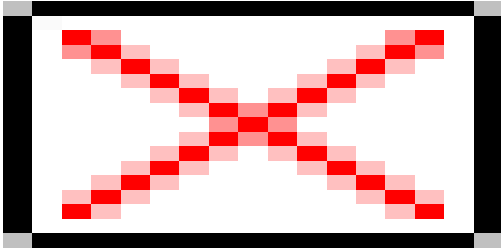


Monetary Limits for appeals in Tribunal/Courts - CBEC Clarifies



TIOL-DDT 2505

29 .12.2014

Monday

CBEC

has been receiving letters from the field seeking clarifications on various aspects relating to implementation of the Instructions governing monetary limits for filing appeal in the Tribunal and Courts.

Mostly, the clarifications sought are:

1. Whether cases of recurring nature, whether involving the same party or even other parties, need to be pursued in litigation irrespective of the amount involved in such cases.
2. The applicability of the threshold limits in various situations, mostly where the adjudicating/appellate authority disposes of more than one appeal in a common order which is sought to be challenged. Such order, generally involve cases of more than one parties, some of which fall below the monetary limit fixed for filing appeal in the forum of appeal.

Vide [Instruction](#)

dated 17.8.2011 by which the Board had fixed monetary limits below which appeal shall not be filed in the Tribunal/Courts by the Department; the present monetary limits are Rs 5 lakhs/ Rs 10 lakhs/ Rs 25 lakhs respectively for appeal in the Tribunal/High Courts and the Supreme Court. Appeal is not required to be filed in cases below these monetary limits unless the dispute falls in the two exclusion category mentioned in para 3 of the instruction:

3. Adverse judgments relating to the following should be contested irrespective of the amount involved:
 - a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
 - b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires

Now CBEC clarifies:

1. All cases, including cases of recurring nature, are covered under the Instruction on monetary limits and appeal is not to be filed in such cases except those falling in the two exclusion clauses mentioned above.
2. Even if an appeal is pending in the higher appellate forum, subsequent case of the same party or other party shall not be pursued further in litigation if the case falls below the monetary limit prescribed by the Board.

What is 'case'?

In a definition crazy administration, departmental officers wanted to know what a 'case' is as it was not defined in the instructions. The Board now clarifies:

The term "case" needs to be interpreted in the context of [National Litigation Policy](#) which aims at reduction of litigation. In respect of a composite order which disposes of more than one appeal/SCN and the Department contemplates filing of appeal, every appeal would be a "case" and should be subjected to the threshold limit prescribed. To illustrate, if the Tribunal passes one composite order disposing of more than one appeal filed before it, and if the Department being aggrieved is required to file more than one appeal against the said Tribunal order, then each appeal shall be subject to the monetary limit prescribed.

Board wants the field to take note of the clarification while processing appeals before the Tribunal and Courts. Let us hope they will obey the Board.

[CBEC Instruction in F. No. 390/Misc/163/2010-JC., Dated: December 26, 2014](#)

Cases in Settlement Commission to go to 'Call Book' - CBEC

CBEC Clarifies:

- 1. Cases admitted by the Settlement Commission may be transferred to the Call-book, as it is already covered under Category "(ii) cases where injunction has been issued by the Supreme Court/High Court/CEGAT etc." mentioned in Circular dated 14.12.1995,***
- 2. Where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission,***
- 3. Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.***

What is a Call Book? Please see [What is Call Book?](#) in DDT 1257 - 14.12.2009.

For more on Call Book, please see [DDT 26](#), [DDT 408](#), [DDT 508](#), [DDT 2186](#) and [DDT 2338](#).

[CBEC Circular No. 992/16/2014-CX., Dated: December 26, 2014](#)

IT - Compounding of Offences - CBDT Guidelines

CBDT has issued guidelines on compounding of offences effective 1st of January 2015. Some salient features:

1. Any offence under chapter XXII of the Act may, either before or after the institution of proceedings, be compounded by the CCIT/DGIT.
2. Compounding of offences is not a matter of right. However, offences may be compounded by the competent authority on his satisfaction of the eligibility conditions.
3. Prosecution instituted under Indian Penal Code, if any, cannot be compounded as per these guidelines. However, section 321 of Criminal Procedure Code, 1973 provides for withdrawal of such prosecutions.

The following conditions should be satisfied for considering compounding of an offence:-

- i. The person makes an application to the CCIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the **prescribed format**
- ii. The person has paid the **outstanding** tax, interest, penalty and any other sum due, relating to the offence for which compounding has been sought
- iii. The person undertakes to pay the **compounding charges** including the compounding fee, the prosecution establishment expenses and the litigation expenses including counsel's fee, if any, determined and communicated by the CCIT/DGIT concerned.
- iv. The person undertakes to withdraw appeal filed by him, if any, in case the same has a bearing on the offence sought to be compounded.

The application for compounding in the cases of co-accused shall be considered along with the main case or immediately after a decision has been taken in the main case.

[CBDT Instruction in F.No. 285/35/2013 IT\(Inv.V\)/108., Dated: December 23, 2014](#)

The new Pre-deposit conundrum

AS

we know, for appeals filed before the CESTAT with effect from 6.8.2014, a mandatory pre-deposit of 7.5% of the demand (subject to a ceiling of ten crore rupees) has to be made.

In this case before the Tribunal, an order-in-original was passed by the **CCE, Aurangabad** on 30.05.2014.

By the time the appellant filed an appeal before the CESTAT, the new section 35F of the CEA, 1944, as substituted by the Finance Act, 2014 w.e.f 06.08.2014 had come into existence.

Presumably, no deposit of the percentage of duty/penalty as specified in section 35F was made by the appellant while filing the appeals and, therefore, the appeals were listed for their maintainability.

The appellants contended that although a show-cause notice had been issued but the impugned order was passed without following the principles of natural justice and, therefore, the matter ought to be remanded back to the adjudicating authority, by setting aside the impugned order, to hear the appeal on merits.

The Bench observed -

"4.As per the provisions of Section 35F of Central Excise Act, 1944 as amended in Finance Act, 2014, there is a mandatory requirement of pre-deposit of 7.5% of duty/penalty confirmed by way of impugned order. As statutory requirement has not been fulfilled by the appellants, we are not required to go into the merits of the case. Accordingly, the appeals are dismissed as non-maintainable."

If the appellants now make the pre-deposit as mandated in section 35F of CEA, 1944 can they file an appeal again with an application for COD? Would such an application/appeal be entertained? Or is an appeal before the High Court the only alternative? Nonetheless, the fact of the matter is that it gives weightage to that school of thought which says that the new section 35F should provide exceptions covering such situations.

Please see [2014-TIOL-2629-CESTAT-MUM](#)

We came across another case in which a Commissioner passed an order on demanding 1.87 crore from an importer and 2.14 crore from another one on 25.7.2014.

The issue involved has been referred to a Larger Bench by another Division Bench of the Tribunal. If the appeal was filed before 6.8.2014, they could have got full waiver of pre-deposit.

But now the Tribunal dismissed the appeal itself, as mandatory pre-deposit was not paid.

Tax Evasion in Public Procurement - CVC Cautions

IN a recent publication on 'Check points for various stages of Public Procurement', the Central Vigilance Commission states,

Tax evasion in the procurement contracts could be another area of concern; therefore, it is necessary that tax liability of the contractors/suppliers is examined properly.

Following check-points are suggested:

1. Whether the payment is made as per the terms of the contract?
2. Whether there is any possibility of duplicate payment being made to the contractor/supplier?
3. Whether any over payment is being made to the contractor/supplier?
4. Whether the rates for extra/substituted items have been derived as per the provision in the -contract agreement/Procurement Manual?
5. Whether the payment for extra/substituted items have been made after due approval of the Competent Authority?
6. Whether advances are paid to the contractors/suppliers for the amount specified in the contract agreement?
7. Whether recovery of advances is being made as per the terms of the contract agreement?
8. Whether recovery of mandatory taxes and duties is being done as per the extant instructions of the Government and as per the terms of the contract agreement?
9. Whether reimbursement of service tax, excise duty etc. is being done after obtaining the actual proof of depositing the same with authorities concerned?
10. Some of the contracts provide escalation clause, with detailed formula in order to compensate the contractors for increase in the material cost during the contract period. Whether the formula for escalation is applied correctly or not?
11. Whether hire charges of Plant and Machineries are being recovered from the contractor as per the specified rate?

Some authorities are refusing to reimburse Service Tax or excise duty paid from CENVAT Credit. Only amounts paid by challan are reimbursed. Some contractors even went to a High Court regarding this - without success.

Declaration of Assets and Liabilities by Babus - Forms Simplified - No need to declare yachts and airplanes, but paintings should be declared.

GOVERNMENT

has simplified the Form-II and Form IV in the Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014.

Now babus need not declare information about yachts, aircrafts and ships they own, but if they or their spouses own furniture, fixtures, antiques, electronic goods or anything worth more than two months pay, declaration is mandatory. If a babu has any antique property, is he supposed to get it evaluated and declare to the Government?

We are told that many babus are quitting because they don't want to face vigilance inquiry.

[DoPT Notification., Dated: December 26 2014](#)

IRS Officer Deepak Shetty is DG, Shipping

1980 batch IRS (Cus&CE) officer Deepak Shetty has been appointed as the new Director General of Shipping.

It was only last week that Deepak Shetty was properly promoted as Chief Commissioner. Shetty was in the Shipping Ministry earlier as Joint Director General of Shipping.

DG, Shipping is a much sought after posting, mostly held by IAS officers.

Grand Inauguration of Training for 66th Batch of IRS Probationers.

What is the role of CBEC in the GST Regime?

When will we get paperless office?

Be Firm and Fair - No concessions or discounts

IT was a grand affair - for the First time in the history of NACEN, the Finance Minister inaugurated the training programme for a new batch of IRS (Customs&CE) probationers. The FM asked them to be fair and firm - a taxman's job does not involve giving any concessions or discounts. The FM said that tax officers must maintain a fine balance between what taxes are to be charged and what are not to be charged. He exhorted the Officer Trainees to maintain high level of ethics, morality and credibility in public life.

The MoS Jayant Sinha was the Star Speaker. He stated that the priority of the government was to empower people and not merely grant them entitlements. He noted that the aim of the Government is bring about minimum government and maximum governance. He called for the need to raise the tax to Gross Domestic Product (GDP) ratio from the current levels of 15.5% to match with the levels of the developed nations. He encouraged the Officer Trainees to innovate and improvise as they have the advantage of being at ease with technology. Taking note of the large number of engineers amongst the officer trainees, he advised them to deal with any problem at the systemic level and eliminate the root cause of the issue instead of merely fire-fighting. CBEC Chairman Koushal Srivastava thanked the Government for approving the construction of a new campus for the Academy at Hindupur, Andhra Pradesh. DG, NACEN Sree kumar Menon welcomed the gathering and CBEC Member Joy Kumari Chander proposed a vote of thanks.

The probationers were given the opportunity of asking a few questions.

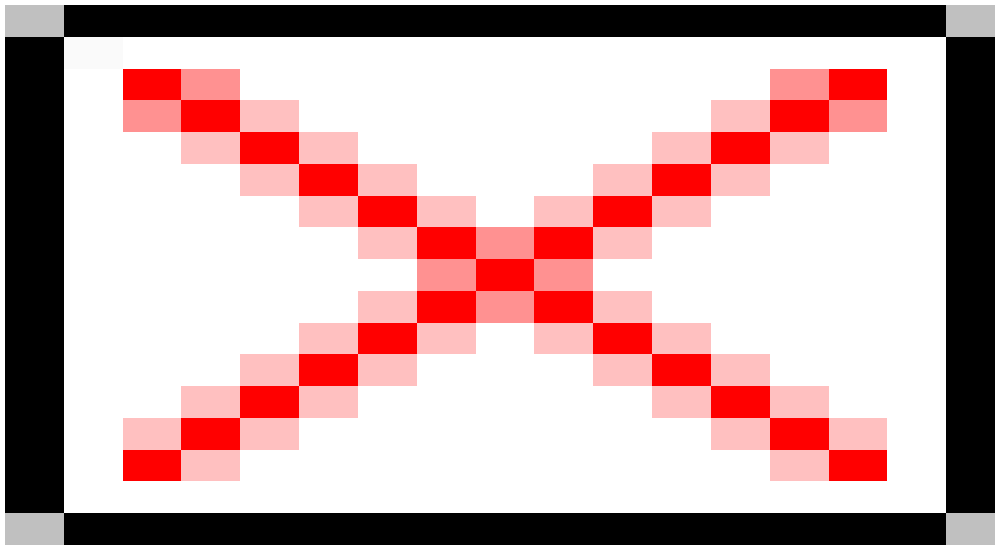
"When will we have 'zero paper office'?"

asked a probationer. The MoS replied that he was in a paperless office for ten years he spent in the private sector, but it is not possible any time soon in the Government.

What will be the role of CBEC in the GST regime?, asked another probationer.

CBEC will play a central role in the Central Goods & Services Tax (CGST) and Integrated Goods & Services Tax (IGST), was the answer.

The new batch has 21 IITians, 6 from IIMs and at least 1 graduate from Stanford.



CBEC Member SB Singh; Revenue Secretary Shaktikanta Das; MoS Jayant Sinha; FM Arun Jaitley; CBEC chairman Kaushal Srivastava; CBEC Member Joy Kumari Chander with the probationers.

Out of the 230 officers in the batch, 178 reported for training. How and where will NACEN train such a huge batch? It seems a large number of probationers will be sent to Hyderabad for training.

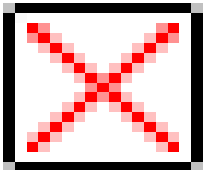
Smuggler dies in altercation with US Customs

THE

US Customs and Border Protection (CBP) in a release in the weekend said that an alleged smuggler died in a clash with Customs officers on Wednesday San Diego, California. It seems the CBP officers searched him and found heroin. The alleged smuggler jumped over the desk and attacked two officers. After numerous attempts to restrain the assailant who continued to resist, an officer used his service issued electronic control device, and gained physical control. When he was taken to a hospital, he was declared dead.

Similar to an Indian Police Story?

Jurisprudential-Tuesday's cases



Customs/Excise/ST

Law is very clear and there is no ambiguity in the matter - In terms of amended s. 129Ew.e.f 06/08/2014, Tribunal is barred from entertaining any appeal unless the pre-deposit as mentioned in s. 129E is complied with - as appellants have not complied with pre-deposit requirements, Misc. applications and appeal dismissed: CESTAT

THE CC(Preventive), Mumbai vide orders-in-original dated July, 2014 classified the coal imported by the appellant as "bituminous coal" and consequently confirmed a duty demand of Rs.1,86,91,478/- against M/s Asian Natural Resources and Rs.2,13,72,835/- against M/s Bhatia Global Trading, apart from interest thereon and imposing penalties.

The appellants are before the CESTAT with Miscellaneous applications and have urged that the case be heard without insisting on any pre-deposit and, therefore, the appeal be admitted.

Held:

the appeal is not admissible before this Tribunal, inasmuch as the appellants have not complied with the pre-deposit requirements envisaged in section 129.

Income Tax

Whether 'amalgamation' as term can include transfer of one or more undertakings to another company without actually blending existing companies into amalgamated company - YES: High Court

THE

assessee company is engaged in the business of manufacturing of textiles. Upon verification of its return, the assessee had claimed and was granted benefit of investment allowance or carried forward of investment allowance u/s 32A. Subsequently, it was noticed by the AO that under a scheme of arrangement u/s 391 and 394 of Companies Act, nine out of thirteen industrial units held by assessee were transferred to three newly formed companies. Accordingly, relying upon section 32A(5) and treating transfer of assets and liabilities, including plant and machinery as "sale or otherwise transfer", the AO passed an order u/s 32A(5) r/w/s 155(4A) and 154 withdrawing benefit of investment allowance or carried forward of investment allowance.

The issue before the Bench is - Whether "**amalgamation**"

as a term can include transfer of one or more undertakings to another company without actually blending existing companies into the amalgamated company. And the answer is YES.

Service Tax

Since non-payment of ST was detected from books of accounts it indicates that appellant could not have acted mala fide - Adjudicating authority having found reasonable cause for waiving penalty u/s 76, there is no justification for imposing penalty u/s 77, 78 of the Act: CESTAT

THE

appellant paid service tax under the category Goods Transport Agency on reverse charge basis. However, during the audit of their unit, the reconciliation of ledger accounts with the service returns revealed that they had not paid the due service tax during the periods 2007-2008 and April 2008 to December 2009.

Upon being pointed out, the entire amount of service tax was paid later but before the issue of show cause notice.

Nonetheless proceedings were initiated and apart from upholding the ST demand, penalties were imposed under Sections 77 & 78 of the Finance Act, 1994 along with interest.

See our Columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a nice day.

Mail your comments to vijaywrite@tiol.in