

Appeals to Commissioner (Appeals) – Excise

Introduction

We have discussed in the article 'Appeals under excise' when an appeal can be made to the appropriate authorities. All officers up to and including Additional Commissioner can file an appeal to the Commissioner appeals.

An appeal to Commissioner (Appeals) is not tenable where the order-in-original is passed by the Commissioner as an adjudicating authority. Apart from this, all decisions and orders passed under the Central Excise Act or the rules made thereunder are subject to two departmental appeals, first to Commissioner (Appeals) and next to the Tribunal.

Time limit for filing Appeal

As per Rule 3 of Central Excise (Appeals) Rules, 2001 an appeal under sub-section (1) of section 35 to the Commissioner (Appeals) shall be made in Form No.E.A.-1 (in duplicate) and shall be accompanied by a copy of the decision or the order appealed against, along with the signature of the responsible person/Authorized officer on the form of verification [Rule 3(2)].

Such an appeal can be filed within sixty days from the date of the communication of decision/ order. This period can be extended a further thirty days by the Commissioner (Appeals) on sufficient cause being shown. Commissioner (Appeals) may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties and adjourn the hearing for reasons to be recorded in writing. However, such adjournment shall not be granted for more than three times to a party during the proceeding

Appeals by Department Officers

As per Rule 4 of Appeal Rules, if an application is made by the authorized officer of the department for revision to the Commissioner (Appeals) it shall be made in Form No.E.A.2 & such an application shall be treated as an appeal.

The form of application in Form No.E.A.2 shall be filed in duplicate and accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order passed by the Commissioner of Central Excise directing such authority to apply to the Commissioner (Appeals).

[When can a Dept. officer appeal?](#)

Under section 35E(4), the adjudicating authority or the authorized officer can make an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order as mentioned below:

The Commissioner of Central Excise may, of his own accord, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order

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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 or any Central Excise Officer subordinate to him 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 Central Excise in his order.

Note: Commissioner (Appeals) cannot take a view contrary to decision of Tribunal on the same and identical set of facts for periods subsequent to decision of Tribunal - The Supreme Court, in Commissioner v. Eicher Motors Ltd. 2007.

Procedure in Appeal (Section 35A)

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

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. However, 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. Further, where the commissioner (Appeals) is of the opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 11A to show cause against the proposed order.

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. 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. On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority, the Chief Commissioner of Central Excise and the Commissioner of Central Excise.