After studying this chapter, you would be able to:

- identify the orders appealable before different appellate authorities
- recall the time limit for filing appeals before different appellate authorities
- appreciate the powers of different appellate authorities
- appreciate the procedure for revision by Central Government under section 129DD
- compute interest on delayed refund of amount deposited under section 129E
- analyse and apply the above provisions to determine whether an order is appealable before a particular appellate authority, the time limit for filing of appeal and address other issues in non-complex to moderately complex scenarios.
1. APPELLATE STAGES

Chapter XV deals with provisions relating to appeals and revisions. Under this Chapter, both assessee and department have been conferred with a right of three stage remedies against the orders passed under Customs Act and Rules.

Briefly, it consists of three stages of appeal two stages of revision and further appeal to Supreme Court. The three stages of Appellate Authorities are the Commissioner (Appeals), CESTAT, High Court.

For orders passed by officers lower than the rank of Principal Commissioner/Commissioner of Customs, the first appeal lies to the Commissioner (Appeals) and there from to the Appellate Tribunal, and then to High Court and finally to the Supreme Court. Where the order of the Tribunal does not relate to determination of rate of duty or value of goods, an appeal is made to the High Court under sections 130, instead of appeal to Supreme Court. In cases where the order-in-original is passed by a Principal Commissioner/Commissioner of Customs, appeal lies directly to the Appellate Tribunal.

The provisions contained in sections 128 to 131C are similar to the provisions contained in sections 35 to 36 of the Central Excise Act.

2. APPEALS TO COMMISSIONER (APPEALS) [SECTION 128]

Any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than a Principal Commissioner/Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order.

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal 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.

The appeal before the Commissioner (Appeals) is to be filed in Form No.C.A.1. in duplicate and is to be accompanied by a copy of decision or order appealed against. The grounds of appeal and the form of verification as contained in form No.C.A.1 is to be signed by the appellant.

The following are important with respect to this section:

1. The provisions of section 5 of the Limitation Act 1963 will apply only to courts. Therefore, quasi judicial authorities such as Collectors and Tribunals are not required to follow the provisions of that Act for computation of time. Even where the Act provides that the provisions of Limitation Act shall apply, section 5 of that Act will come into play only after computing the time prescribed under that particular statute.

2. A person who is not a party to the original proceeding cannot file an appeal. He is not an aggrieved person as none of his legal rights are affected.

3. Additional grounds cannot be raised in appeal as a matter of right, if these grounds had not been raised before the original authority. Although the appellate authority is competent to allow such grounds, it should be established that the additional grounds are bonafide and could not be raised earlier before the assessing officer.

4. In an appeal, several grounds can be raised including alternative grounds. It is not open to the authority to pick one of the grounds and reach a conclusion. Raising of a ground in the alternative does not mean that the appellants are claiming so. Such grounds are always without prejudice to other grounds. Therefore, it would be improper to pick up one of the grounds to come to the conclusion that that is all along the claim of the appellant.

5. CHA (Custom House Agent) cannot file an appeal on behalf of principal: Clause (f) of sub-section (2) of section 146 allows right of appeal against an order suspending his own licence. Nowhere this or other provisions allow a CHA to file an appeal in relation to imports or exports of his principal.

3. PROCEDURE IN APPEAL [SECTION 128A]

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

3. 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 has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 28 to show cause against the proposed order.

4. 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.

5. 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. [Sub-section 4A]

6. On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority, the Principal Chief Commissioner/ Chief Commissioner of Customs and the Principal Commissioner/ Commissioner of Customs.

4. APPELLATE TRIBUNAL [SECTION 129]

1. The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.
2. A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

For the purposes of this sub-section, -

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

3. A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Principal Commissioner/Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

4. The Central Government shall appoint —

(a) a person who is or has been a Judge of a High Court; or

(b) one of the members of the Appellate Tribunal, to be the President thereof.

5. The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.

6. The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

7. On ceasing to hold office, the President, Vice-President or other Member shall not be entitled to appear, act or plead before the Appellate Tribunal.
8. The qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President or other Members of the Appellate Tribunal shall be governed by provisions of section 184 of Finance Act, 2017.

5. APPEALS TO APPELLATE TRIBUNAL
[SECTION 129A]

Orders appellable to Appellate Tribunal: Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -
(a) a decision or order passed by the Principal Commissioner/Commissioner of Customs as an adjudicating authority;
(b) an order passed by the Commissioner (Appeals) under section 128A;

Orders not appealable: No appeal shall lie 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) if such order relates to, -
(a) any goods imported or exported as baggage;
(b) 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;
(c) payment of drawback as provided in Chapter X, and the rules made thereunder.

In the following cases, the Appellate Tribunal may refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where –
(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
(ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
(iii) the amount of fine or penalty determined by such order, does not exceed ₹ 2,00,000 [Sub-section 1].

**Appeal by Committee of Principal Commissioner/Commissioners of Customs:** The Board may, by order, constitute such Committees as may be necessary for the purposes of this Act. Such Committee shall consist of two Principal Chief Commissioners/Chief Commissioners of Customs or two Principal Commissioners/Commissioners of Customs [Sub-section (1B)]. Such Committee of Principal Commissioners/Commissioners of Customs may direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order, if it is of the opinion that an order passed by the Commissioner (Appeals) under section 128 or under section 128A is not legal or proper [Sub-section (2)].

**Difference in opinion in the Committee of Principal Commissioners/Commissioners of Customs:** Where the Committee of Principal Commissioners/Commissioners of Customs differs in its opinion regarding appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner/Chief Commissioner of Customs. The Principal Chief Commissioner/Chief Commissioner shall direct the proper officer to appeal to the Appellate Tribunal against such order if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper.

It has also been explained that “jurisdictional Principal Chief Commissioner/Chief Commissioner” means the Principal Chief Commissioner/Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter.’

**Time limit for filing appeal:** Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against was communicated to the Principal Commissioner/Commissioner or, as the case may be, the other party preferring the appeal.

**Memorandum of Cross objections:** On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be
specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

**Form of Appeal:** An appeal to the Appellate Tribunal under section 129A(1) shall be filed in Form CA3. A departmental appeal to the Appellate Tribunal under section 129A(2) shall be filed in Form CA-5. Both the appeals shall be verified in such manner as may be specified by rules made in this behalf.

**Fee for filling an appeal/ application:** Sub-section (6) of section 129A prescribes the amount of fee for filing an appeal to the Appellate Tribunal.

<table>
<thead>
<tr>
<th>Amount of duty, interest demanded and penalty levied</th>
<th>Fee for filing an appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to ₹ 5,00,000</td>
<td>₹ 1,000.00</td>
</tr>
<tr>
<td>More than ₹ 5,00,000 but not exceeding ₹ 50,00,000</td>
<td>₹ 5,000.00</td>
</tr>
<tr>
<td>More than ₹ 50,00,000</td>
<td>₹ 10,000.00</td>
</tr>
</tbody>
</table>

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

Sub-section (7) prescribes a fee of ₹ 500 for every application made before the Appellate Tribunal. The application can be an appeal 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 Principal Commissioner/Commissioner of Customs.

**Illustration**

*State the circumstances under which a revision petition can be filed before the Central Government under the Customs Act.*
Answer

The first proviso to section 129A of the Customs Act, 1962 provides that the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order passed by Commissioner (Appeals) if such order relates to,

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or which are short landed at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder.

In such cases, redressal lies with the Central Government. Section 129DD(1) enables the appellant to get the orders of Appellate Commissioner (on these three aspects) annulled or modified by the Central Government.

By virtue of section 129DD(1A) the Principal Commissioner of Customs or Commissioner of Customs may direct the proper officer to make an application on his behalf to the Central Government for revision of an order. However, such application can be made only if the Principal Commissioner of Customs or Commissioner of Customs is of the opinion that the order passed by the Commissioner (Appeals) under section 128A is not legal or proper.

Therefore, while an importer or exporter (i.e., an assessee) can file a review application against the orders of Commissioner (Appeals) under section 129DD(1), the departmental review application is filed under section 129DD(1A).

6. ORDERS OF APPELLATE TRIBUNAL [SECTION 129B]

The Appellate Tribunal may

- pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or

- may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.
However, the Appellate Tribunal may pass such orders only after giving the parties to the appeal, an opportunity of being heard.

**Adjournment by CESTAT:** The Appellate Tribunal (CESTAT) 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.

**Rectification of mistake:** The Appellate Tribunal may, at any time within six months from the date of the order amend any order passed by it and shall make such amendments if the mistake is brought to its notice by the Principal Commissioner/Commissioner of Customs or the other party to the appeal. Such amendments shall be made with a view to rectifying any mistake apparent from the record.

An amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

**Time limit for deciding the appeal:** Every appeal shall be decided by the Appellate Tribunal within a period of three years from the date on which such appeal is filed, if it is possible to do so.

**Finality of the orders of the CESTAT:** The Appellate Tribunal shall send a copy of every order passed to the Principal Commissioner/Commissioner of Customs and the other party to the appeal.

Save as otherwise provided in section 130 or section 130E, orders passed by the Appellate Tribunal on appeal shall be final.

**7. PROCEDURE OF APPELLATE TRIBUNAL [SECTION 129C]**

The powers and functions of the Appellate Tribunal are to be exercised and discharged by the Benches constituted by the President of the Tribunal and such benches would be formed from amongst the members of the Appellate Tribunal. [Sub-section (1)]
Under sub-section (2) to Section 129C, it is provided that such bench shall consist of one judicial member and one technical member.

However, under sub-section (4) an exception to the above is provided that the President or any other member of the Appellate Tribunal authorized in this behalf by the President may sit singly and dispose of any case which has been allotted to the bench of which he is a member, subject to the condition that

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125;

(ii) in any other disputed case other than case of determination of any question relating to the rate of duty of customs or to the value of goods for the purpose of assessment is in issue or is one of the points in issue the difference in duty involved or the duty involved

(iii) the amount of fine or penalty involved does not exceed ₹ 50 lakh.

If the members of the Bench differ in opinion on any point, such point shall be decided according to the opinion of the majority, if there is a majority. If the members are equally divided, they shall state the point on which they differ and make reference to the President, who will either hear himself or refer the case for hearing on such point and shall be decided according to the opinion of the majority of these members including those who heard it first.

Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding and the Appellate Tribunal shall be deemed to be a Civil Court.

8. **POWERS OF COMMITTEE OF PRINCIPAL CHIEF COMMISSIONER / CHIEF COMMISSIONER OF CUSTOMS OR PRINCIPAL COMMISSIONER/COMMISSIONER OF CUSTOMS TO PASS CERTAIN ORDERS [SECTION 129D]**

This section empowers the Committee of Principal Chief Commissioners/Chief Commissioners of Customs and Principal Commissioner/Commissioner of Customs to review certain orders. The provisions are discussed below in detail:
Review by Committee of Principal Chief Commissioners/Chief Commissioners of Customs: Section 129D(1) gives powers to Committee of Principal Chief Commissioner/Chief Commissioners or Principal Commissioner/Commissioner of Customs to pass certain orders. The Committee of Principal Chief Commissioners/Chief Commissioners may of its own motion, call for and examine the record of any proceeding in which a Principal Commissioner/Commissioner of Customs has passed any order so as to satisfy itself upon the legality or propriety of the order. Thereafter, the Committee of Principal Chief Commissioners/Chief Commissioners may direct such Principal Commissioner/Commissioner or any other Principal Commissioner/Commissioner to apply to the Appellate Tribunal to determine such points arising out of the decision or order as may be specified by it.

Difference in opinion in the Committee of Principal Chief Commissioners/Chief Commissioners of Customs: Where the Committee of Principal Chief Commissioners/Chief Commissioners of Customs differs in its opinion as to the legality or propriety of the decision or order of the Principal Commissioner/Commissioner of Customs, it shall state the point or points on which it differs and make a reference to the Board. If the Board is of the opinion that the decision or order passed by the Principal Commissioner/Commissioner of Customs if it is of the opinion that it is not legal or proper, it may direct such Principal Commissioner/Commissioner or any other Principal Commissioner/Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order.

Review by Principal Commissioner/Commissioner of Customs: Sub-section (2) of section 129D grants similar powers of review to the Principal Commissioner/Commissioner of Customs in respect of decisions taken by the adjudicating authority subordinate to him. The Principal Commissioner/Commissioner may direct such authority or any officer of customs subordinate to him to apply to the Commissioner (Appeals) to determine such points as may be specified by him.

Time limit for passing the order: Every order under sub-section (1) and sub-section (2) shall be made within a period of 3 months from the date of communication of the decision or order of the adjudicating authority [Sub-section (3)].
Board may, on sufficient cause being shown, extend the aforesaid period by another 30 days.

**Time limit for making the application to CESTAT/Commissioner (Appeals):**
The time period available to the Principal Commissioner/Commissioner or the adjudicating authority to make an application to the Appellate Tribunal or the Commissioner (Appeals) is 1 month from the date of communication of the order of the Committee of the Principal Chief Commissioner/Chief Commissioner or Principal Commissioner/Commissioner. Such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals) as if such application were an appeal made against the decision or order of the adjudicating authority. The provisions regarding appeals, including the provisions of sub-section (4) of section 129A shall, so far as may be, apply to such application.

**9. REVISION BY CENTRAL GOVERNMENT [SECTION 129DD]**

The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order. The Central Government is vested with the powers to review orders of the Commissioner Appeals on an application made by any aggrieved person. The powers can be exercised as follows:

1. The Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

2. The Principal Commissioner/Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

3. An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made. Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow
it to be presented within a further period of three months.

4. Where the central Government is of the opinion that there is short levy or non levy of duty no order levying or enhancing duty can be made unless show cause notice is given within the time limit prescribed in Section 28.

10. DEPOSIT OF CERTAIN PERCENTAGE OF DUTY DEMANDED OR PENALTY IMPOSED BEFORE FILING APPEAL [SECTION 129E]

This section provides as under:

(i) The Commissioner (Appeals) shall not entertain any appeal under section 128(1), unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner/Commissioner of Customs;

(ii) The Tribunal shall not entertain any appeal against the decision or order passed by Principal Commissioner/Commissioner of Customs under section 129A(1)(a), unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) The Tribunal shall not entertain any appeal against the decision or order passed by Commissioner (Appeals) under section 129A(1)(b), unless the appellant has deposited 10% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

(iv) The amount of pre-deposit shall not exceed ₹ 10 crores.

The provisions relating to making pre-deposits at first and second appellate stages are summarized as under:

<table>
<thead>
<tr>
<th>Stage of appeal</th>
<th>Appellate Authority</th>
<th>Quantum of pre-deposit</th>
</tr>
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<tbody>
<tr>
<td>First Appeal</td>
<td>Commissioner (Appeals)</td>
<td>7.5% of the duty where only duty</td>
</tr>
</tbody>
</table>
### Points to be noted:

- Pre-deposit shall be computed as a percentage of only duty demanded even in cases where dispute involves both duty demanded and penalty levied. Only when penalty alone is in dispute, would the pre-deposit be computed on the basis of penalty.

- Interest payable is not included within the ambit of duty demanded. Thus, pre-deposit of 7.5%/10% would exclude interest, if any, payable on the duty demanded.

- It has been clarified by CBEC vide its Letter *DOF No. 334/15/2014 TRU dated 10.07.2014* that another 10% of the duty or penalty is to be paid at the time of filing second appeal before CESTAT.

CBEC has issued *Circular No. 984/08/2014 CX dated 16.09.2014* which clarifies the following:

### Quantum of pre-deposit

- Where an appeal is made against the order of Commissioner (Appeals) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). This amount may or may not be same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.
• Where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, pre-deposit would be calculated based on the aggregate of all penalties imposed in the order sought to be appealed against.

Payments made during investigation
• Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10% (subject to a limit of ₹10 crore), will be considered as payments towards pre-deposit for filing the appeals.
• Date of filing of appeal will be deemed to be the date of deposit of such payments.

Recovery of the amounts during the pendency of appeal
• No coercive measures for the recovery of balance amounts of demands of tax and penalties can be taken if the party/assessee shows the proof of payment of pre-deposit (7.5% / 10%) and the copy of appeal memo.
• Recovery can be initiated only after the disposal of the case by the Commissioner (Appeals)/Tribunal in favour of the Department unless order of Commissioner (Appeals) or CESTAT is stayed by authority/higher court. The amount to be recovered will include interest calculated from the date duty became payable till the date of payment.

Refund of Pre-Deposit
• Refund of pre-deposit is not refund of duty and hence the same will not be governed by provisions of section 11B of Central Excise Act/section 27 of Customs Act, 1962. Therefore, once the appeal is decided in favour of the assessee, he can apply for refund of pre-deposit.
• Refund of pre-deposit along with interest will have to be made within 15 days of receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.
• Refund of pre-deposit should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party.
In the event of a remand, refund of the pre-deposit shall be payable along with interest.

Further, CBEC vide Circular No. 993/17/2014-CX dated 05.1.2015 has clarified that mandatory pre-deposit would be payable in cases of demand of drawback when the appeal is filed before Commissioner (Appeals) as the new section 129E of Customs Act, 1962 would apply to such cases. However, the ambit of section 129E does not extend to appeals under section 129DD before Joint Secretary (Revision Application).

Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner(Appeals), no pre-deposit would be payable in such cases while filing appeal before the JS(RA).

11. INTEREST ON DELAYED REFUND OF AMOUNT DEPOSITED UNDER SECTION 129E [SECTION 129EE]

Where an amount deposited by the appellant under section 129E is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below 5% and not exceeding 36% per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount. At present, Notification No. 70/2014 Cus (NT) dated 12.08.2014 specifies 6% as the rate of interest payable on delayed refund of pre-deposit.

12. APPEAL TO HIGH COURT [SECTION 130]

An appeal shall lie to the High Court from every order passed in appeal by the Appellate (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law [sub-section (1)].

The Principal Commissioner/Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to
the High Court and such appeal under this sub-section shall be-

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Principal Commissioner/Commissioner of Customs or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved [sub-section (2)].

The High Court has power to condone the delay and admit an appeal after the expiry of the period of 180 days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period [sub-section (2A)].

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question [sub-section (3)].

The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. However, nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question [sub-section (4)].

The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit [sub-section (5)].

The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on any question of law [sub-section (6)].

When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges [sub-section (7)].
Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it [sub-section (8)].

The provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section [sub-section (9)].

**Illustration**

*Which orders are appealable to the High Court under the Customs Act, 1962? Can the delay in filing an appeal be condoned by the High Court?*

**Answer**

As per section 130(1) of the Customs Act, 1962, an appeal can be made to the High Court against the order of the Tribunal if the case involves substantial question of law, except in cases relating to rate of customs duty and valuation of goods. If the issue relates to rate of customs duty or valuation of goods, appeal lies directly to Supreme Court.

Sub-section (2) of section 130 inter alia lays down that an appeal can be made to the High Court within 180 days from the date on which the order appealed against is received by the Principal Commissioner of Customs or Commissioner of Customs or the other party.

The High Court has power to condone the delay and admit an appeal after the expiry of the period of 180 days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period [sub-section (2A)].

**13. POWER OF HIGH COURT OR SUPREME COURT TO REQUIRE STATEMENT TO BE AMENDED. [SECTION 130B]**

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the
14. DECISION OF HIGH COURT OR SUPREME COURT ON THE CASE STATED [SECTION 130D]

The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

Where the High Court delivers a judgment in an appeal filed before it under section 130, effect shall be given to the order passed on the appeal by the proper officer on the basis of a certified copy of the judgment.

The costs of any reference to the High Court or an appeal to the High Court or the Supreme Court as the case may be which shall not include the fee for making the reference shall be in the discretion of the Court.

15. APPEAL TO SUPREME COURT [SECTION 130E]

The Customs Act, 1962, provides a two tier machinery for redressal of grievances against the decision of the Appellate Tribunal. In cases where the decision of the Appellate Tribunal relates to any question having relation with the determination of ‘rate of duty’ or ‘value of goods’ amongst other things, the same is directly appealable to the Supreme Court under Section 130E. However, where the order of the Appellate Tribunal does not relate to ‘rate of duty’ or ‘value of goods’, first an appeal is made to the High Court and thereafter an appeal against the judgment of the High Court can be made to the Supreme Court provided the High Court certifies it to be a fit case for appeal to the Supreme Court.

Orders appealable to the Supreme Court: Section 130E specifies two types of orders which are appealable to the Supreme Court:
(a) an appeal shall lie to the Supreme Court from any judgment of the High Court delivered-

(i) in an appeal made under section 130, or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003, or

(iii) on a reference made under section 130A

if the High Court certifies the case to be fit for appeal to the Supreme Court. The High Court can certify any case on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.

(b) any order of the Appellate passed having relation to the determination of rate of customs duty or value of goods, among other things.

Illustration

Mention the orders against which appeal lies to the Supreme Court under section 130E of the Customs Act.

Answer

As per section 130E of the Customs Act, an appeal shall lie to the Supreme Court from-

(a) any judgment of High Court delivered in an appeal made under section 130, if the High Court certifies the case to be fit for appeal to the Supreme Court. Such certification can be done by the High Court on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.

(b) any order of the Appellate Tribunal having relation to the determination of rate of customs duty or value of goods, among other things.

Under section 130E(a), an appeal is filed before Supreme Court against the orders of High Court on matters other than those relating to determination of rate of customs duty or value of goods.
16. HEARING BEFORE SUPREME COURT
[SECTION 130F]

The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 130E as they apply in the case of appeals from decrees of a High Court. However, these provisions shall not affect the provisions of section 130D(1) or section 131.

The costs of the appeal shall be in the discretion of the Supreme Court. Further, where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 130D in the case of a judgment of the High Court.

17. EXCLUSION OF TIME TAKEN FOR COPY
[SECTION 131A]

In computing the period of limitation specified for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

18. NON-FILING OF APPEAL IN CERTAIN CASES
[SECTION 131BA]

Section 131BA provides that the Board is empowered to issue orders or instructions or directions fixing monetary limits for the purposes of regulating the filing of appeal, application, revision or reference by the Principal Commissioner/Commissioner of Customs.

The Principal Commissioner/Commissioner of Customs who has not been able to file an appeal/application/revision/reference against any decisions/order on account of such monetary limits, will not be precluded from filing any appeal/application/revision/reference in any other case involving the same or similar issues or questions of law.
The other party to the appeal will not be able to contend that the Principal Commissioner/Commissioner of Customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

The Commissioner (Appeals) or the Appellate Tribunal or the court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the Principal Commissioner/Commissioner of Customs in pursuance of orders or instructions or directions issued by the Board under this section.

 Relevant Case Law:

The role of the Supreme Court as envisaged by the Constitution cannot altogether be lost sight of: while construing the extent of the appellate jurisdiction to be exercised by the Supreme Court under a statutory enactment, particularly when different statutes like the Electricity Act, 2003; Companies Act 2013, National Green Tribunal Act, 2010, Telecom Regulatory Authority of India Act, 1997, by way of illustration, expressly limit the appellate power of the Supreme Court to determination of substantial questions of law (Section 100 CPC). The position should be no different in construing the provisions of Section 130E (b) of the Act though it omits to specifically mention any such limitation. –Steel Authority of India Ltd Vs Designated Authority dated 17.04.2017 (TIOL-2017-173-SC-CUS)

M P Steel Corporation Vs CCE dated 23.04.2015

Customs - Appeal before Commissioner (Appeals) - Limitation - Time to taken to pursue the appeal in the wrong forum to be excluded - Principles of Section 14 of the Limitation Act applicable:

Whether the Principle of Section 14 of the Limitation Act would apply to an appeal filed under Section 128 Customs Act: Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply 2015 (319) ELT 373 (SC)
19. TEST YOUR KNOWLEDGE

1. Which orders of Commissioner (Appeals) are not appealable to Appellate Tribunal under section 129A of the Customs Act, 1962?

2. The Committee of Principal Commissioners/Commissioners of Customs is empowered under the Customs Act, 1962 to direct the filing of an appeal before the Appellate Tribunal in certain cases while in certain others, the Committee of Principal Chief Commissioners/Chief Commissioners may direct an application to be filed before the Appellate Tribunal for determination of such points arising out of the decision or order as may be specified by the said Committee.

Write a brief note on the powers of the Committee of Principal Commissioners/Commissioners and Committee of Principal Chief Commissioners/Chief Commissioners of Customs bringing out the difference in the exercise of such powers.

3. Explain briefly the powers of review of the Principal Commissioner or Commissioner of Customs under section 129D(2) of the Customs Act, 1962 in respect of decisions taken by adjudicating authority subordinate to him.

4. Briefly explain the powers of CBEC to issue instructions regarding non-filing of appeal in certain cases under the Customs Act, 1962.

5. Discuss with a brief note on the provisions of section 129E of the Customs Act, 1962 regarding deposit of certain percentage of duty demanded or penalty imposed before filing appeal.

6. Compute the quantum of pre-deposit required to be made under section 129E of the Customs Act, 1962 in each of the following independent cases:

   (i) In an order dated 18-10-20XX issued to M/s. RR Ltd., the Joint Commissioner of customs has confirmed a duty demand of ₹ 16,00,000 and imposed a penalty of ₹ 5,00,000, M/s. RR Ltd. intends to file an appeal with the Commissioner (Appeals) against the duty and penalty imposed.

   (ii) M/s. KK Ltd. intends to file an appeal with CESTAT against the order of Commissioner (Appeals) which confirmed a duty demand of ₹ 24,00,000 and imposed a penalty of ₹ 6,00,000.
(iii) LKS Ltd., intends to file an appeal with CESTAT against the order of Principal Commissioner which confirmed a duty demand of ₹ 36,00,000 and imposed a penalty of ₹ 8,00,000.

(iv) MNM Ltd. intends to prefer an appeal before the Joint Secretary (Revision Application) relating to drawback case under section 129DD against the order of Commissioner (Appeals) which confirmed a duty demand of ₹ 10,00,000.

7. **Mention briefly the orders that are not appealable to the Appellate Tribunal.**

8. **Discuss the provisions in respect of making an appeal to the High Court.**

9. **Discuss the revisionary powers of the Central Government.**

**20. ANSWERS/HINTS**

1. No appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall have no jurisdiction to decide any appeal in respect of any order passed by the Commissioner (Appeals) under section 129A, if such order relates to:

   (i) any goods imported or exported as baggage;

   (ii) any goods loaded in 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 there under.

   In these cases, revision lies with the Central Government.

2. Under section 129A(2) of the Customs Act, 1962, the Committee of Principal Commissioner/Commissioners of Customs may direct the proper officer to file appeal on its behalf to the Appellate Tribunal against the order of Commissioner (Appeals), if it is of the opinion that the order is not legal or proper.

   Under section 129D(1) of the Customs Act, 1962, the Committee of Principal Chief Commissioners of Customs or Chief Commissioners of Customs may, of its own motion, call for and examine the record of any proceedings in which a
Principal Commissioner of Customs or Commissioner of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Principal Commissioner/Commissioner or any other Principal Commissioner/Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Principal Chief Commissioner of Customs or Chief Commissioners of Customs in its order.

Therefore, differences in two cases mentioned above can be tabulated as under:

<table>
<thead>
<tr>
<th>Committee of Principal Commissioners/Commissioners of Customs</th>
<th>Committee of Principal Chief Commissioners/Chief Commissioners of Customs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can direct to file an appeal against order of Commissioner (Appeals) who passes order in appeals filed against orders passed by any officer lower in rank than Principal Commissioner/Commissioner of Customs.</td>
<td>Can direct to file a review petition against order of Principal Commissioner/Commissioner of Customs who passes order as an adjudicating authority.</td>
</tr>
<tr>
<td>Regular appeal filed with the Tribunal.</td>
<td>Review application filed with the Tribunal. [Review application treated as appeal filed against the order of the adjudicating authority - section 129D(4) of the Customs Act, 1962.]</td>
</tr>
<tr>
<td>Appeal to be filed within three months as specified in section 129A(3) of the Customs Act, 1962.</td>
<td>Review application can be filed within four months; three months for the Committee to issue order for review [delay in filing upto 30 days can be condoned by the</td>
</tr>
</tbody>
</table>
3. Section 129D(2) empowers the Principal Commissioner of Customs or Commissioner of Customs to review any decision taken by the adjudicating authority subordinate to him. For this purpose, he may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under the Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order.

Thereafter, the Principal Commissioner of Customs or Commissioner of Customs may, by order, direct such authority or any officer of Customs 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 him in his order.

Such review application is treated as Departmental appeal against order of adjudicating authority lower in rank than Principal Commissioner/Commissioner of Customs like Additional/Joint/Deputy/Assistant Commissioner.

4. Section 131BA of Customs Act, 1962 empowers the CBEC to issue instructions regarding non-filing of appeal in certain cases as under:

(i) The Board may issue instructions fixing such monetary limits for the purposes of regulating the filing of appeal/ application/ revision/ reference by the Principal Commissioner of Customs or Commissioner of Customs.

(ii) Where the Principal Commissioner of Customs or Commissioner of Customs has not filed an appeal/ application/ revision/ reference against any decision or order passed under the provisions of this Act in pursuance of such an instruction, he shall not be precluded from filing any appeal etc. in any other case involving the same or similar issues or questions of law.

(iii) Non-filing of appeal, application etc. by Principal Commissioner of Customs or Commissioner of Customs cannot be considered to be his
acquiescence in the decision on disputed issue. Further, the Commissioner (Appeals) or Appellate Tribunal or court must have regard to the circumstances for non-filing of appeal etc.

Following monetary limits have been fixed by CBEC vide its Instruction F No. 390/Misc/163/2010 JC dated 17.08.2011 as amended by Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015 below which an appeal shall not be filed by the Department in CESTAT, High Court and Supreme Court:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Appellate Forum</th>
<th>Monetary limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CESTAT</td>
<td>₹ 10,00,000/-</td>
</tr>
<tr>
<td>2.</td>
<td>High Courts</td>
<td>₹ 15,00,000/-</td>
</tr>
<tr>
<td>3.</td>
<td>Supreme Court</td>
<td>₹ 25,00,000/-</td>
</tr>
</tbody>
</table>

For ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty under dispute e.g., in a case involving duty of ₹ 10 lakhs or below with equal penalty and interest, as the case may be, no appeal shall be filed in the Tribunal. Similarly, no appeal shall be filed in the High Courts if the duty involved does not exceed ₹ 15 lakhs with or without penalty and interest. However, where the imposition of penalty or interest is the subject matter of dispute and the said penalty or interest exceeds the limit prescribed, then the matter could be litigated further.

It has also been clarified that the adverse judgements relating to the following would be contested irrespective of the amount involved:

(a) where the constitutional validity of the provisions of an Act or Rule is under challenge; or

(b) where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.

(c) classification and refund issues which are of legal and/or recurring nature

It has been clarified vide Circular No. 390/Misc/163/2010 JC dated 03.06.2013 that the said limits as applicable to penalty are applicable for redemption fine also. Where both penalty and redemption fine are imposed, the limit should
be calculated taking these together. Further, such limits apply to refunds also, but not to application filed before Joint Secretary (Revision Application).

5. Section 129E of the Customs Act, 1962 provides as under:

(i) The Commissioner (Appeals) shall not entertain any appeal under section 128(1), unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs.

The appeal under section 128(1) is the first appeal before Commissioner (Appeals) against order of officers lower in rank than Principal Commissioner/Commissioner of Customs e.g. Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner.

(ii) The Tribunal shall not entertain any appeal against the decision or order passed by Principal Commissioner of Customs/Commissioner of Customs under section 129A(1)(a), unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against.

The appeal under section 129A(1)(a) is the first appeal before Tribunal against an order passed by Principal Commissioner/Commissioner of Customs as an adjudicating authority.

(iii) The Tribunal shall not entertain any appeal against the decision or order passed by Commissioner (Appeals) under section 129A(1)(b), unless the appellant has deposited 10% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against.

Appeal under section 129A(1)(b) is second appeal before Tribunal against an order passed by Commissioner (Appeals).

(iv) The amount of pre-deposit shall not exceed ₹ 10 crores.

6. (i) As per section 129E, while filing an appeal with Commissioner (Appeals), quantum of pre-deposit will be 7.5% of the disputed duty amount in case
where both duty and penalty are in dispute. Thus, in the given case quantum of pre-deposit will be 7.5% of ₹ 16,00,000 which is ₹ 1,20,000.

(ii) As per section 129E, while filing an appeal with CESTAT against an order passed by Commissioner (Appeals) i.e., a second appeal, quantum of pre-deposit will be 10% of the disputed duty amount in case where both duty and penalty are in dispute. Thus, in the given case quantum of pre-deposit will be 10% of ₹ 24,00,000 which is ₹ 2,40,000.

(iii) As per section 129E, while filing an appeal with CESTAT against an order passed by Principal Commissioner i.e., a first appeal, quantum of pre-deposit will be 7.5% of the disputed duty amount in case where both duty and penalty are in dispute. Thus, in the given case, quantum of pre-deposit will be 7.5% of ₹ 36,00,000 which is ₹ 2,70,000.

(iv) CBEC has clarified vide Circular No. 993/17/2014CX dated 05.01.2015 that ambit of section 129E does not extend to appeals under section 129DD before Joint Secretary (Revision Application) [JS(RA)]. Therefore, MNM Ltd. is not required to pay mandatory pre-deposit while filing appeal before the JS(RA) relating to drawback.

7. [Refer para 5-section 129A]
8. [Refer para 12-section 130]
9. [Refer para 9-section 129DD]
SIGNIFICANT SELECT CASES

1. Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period?

_Thakker Shipping P. Ltd. v. CCus. (General) 2012 (285) ELT 321 (SC)_

**Facts of the Case:** The Commissioner of Customs (General), in his order-in-original, dropped the proceedings which were initiated against the appellant. The Committee of Chief Commissioners of Customs constituted under section 129A(1B) of the Customs Act, 1962 reviewed his order and directed him to apply to the Tribunal for determination of certain points. The Commissioner, accordingly, made an application under section 129D(4) of the Act before the Tribunal. As the said application could not be made within the prescribed period and was delayed by 10 days, an application for condonation of delay was filed with a prayer for condonation. However, Tribunal rejected the application for condonation of delay on the ground that Tribunal had no power to condone the delay caused in filing the application under section 129D(4) by the Department beyond the prescribed period of three months.

**Point of Dispute:** The question which arose for consideration before this Court was whether it was competent for the Tribunal to invoke section 129A(5) where an application under section 129D(4) had not been made by the Commissioner within the prescribed time and to condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.

**Supreme Court’s Observations:** The High Court observed that Parliament intended that entire section 129A, as far as applicable, should be supplemental to section 129D(4). For the sake of brevity, instead of repeating what had been provided in section 129A as regards the appeals to the Tribunal, it had been provided that the applications made by the Commissioner under section 129D(4) should be heard as if they were appeals made against the decision or order of the adjudicating authority and the provisions relating to the appeals to the Tribunal would apply in so far as they might be applicable.
The expression, “including the provisions of section 129A(4)” was by way of clarification and had been so said expressly to remove any doubt about the applicability of the provision relating to cross objections to the applications made under section 129D(4) otherwise it could have been inferred that provisions relating to appeals to the Tribunal had been made applicable and not the cross objections. The use of expression “so far as may be” was to bring general provisions relating to the appeals to Tribunal into section 129D(4).

Consequentially, section 129A(5) also stood incorporated in section 129D(4) by way of legal fiction and must be given effect to. In other words, if the Tribunal was satisfied that there was sufficient cause for not presenting the application under section 129D(4) within prescribed period, it might condone the delay in making such application and hear the same.

**Supreme Court’s Decision:** In light of the above discussion, the High Court ruled that the Tribunal was competent to invoke section 129A(5) where an application under section 129D(4) had not been made within the prescribed time and condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.

**Note:** The provisions of section 129A(5) and 129D(4) of the Customs Act, 1962 have been outlined below:-

**Section 129A(5):** The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

**Section 129D(4):** Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Commissioner of Customs, makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of section 129A(4) shall, so far as may be, apply to such application.
2. Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter?

*Neeraj Jhanji v. CCE & Cus. 2014 (308) ELT 3 (SC)*

**Facts of the Case:** In this case, the assessee filed a writ petition before the Delhi High Court against the order in original passed by the Commissioner of Customs of Kanpur. However, the jurisdictional High Court for the petitioner would have been Allahabad High Court. When the Revenue raised objection over the territorial jurisdiction of the High Court, the assessee withdrew the appeal from the Delhi High Court and filed the appeal with the Allahabad High Court with the application for condonation of delay. The Allahabad High Court, however, dismissed the application for condonation of delay and also dismissed the appeal as time barred. Then, the assessee filed a special leave petition with the Supreme Court.

**Supreme Court’s Decision:** The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.

*Note: In the aforementioned case, the Apex Court has disapproved the practice of Forum Shopping as adopted by the petitioner. Forum Shopping is the practice adopted by the litigants to have their legal case heard in the Court which would provide most favourable decision.*

3. Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?

*Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) ELT 24 (All.)*

In this case, CESTAT rejected the appellant’s application for condonation of delay in filing the appeal before CESTAT on the ground that the reasons given for filing the appeal beyond stipulated time were not convincing. The Counsel of the appellant filed his personal affidavit stating that the appeal had been filed with a delay due to his mistake.
4. Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975?

Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) ELT 547 (Bom.)

Facts of the Case: In the instant case, the CESTAT upheld a notification issued by the Central Government imposing definitive anti-dumping duty on certain products originating from specified countries pursuant to the findings recorded by the Designated Authority in a review of anti-dumping duty. The assessee filed a writ petition under Article 226 of the Constitution to challenge the said order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975.

Point of Dispute: The Department contended that an appeal, and not a writ petition, would lie against the order passed by the CESTAT.

High Court’s Observations: The High Court observed that section 9A(8) of the Customs Tariff Act, 1975 specifically incorporates all the provisions of the Customs Act, 1962 relating to appeal as far as may be, in their application to the anti-dumping duty chargeable under section 9A. The order of the CESTAT passed in appeal would, therefore, clearly be subject to appeal, either to this Court under section 130 or to the Supreme Court under section 130E of the Customs Act, 1962 if the appeal relates to the rate of duty or to valuation of goods for the purposes of assessment.

The assessee submitted that under section 130(2), an appeal can be filed by the Commissioner of Customs or the other party. However, in case of anti-dumping duty, Commissioner of Customs would have no occasion to file an appeal since proceedings are against the designated authority.

Against this submission, the High Court clarified that since appellate provisions of the Customs Act, 1962 have been incorporated in section 9A(8) of the Customs Tariff Act, 1975, they necessarily apply in a manner that would make the same intelligible and workable.
**High Court’s Decision:** The High Court, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.

**Note:** The statutory provisions discussed in the above case law are given hereunder:

Section 9C(1) provides that an appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the CESTAT constituted under section 129 of the Customs Act, 1962.

Section 9A(8) of the Customs Tariff Act, 1975 provides that the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

Under section 130 of the Customs Act, 1962, an appeal can be filed to the High Court from every order passed in appeal by the Tribunal on a substantial question of law (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment). Section 130E(b) of the Customs Act provides that an appeal shall lie to the Supreme Court from an order passed by the Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment.

The afore-mentioned case reaffirms the settled position of law that writ petitions should not be entertained by the High Court under Article 226 of the Constitution of India when alternate remedies are available under the relevant statute. Courts have held that where a hierarchy of appeals is provided under the relevant statues, taxpayers must exhaust the statutory remedies before resorting to writ jurisdiction.

A writ is a directive from a higher court ordering a lower court or government official to take a certain action in accordance with the law. Writs are usually
considered to be extraordinary remedies which are permitted only when there is no other adequate remedy, such as an appeal. In other words, a writ can be filed to contest a point that cannot be raised in an appeal. Since, writ petitions are heard more quickly than appeals, the same are preferred by the assesses to secure a speedy review of some issue when the matter is urgent. Writ petition can also be filed when a final judgment has not yet been made in the lower court, but the party seeking the writ needs relief at once to prevent an injustice or unnecessary expense.