

CENTRAL EXCISE/ CUSTOMS/ SERVICE TAX

Clarification Regarding Amendment in Appeal provisions made by Finance Act, 2014

Section 35F of the Central Excise Act, 1944/Section 129E of the Customs Act, 1962 have been substituted with new sections to prescribe mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute. However, where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed. The amount of pre-deposit payable would be subject to a ceiling of Rs. 10 crores.

CBEC has issued *Circular No. 984/08/2014-CX dated 16th September 2014* wherein the following issues have been clarified:

1. Quantum of pre-deposit

- In the event of appeal 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.
- In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.
- In case of any short payment or non-payment of the stipulated amount, the appeal filed is liable for rejection.

2. Payments made during Investigation

- Payment made during the course of investigation or audit, prior to the date on which appeal is filed, can be considered to be deposit made towards fulfilment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. However, any excess payment will not be treated as deposits under the said sections.
- The date when the deposit is made would be considered as the date of filing of appeal.

3. Recovery of the Amounts during the Pendency of Appeal

- Old instructions issued by the board prior to enactment of the amended Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, would not apply with regard to recovery of amounts due to the Government in this regard.
- If the party/ assessee shows the proof of payment of stipulated amount as pre-deposit of 7.5% / 10%, subject to a limit of Rs.10 crores and the copy of appeal memo filed with the

appellate authority to the jurisdictional authorities, no coercive measures for recovery of the balance amounts can be taken during the pendency of the appeal.

- If the Tribunal decides a case in favour of the Department, recovery action for the amount over and above the amount deposited under the provisions of Section 35F / 129E may be initiated provided that the order of the Tribunal is not stayed by the High Court/Supreme court. This amount to be recovered will include the interest amount calculated at the specified rate, from the date duty became payable till the date of payment.

4. Refund of Pre-Deposit

- When an appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the interest at the rate of 6 % rate from the date of making the deposit to the date of refund. This is to be done 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. Even if Department is contemplating an appeal against the order of the Commissioner (Appeals) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.
- In the event of a remand, refund of the pre-deposit shall be payable along with interest. In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government is collected by adjusting the deposited amount along with interest.
- Refund of pre-deposit made 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.

[Circular No. 984/08/2014-CX dated 16th September 2014]

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