

Litigation before the Supreme Court

Appeal Provisions

(a) Against the order of the High Court appeal can be made to the Supreme Court by way of Civil Appeal u/s 35L(a) of the Central Excise Act, 1944 or u/s 130E(a) of the Customs Act, 1962 or Special Leave Petition under article 136 of the Constitution.

(b) Civil Appeal against any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of Customs / Central Excise or Service Tax or to the value of goods/services for purposes of assessment, appeal can be filed in the Supreme Court u/s 35L(b) of the Central Excise Act, 1944 or u/s 130E(b) of the Customs Act, 1962.

Limitation for filing Civil Appeal/ Special Leave Petition

(c) The limitation prescribed under the Supreme Court Rules, 1966 for filing Civil Appeal before the Supreme Court against the order of Tribunal is 60 days from the date of receipt of the order.

(d) In a case where the High court on its own motion or on an oral application made by the party aggrieved, immediately after passing of the judgment, certifies the case to be fit for appeal to the Supreme Court, a Civil Appeal is filed against the High Court order under Sec. 35L of the Act for which limitation is 60 days from the date of the order (and not the date of receipt of order). However, in most of the cases no such application is made by the aggrieved party before the High court and therefore in such cases, if aggrieved party intends to agitate the order / judgment of the High Court before the Supreme Court, then it can be done by way of filing a Special Leave Petition under Article 136 of the Constitution of India. The limitation for filing of SLP is 90 days from the date of the High Court's order. The time taken by the Court from the date of filing of application for certified copy of the order till the copy is ready for delivery is excluded from the computation of the period of limitation.

(e) It is noticed that many a time the orders / directions given by the CESTAT are not received at all or received late in the Commissionerates. To strengthen the departmental mechanism for obtaining copies of the orders passed by the Tribunal, the Board has decided that JCDR/SDR would directly communicate the orders in important matters to the Commissioners after its pronouncement. For proper co-ordination, the CDR/Jt CDR will hold regular interaction meetings with the Chief Commissioners. The Chief Commissioners would work out a mechanism for making available one officer (for a period of about three months by rotation) for collection of the orders passed by the Tribunal in respect of their Zones.

(f) The delay in applying for the certified copy of the order is attributed on the part of the party. Therefore, the procedure for obtaining the certified copy of the order of High

Court should be initiated immediately on pronouncement of the order, preferably the date of pronouncement or a day after. It shall be impressed upon the Standing Counsels appointed by the Board for handling the case of indirect taxation before the High Courts that it is their responsibility to apply for the certified copy of the order in time and to ensure that it is sent to the department immediately. The officers of Legal Cell set up in the Commissionerate located where the seat of the High court functions should ensure that the certified copy of order is procured in time.

Forwarding of proposal to file Civil Appeal / SLP by the Commissionerate to the Board

(g) In order to improve upon the quality of proposals and also the time limit prescribed and the documentation, Board has decided to involve Chief Commissioners in the process of litigation before the High Courts and Supreme Court. Henceforth, all the proposals to file CAs/SLPs should be sent by the Commissioner only after obtaining the concurrence of the jurisdictional Chief Commissioner. While forwarding the proposal, the Commissioner shall also submit a certificate to the effect that legible copies of requisite documents are enclosed along with the proposal and that the proposal is sent within the time prescribed in the above stated circular.

(h) It is also felt important to put in place a mechanism for examination of CESTAT Orders in the Office of the Chief / Joint Chief Departmental Representative as they would have dealt with the cases before CESTAT and their opinion in the matter will certainly act as a guiding factor/facilitate the Commissioner to take a decision. Needless to say such communication has to be very fast especially where it is proposed to file appeal before the Supreme Court. The Board, vide its letter F. No. 390/Misc/411/07- JC dated 6th February 2008 had laid down the following mechanism in the Office of the Chief / Joint Chief Departmental Representative in this regard:-

- (i) All orders passed by CESTAT will be examined by the concerned DRs and put up to the Jt.CDR to examine the correctness and legality of the Order.
- (ii) In case the Jt.CDR is of the view that appeal needs to be filed against the Order, he will send a letter along with details in the Proforma A given below to the concerned Commissioner giving his opinion about the need for challenging the Order.
- (iii) All orders involving revenue implications over ₹ 1 Crore will also be placed before the CDR.

(i) As mentioned in para 2.5 the proposal for filing of appeal before Supreme Court against the order of Tribunal should be sent to the Board within 15 days of receipt of the order. The proposal for appeal against the High court's order should be sent within 20 days of the pronouncement of the order. The proposal against the High court's order shall be initiated on the strength of the copy of the order circulated by the Court on its own motion or copy downloaded from the website of the Court i.e www.indiancourts.nic.in or www.court.nic.in without waiting for the certified copy of the order. The certified copy of the order may be sent separately thereafter. All the proposals should invariably be sent in the proforma "B" and a flow chart, as per

proforma "C" (which indicates the time allocated at each stage of filing appeal), shall be enclosed.

(j) The Chief Commissioners may strengthen their legal / Review / Judicial sections by re-deploying the staff from the Commissionerates. Sincere efforts must be made to ensure that the time limit is adhered to, however, taking into consideration the geographical constraints, serious view would be taken by the Board if the proposal is received beyond 20 days of the receipt of the CESTAT's order / date of the order of the High Court.

(k). The Commissionerates should not take legal opinion from the Standing counsels in respect of the High Court's orders for forwarding proposal to file appeal as the SLPs against the High Court's orders are filed by the Board only after obtaining the legal opinion from the Ministry of Law & Justice and Ld. Law officers of the Government of India. Similarly, the orders of the Tribunal should be examined within the prescribed time without waiting for the recommendations of the CDR/Jt CDR and proposal for filing appeal before the Supreme Court sent as stipulated supra. As and when the recommendation of the DR is received, the same may be sent to Board in continuation of the earlier communication.

(l) In cases where the proposals are sent with delay beyond the prescribed period the Commissioner should, along with the proposal, indicate the reasons for the delay and the action taken / proposed to be taken against the officers responsible for delay.

(m) Where proposal is sent belatedly (beyond 30 days) or where revenue involved is ₹ 1 Crore or more, the appeal proposal should be sent through a special messenger. Such messenger should preferably be an officer well conversant with the case. Similarly in matters relating to challenge to constitutional validity of certain provisions of the statute, compliance of directions of Tribunal / High court within certain time less than the period of limitation, filing of contempt petitions against the department, grant of anticipatory bail, return of passports etc, the proposal should be sent through a well conversant officer. He should be prepared to stay in Delhi for 3-7 days with the possibility of making another trip at the time of vetting. It must be ensured that necessary logistic support and advance payment of TA/DA etc. are provided to him in time.

(n) The Commissionerates must send soft copy of all the proposals with statement of facts and grounds of appeal by e-mail to sojc-cbec@nic.in in respect of CA proposals against CESTAT order and to dirlegal_cbec@nic.in in respect of CA / SLP proposals against High Court's order as soon as hard copy of the proposal along with all documents is sent by post or through messenger. This should be followed by sending the soft copy of the impugned order, and orders of the lower appellate authorities such as Commissioner (A) and /or CESTAT as the case may be, order in original and the

show cause notice along with all the requisite documents as soft copies of these documents are required while preparing the paper book.

(o) It is noticed many a time that the proposals are sent by the Commissionerates to the sections of the Board not dealing with the same and redirection of such proposals adds to delay. Therefore it is important for the field formations to note the sections of the Board to whom the proposals for filing Civil appeals and Special Leave Petitions are to be sent:-

S.No	Category of proposals	Concerned Person/ section of the Board
1	Civil appeals against the orders of CESTAT	JS(Review), CBEC, 4 th floor, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110 066
2	Civil appeal / SLP against the orders of High courts except cases mentioned at 3 below.	Commissioner (Legal), CBEC, 5 th floor, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110 066
3	Administration matters/CAT orders/vigilance cases	Joint Secretary (Admn.), CBEC, North Block, New Delhi

Documentation with the Civil Appeal / Special leave Petitions

(p) For proper representation of department's case, it is necessary that all papers or documents presented by either side before the Tribunal or the High Court are available to the law officer or counsel representing the Revenue. It may also be noted that the Court insists that the status of the relied upon decisions of the Tribunal / High Courts is invariably indicated by the appellant, absence of which causes considerable inconvenience for proper appreciation of law and delivery of justice by the Hon'ble Judges. The Hon'ble Court had passed a judicial order stating that *unless the status of connected/relied upon cases/judgment referred to by the Tribunal and the High Courts is made clear in the forefront of the synopsis of the cases annexed with the Civil Appeal/Special Leave Petition, the Registrar of the Apex Court should not number the revenue cases.*

(q) Accordingly, the proposal to file civil appeal against CESTAT orders should be sent in the Proforma "B" along with all related documents viz.

- i) Copies of SCNs along with relied upon documents;
- ii) Copy of Order-in-Original/Order-in-Appeal;
- iii) Certified copy of CESTAT order indicating date of receipt by the Commissioner;
- iv) Copy of relevant rules, notifications, Board's circulars, instructions quoted in the order;
- v) Copy of relied upon decisions in the CESTAT order along with their status;
- vi) Copy of paper book, additional documents and counter affidavits etc filed by any side and
- vii) Any other relevant document.

(r) In respect of appeal proposal against High Court's order, the same proforma "B" will be used. The proposal to file Appeal / SLP should contain the brief facts of the case, the gist of the orders of Appellate authority/Tribunal and of the High court and the proposed grounds of appeals along with the question of law to be framed before the Supreme Court. Apart from the documents as stated at (q) above (not all may be filed in certain cases such as in a writ petition), the following documents may also be enclosed with the proposal-

- i) Copy of the writ petition under the Constitution of India / copy of the appeal / reference application under the Central Excise Act, 1944 / Customs Act, 1962 / Finance Act, 1994 as the case may be,
- ii) Counter affidavit / rejoinder filed by either side,
- iii) Interim order of the court, if any
- iv) Miscellaneous application if any, filed during the course of the hearing.

(s) In criminal matters, copy of the documents seized, the statements recorded and other relevant documents prepared during the course of investigation should be sent. If these documents are in vernacular, then their proper English translation duly authenticated by an officer not below the rank of Assistant Commissioner certifying the correctness of the translation should be sent.

(t) In view of the Court's order mentioned at (p) above, a separate report on connected matters should be sent by the Commissionerates in the enclosed Proforma D along with the appeal proposal. Information on connected matters would mean details and status of the case/cases referred to and relied upon by the Tribunal or Court in the impugned order, as well as the judgments of Tribunal/High Courts or the Apex Court which are sought to be relied upon by the Department in support of their appeal. The correctness of the citations incorporated in the impugned orders, as well as applicability of these relied upon decisions to the case i.e., to say, whether CESTAT has correctly applied that ratio of a particular decision to the case under examination should be verified. After ascertaining the correctness of the citation and applicability thereof it shall be the responsibility of the Commissioner sending the appeal proposal to ascertain full information about the status of the relied upon cases, i.e. to say whether any appeal was filed against the said order/orders, what was the outcome of such appeal/appeals etc. Commissioners should ascertain this information from the Commissioners concerned and furnish the same to the Board.

(u) It has further been felt that a procedure must be devised by which technical literature, court orders, judgments, copies of written submissions as well as material including technical literature which is handed over to the Tribunal by the Counsel of the assessee at the time of oral submissions must be supplied to the Department. The Joint Chief Departmental Representatives shall ensure that the documents stated above are preserved and sent to the Commissioner concerned immediately after the pronouncement of the order so that the said documents can be made a part of the Paper Book in case it is decided to agitate the matter before the Supreme Court. In case the documents have not been received by the Commissioner at the time of sending the CA proposal to the Board, the same should be procured by the Commissioners from DR's

office and sent to the Board soon after dispatching the CA proposal or latest after filing of appeal.

Review of judgments of the Supreme Court

(v) We all are aware that every decision of the Hon'ble Supreme Court is final and needs to be implemented without waiting for any administrative concurrence. The DLA receives the certified copy of the order from the Court registry through the Central agency section and dispatches the same to the concerned Commissioner for compliance in the matter.

(w) It is pointed out that review of the Hon'ble Supreme Court's order is rarely contemplated by the department and a petition filed. The limitation for filing of review petition is 30 days from the date of the order / judgment of the Supreme Court. The proposal of review must be sent by the Commissioner with the concurrence of the Chief Commissioner within 10 days of the pronouncement of order with reasons thereof. The Article 137 of the Constitution, order XLVII - review (the I schedule) of Civil Procedure Code 1908 and order XL of Supreme Court rules, 1966 may be seen for understanding the basic criteria for filing of review against the order / judgment of the Supreme Court.

PROFORMA "A"
(refer para (h) (ii) above)

Recommendation by the Jt CDR to jurisdictional Commissioners

1. Appeal No:-
2. Cause title:-
3. CESTAT Final order number and date:-
4. Issue involved (in brief):-
5. Submission of the DR before the Bench:-
6. Decision of the Bench:-
7. Reasons for filing appeal against the order:-

Joint Chief Departmental Representative

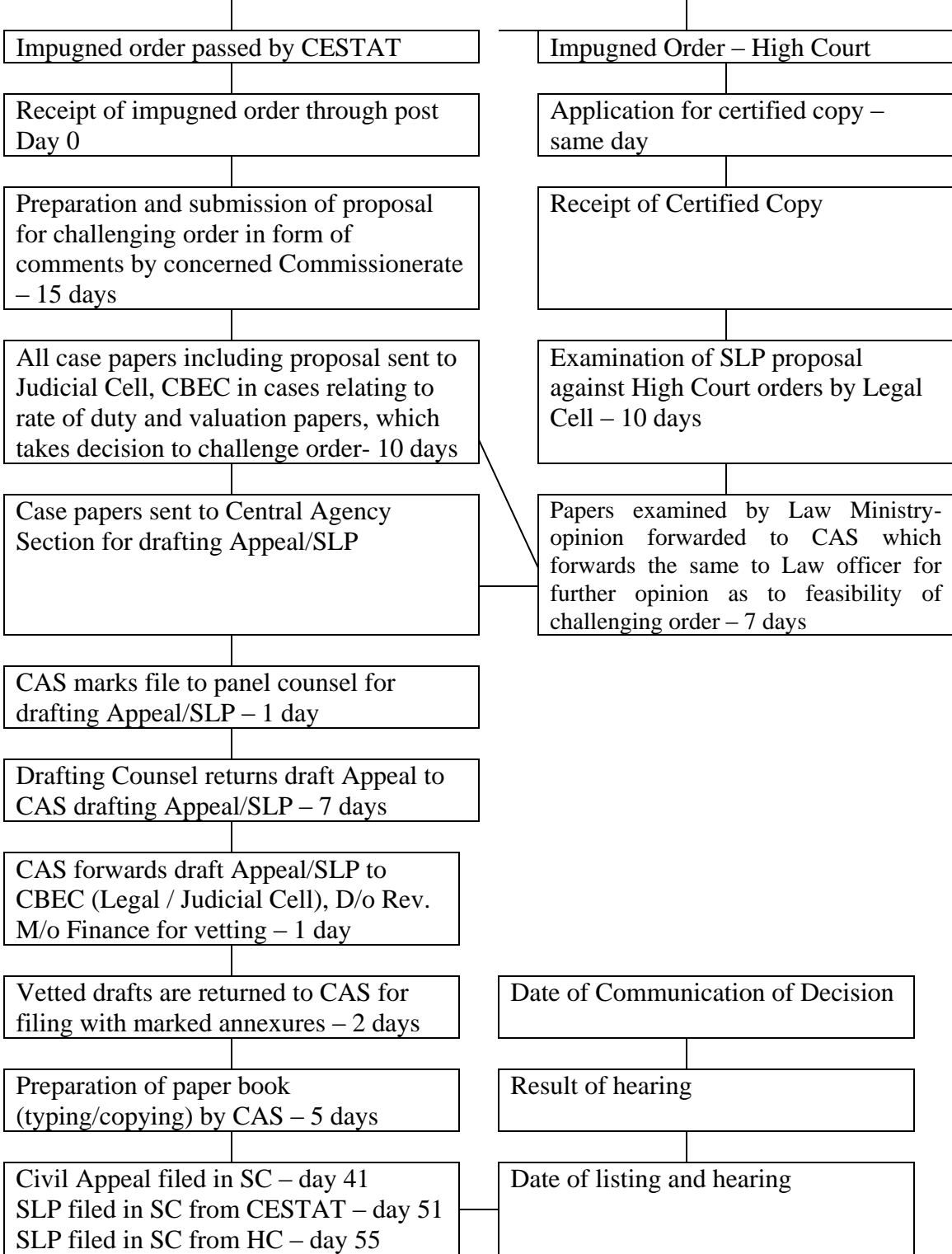
PROFORMA B

COMMISSIONER'S COMMENTS/REPORT ON TRIBUNAL / HIGH COURT ORDER

1.	Number and date of the Tribunal/High Court order	
2.	Date of receipt in the Commissionerate	
3.	Issue involved before the Bench.	
4.	Facts of the case.	
5.	Tribunal's/High Court's decision on the issues involved	
6.	Are there any instructions of the Ministry/Board on the issue involved? Please enclose copies.	
7.	Is there any earlier order of the Tribunal/High Court on this issue? Any action taken?	
8.	Is there any Supreme Court's judgment on the issues involved	
9.	Whether the decision has a recurring effect with respect to the current tariff and statutes.	
10.	Grounds for preferring appeal	
11.	Revenue involved in the matter (demand/refund)	
12.	Whether revenue implication has recurring effect or not	
13.	Whether any refund accrues as a result of the impugned order	

PROFORMA C

FLOW CHART SHOWING PROCESS UNDERTAKEN FOR FILING APPEAL / SLP IN CASES RELATING TO EXCISE, CUSTOMS AND SERVICE TAX AND RECOMMENDED TIME FRAME



PROFORMA "D"
[refer para (t) above]

REPORT ON CONNECTED MATTERS

1. Name of Commissionerate :
2. Cause title, Order No. and date of impugned order :
3. Give the details of cases relied upon by the CESTAT / High Court including cause title, citation, order No. & date; Whether department filed appeal against that order and if so the CA or CAD No. or SLP No., Board's reference No. and the present status of the same; if appealed before High Court , appeal number and present status:

(A) First relied upon case

- (i) Cause title, citation, order No. and date etc:
- (ii) Commissionerate's name:
- (iii) If Appeal has been filed against CESTAT/ High Court's order before Supreme Court, then CA/SLP No., Board's reference No. etc:
- (iv) Present status of the CA/SLP:
- (v) If Appeal has been filed against CESTAT's order before High Court, details thereof:
- (vi) Present status of the appeal before the High Court:
- (vii) In case the appeal as mentioned at (iii) or (v) above has been decided, whether the same has been accepted by the Department:

(Please give the above information in respect of other decisions upon which the CESTAT / High Court has relied by attaching extra sheets)

4. The details/citation of decisions relied upon by the Department while recommending for filing of appeal in the present case.

- (i)
- (ii)

5. Whether the decision relied upon by the Department as mentioned at Sl No. 4 above has attained finality; and if not, whether the same has been appealed against; and if appealed against, then CA/SLP number assigned by SC registry / appeal number assigned by the High Court registry as the case may be:

- (i)
- (ii)

6. The present position / status of the CA/SLP No/ appeal before High Court in respect of the matters mentioned at Sl. No. 5 above.

- (i)
- (ii)

Commissioner of Customs & Central Excise