – one technical and other judicial. It can be larger than two but it must have one technical and one judicial member. The President of the CESTAT can authorize any member to hear a case singly when the duty or penalty involved does not exceed Rs. 10,00,000/-. If the single bench is unable to agree, the matter goes to the larger bench.

Time limit for passing of order by Tribunal

The Appellate Tribunal shall hear and decide every appeal within a period of 3 years , however this limit is only indicative and not mandatory.

## **Fee structure**

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An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner 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 specified amount of fee. The fee payable in different cases has been tabulated as under:

Amount of duty, interest demanded and penalty levied	Fee for filing an appeal
Up to 5 Lakhs	Rs. 1,000
>5 Lakhs but up to 50 Lakhs	Rs. 5,000
>50 Lakhs	Rs. 10,000

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However, no such fee shall be payable in the case of an appeal preferred by Commissioner of Central Excise. Also, no fee shall be payable in the case of filing of a memorandum of cross-objections.

Further, a fee of Rs. 500 shall be paid for every application made before the Appellate Tribunal. The application can be an appeal for grant of stay or for rectification of mistake or for any other purpose; or for restoration of an appeal or an application. However, no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise.

## **Powers of Tribunal**

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The Tribunal has powers of civil court prescribed in code of civil procedure for following matters:

- Discovery and inspection
- Enforcing attendance of any person and examining him on oath.
- Compelling production of 'books of accounts and other documents
- Issuing commissions.

Note: Tribunal has no powers to review its orders. However, the Tribunal may pass an order for rectifying a mistake apparent from the records, within 6 months of passing of order.

The Tribunal is final fact finding authority and even the High court and Supreme Court cannot go beyond the facts found by Tribunal. Appeal to Supreme court and High court can be made on question of law.