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[Training Material for Departmental Use]

E-BOOK

On

**Mandatory Pre-deposit  
before filing Appeals in  
Central Excise/Customs/Service Tax  
cases**

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## Pre-Deposit for Filing Appeals

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### **Note:**

1. In this E-book, attempts have been made to explain the provisions relating to mandatory pre-deposit for filing of appeals in Central Excise/ Customs/ Service Tax before different appellate forums. It is expected that it will help departmental officers in their day to day work.
2. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACEN, RTI, Kanpur on the Email addresses: [rtinacenkanpur@yahoo.co.in](mailto:rtinacenkanpur@yahoo.co.in) or [goyalcp@hotmail.com](mailto:goyalcp@hotmail.com) (Email address of ADG, RTI, NACEN, Kanpur). This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
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4. This e-book has been prepared with active assistance and contribution of **Shri Sanjay Kumar Agarwal, Superintendent, Commissionerate of Central Excise, Lucknow.** We, at NACEN, appreciate his participation and willingness to prepare e-books and to help fellow departmental officers in capacity building and upgrading their knowledge.
5. If you feel that this e-book has really helped you in improving your knowledge or understanding of the subject matter, we request you to take few minutes out of your precious time and provide us your valuable feedback. Your feedback is important and will help us in improving our e-books.

Sd/-

**(C. P. Goyal)**  
**Additional Director General**  
**NACEN, RTI, Kanpur**

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### 1. Background

1.1 In the area of dispute resolution in Indirect taxation, both the assessee as well as the Department have been conferred with a right of two or three stage appellate remedies. Against the orders passed by the officers who are lower than the rank of Principal Commissioner/Commissioner of Central Excise/Customs/Service Tax, the first appeal lies to the Commissioner of Central Excise/Customs/Service Tax (Appeals) and from there to the Customs, Excise & Service Tax Appellate Tribunal (i.e. CESTAT) and finally to the High Court or Supreme Court, subject to certain conditions. In certain specified categories of cases, the appeal against the order issued by the Commissioner (Appeals) lies before the Joint Secretary (Revision Application). To know more about the concept of Revision Application in Indirect Taxes, please refer to e-book on Revision Application.

1.2 After enactment of the Finance Act (No.2), 2014 with effect from 06.08.2014, **Section 35F** of the **Central Excise Act, 1944** and **Section 129E** of the **Customs Act, 1962** have been substituted with new sections **to provide for 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. Where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed. The amended provisions apply to the appeals filed before Commissioner (Appeals) or Tribunal after 6.8. 2014. Sections 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 contain specific saving clause to provide that all pending appeals/stay applications filed till the enactment of the Finance Bill, 2014 shall be governed by the erstwhile provisions.

1.3 Prior to 6.8.2014, the pre-deposit of percentage of duty confirmed or penalty imposed for filing appeal before Commissioner (Appeals) or CESTAT was not mandatory and decision in this regard was to be taken by Commissioner (Appeals) and CESTAT on the merit of the case. The appellate authority was competent to decide the amount of pre-deposit required to be made by the Appellant after taking into consideration the merits of the case and /or considering financial hardship to the assessee as well as to safeguard the interest of revenue. This decision was taken by Commissioner (Appeals) or Tribunal while considering the application of the Appellant for stay of the order against which he has preferred appeal. The appellate authorities were even competent to order a small amount of pre-deposit or to waive the pre-deposit altogether. However, w.e.f. 06.08.2014, no such discretion is now available with the Commissioner (Appeals) or CESTAT. If the prescribed pre-deposit is not made at the time of filing the appeal, the appeal is liable for rejection.

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1.4 In Service Tax, the provisions of Section 35F of the Central Excise Act, 1944, as in force from time to time, have been made applicable to Service Tax matters by virtue of Section 83 of the Finance Act, 1994. Therefore, the amended provisions of section 35 F of the Central Excise Act, 1944 shall also apply to like matters of Service Tax.

### Provisions of Refund of Pre-deposit along with Interest

1.5 Further, to enable refund of pre-deposit to the assessee in the event of appellate order being their favour, specific provisions in the form of revised sections 35FF and 129 EE (substituted *vide* Finance Act, 2014 with effect from 6.8.2014)) have been incorporated in the Central Excise Act, 1944 and Customs Act, 1962 respectively. In such a situation of order issued by the Commissioner (appeals) or Tribunal in favour of Appellant, the amount of pre-deposit is required to be refunded to the Appellant along with interest. Further, in exercise of power under these newly inserted sections, rate of interest has been prescribed at the rate of 6% per annum.

## 2. *Legal Provisions under Central Excise, Customs and Service Tax Statutes prior to Amendments and after amendments effected vide Finance Act, 2014 at a glance.*

**Table I**

Legal Provisions prior to 6.8.2014	Legal provisions with effect from 6.8.2014
In Central Excise and Service Tax Law	
<p><b>35F:</b> Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:</p> <p><b>Provided</b> that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.</p> <p><b>Provided further</b> that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or</p>	<p><b>35F:</b> The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal—</p> <p>(i) under sub-section (1) of Section 35, unless the appellant has deposited seven and a half per cent. 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 Commissioner of Central Excise;</p> <p>(ii) against the decision or order referred to in clause (a) of sub-section (1) of Section 35B, unless the appellant has deposited seven and a half per cent. 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;</p> <p>(iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in</p>

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<p><b>penalty levied</b> under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, <b>decide such application within thirty days from the date of its filing.</b></p> <p><b>Explanation.—</b> For the purposes of this section “duty demanded” shall include,—</p> <p>(i) amount determined under section 11D; (ii) amount of erroneous CENVAT credit taken; (iii) amount payable under rule 57CC of Central Excise Rules, 1944; (iv) amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004; (v) interest payable under the provisions of this Act or the rules made thereunder.”</p>	<p>dispute, in pursuance of the decision or order appealed against:</p> <p><b>Provided</b> that the amount required to be deposited under this section shall not exceed rupees ten crores:</p> <p><b>Provided further</b> that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.</p> <p><b>Explanation.—</b> For the purposes of this section “duty demanded” shall include,—</p> <p>(i) amount determined under section 11D; (ii) amount of erroneous Cenvat credit taken; (iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.</p>
In Customs Act, 1962	
<p><b>129E:</b> Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or the penalty levied:</p> <p><b>Provided</b> that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.</p> <p><b>Provided further</b> that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.”</p>	<p><b>129E.</b> The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—</p> <p>(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. 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 Commissioner of Customs;</p> <p>(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. 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;</p> <p>(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. 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:</p> <p><b>Provided</b> that the amount required to be deposited under this section shall not exceed rupees ten crores:</p> <p><b>Provided further</b> that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.</p>

### 3. *Relevant Legal Provisions at a Glance*

3.1 All relevant legal provisions applicable to the subject matter of mandatory pre-deposits in Central Excise, Customs and Service Tax cases are given in Table II below.

**Table II**

Sr. No.	Section/Rule /Circular/ Notification	Subject
1.	Section 35 F of the Central Excise Act, 1944	This provides for mandatory pre-deposit of duty confirmed or penalty imposed for filing appeal before Commissioner (Appeals) or CESTAT in Central Excise cases.
2.	Section 129E of the Customs Act, 1962	This provides for mandatory pre-deposit of duty confirmed or penalty imposed for filing appeal before Commissioner (Appeals) or CESTAT in Customs cases.
3.	Section 35FF of the Central Excise Act, 1944 [ Note: <i>Text of Section 35 FF may be seen in Paragraph 6.1 of this e-book</i> ]	It is an enabling provision for refund of Pre-deposits along with interest in Central Excise case in certain situation.
4.	Section 129 EE of the Customs Act, 1962 [Note: <i>Text of Section 129 EE may be seen in Paragraph 6.1 of this e-book</i> ]	It is an enabling provision for refund of pre-deposit along with interest in Customs cases in certain situation.
5.	Notification No. 24/2014-CE (NT), dated 12.08.2014	Prescribes 6% as a rate of interest <b>on refunds</b> given under Section 35E of the Central Excise Act, 1944
6.	Notification No. 70/2014-Cus (NT), dated 12.08.2014	Prescribes 6% as a rate of interest <b>on refunds</b> given under Section 129E of the Customs Act, 1962
7.	<b>CBEC Circulars</b>	
7.1	Circular No. 984/08/ 2014-CX dated 16.09.2014	Amendments to the Appeal provisions in Customs, Central Excise and Service Tax made by Finance Act, 2014- Issue of clarifications
7.2	Circular No. 993/17/2014-CX dated 05.01.2015	Mandatory pre-deposit of duty or penalty for filing appeal.

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### 4. Salient Features of Concept of Mandatory Pre-deposit at a Glance

4.1 Salient Features of concept of mandatory pre-deposit for filing appeals before Commissioner (appeals) or CESTAT are given in Table III below.

**Table III**

Sr. No	Subject Heading	Provision
<b>1. Quantum of pre-deposit For filing appeal before</b>		
1.1	Commissioner (Appeals)	7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute. It is subject to upper ceiling of Rs. 10 crores.
1.2	In case of appeal before CESTAT against the order passed by Commissioner (Appeals)	10% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute. It is subject to upper ceiling of Rs. 10 crores.
1.3	In case of appeal before CESTAT against the order passed by Commissioner as original adjudicating authority	7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute
1.4	Joint Secretary (Revision Application)	No mandatory pre-deposit required
1.5	In cases of drawback, rebate or baggage, first stage appeal filed before Commissioner (appeals)	mandatory pre-deposit is payable at the rate of 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute. It is subject to upper ceiling of Rs. 10 crores. However, no pre-deposit is required for filing revision application before JS (RA).
<b>2. Refund of Pre-deposit</b>		
2.1	Refund of Pre-deposit  [ Under Section 35FF of the Central Excise Act, 1944 and Section 129 EE of the Customs Act, 1962]	<ul style="list-style-type: none"> <li>Where the appellate authority has decided the matter in favour of the appellant, amount pre-deposited is to be refunded with interest <b>within 15 days of the receipt of the letter of the appellant</b> seeking refund irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.</li> <li>No format for refund claim prescribed.</li> <li>Simple letter to the Assistant or Deputy Commissioner is sufficient.</li> <li>Rate of interest notified @ 6% per annum.</li> </ul>
<b>3. No Coercive Action after Mandatory Deposit</b>		
3.1	No Coercive Action under Circular No. 967/1/2013 dated 1 <sup>st</sup> January, 2013 after mandatory pre-deposit	In case of appeals filed under revised provisions of Section 35 F of CEA, 1944/ 129 E of CA, 1962, no coercive action is to be taken against the Assesse for recovery of balance amount in excess of pre-deposit.
3.2	Recovery Action in case of Commissioner (appeals) /Tribunal Order in favour of Department	Recovery action, if any, can be initiated only after the disposal of the case by the Commissioner (Appeal)/ Tribunal in favour of the Department. For example, if the Tribunal decides a case in favour of the Department,

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		recovery action for the amount over and above the amount deposited under the provisions of Section 35F / 129E may be initiated unless the order of the Tribunal is stayed by the High Court/Supreme court
<b>4.</b>	<b>Inclusion of Certain Paragraphs in Preamble of the Order</b>	
4.1	Order issued by adjudicating authority lower in rank to the Commissioner	<i>An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.</i>
4.2	Orders issued by the Commissioner (Appeals)	<i>An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.</i>
4.3	Orders issued by the Commissioner as original adjudicating authority	<i>An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute</i>

## 5. Important Clarifications Issued by CBEC

### 5.1 Quantum of pre-deposit: Important Points.

- In the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be worked out and paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal).
- Where only penalty is in dispute, 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 mandatory pre-deposits stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.
- 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 the limit of Rs. 10 crores, are to 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 is required to be paid before filing of appeal before the appellate authority.
- Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the **date of filing of appeal shall be deemed to be the date of deposit made in terms of the said section.**

## 5.2 Refund of pre-deposit: Important Points

- Where the appeal is decided in favour of the party/assessee, he is entitled to refund of the amount deposited along with the interest at the prescribed rate from **the date of making the deposit to the date of refund** in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.
- The pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962.
- Where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant **within 15 days of the 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.**
- If the Department contemplates appeal against the order of the Commissioner (A) 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 also, refund of the pre-deposit is payable along with interest. However, in case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.
- Refund of pre-deposit made **NOT to 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.

## 5.3 Procedure and Manner of making the pre-deposits: Important Points

- Record of deposits made under Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 are to be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.
- The data should be maintained separately in respect of appeals before CESTAT and Commissioner (Appeals) and may consists of the following details:-

- ✓ Sl. No.
- ✓ Name of the Appellant/ Party
- ✓ Details of duty paying document viz Challan etc
- ✓ Amount of pre-deposit paid
- ✓ Order No and date of the order of Commissioner(A)/Tribunal

### 6. *Text of Relevant notifications/Circulars*

#### 6.1 **Section 35FF of the Central Excise Act, 1944** provides as under:-

*35FF. Where an amount deposited by the appellant under section 35F 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 five per cent. and not exceeding thirty-six per cent. 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:*

*Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of section 35FF as it stood before the commencement of the said Act.*

**[Note: Section 35FF of the Central Excise Act, 1944 has been substituted vide section 106 of the Finance Act, 2014 with effect from 6.8.2014]**

#### 6.2 **Section 129 EE of the Customs Act, 1962** provides as under:-

***Section 129EE: Interest on delayed refund of amount deposited under the proviso to section 129E. –***

*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 five per cent. and not exceeding thirty-six per cent. 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:*

*Provided that the amount deposited under section 129E, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of section 129EE as it stood before the commencement of the said Act.*

**[Note: Section 129 EE of the Customs Act, 1962 has been substituted vide section 90 of the Finance Act, 2014 with effect from 6.8.2014]**

### **6.3 Circular No 984/08/2014-CX, dated 16.09.2014**

[Issued F. No.390/Budget/1/2012-JC ]

**Sub: Amendments to the Appeal provisions in Customs, Central Excise and Service Tax made by Finance Act, 2014- Issue of clarifications – reg.**

The Finance Act (No.2), 2014 has been enacted on 06.08.2014. Section 35F of the Central Excise Act, 1944 and 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. Where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed.

1.2 The amended provisions apply to appeals filed after 6<sup>th</sup> August, 2014. Sections 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 contain specific saving clause to state that all pending appeals/stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions.

1.3 Section 35FF of the Central Excise Act, 1944 and Section 129EE of the Customs Act, 1962 have also been substituted to provide for payment of refund along with interest at the prescribed rate on the amount pre-deposited from the date of such payment till the date of refund. In exercise of the powers conferred under the new Section 35FF of the Central Excise Act, 1944 and Section 129EE of the Customs Act, notification Nos. 24/2014-CE(NT) and 70/2014-Cus(NT), both dated 12.08.2014 have been issued specifying six percent as rate of interest on refunds made under those sections.

1.4 Various doubts / issues have been raised by trade bodies, industry associations and field formations etc. on the implementation of the new provisions. With a view to implement the scheme smoothly, the following clarifications are issued.

#### **2. Quantum of pre-deposit in terms of Section 35F of Central Excise Act, 1944 and Section 129E of the Customs Act, 1962:**

2.1 Doubts have been expressed with regard to the amount to be deposited in terms of the amended provisions while filing appeal against the order of Commissioner (Appeals) before the CESTAT. Sub-section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeal). It is, therefore, clarified that in the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal). This need not be the same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

2.2 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.

2.3 In case of any short payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.

### 3. Payment made during investigation:

3.1 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 the limit of Rs 10 crores, 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. As a corollary, amounts paid over and above the amounts stipulated under Section 35 F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.

3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.

3.3 In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection.

### 4. Recovery of the Amounts during the Pendency of Appeal:

4.1 Vide Circular No.967/1/2013 dated 1<sup>st</sup> January, 2013, Board has issued detailed instructions with regard to recovery of the amounts due to the Government during the pendency of stay applications or appeals with the appellate authority. This Circular would not apply to cases where appeal is filed after the enactment of the amended Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

4.2 No coercive measures for the recovery of balance amount i.e., the amount in excess of 7.5% or 10% deposited in terms of Section 35F of Central Excise Act, 1944 or Section 129E of Customs Act, 1962, shall be taken during the pendency of appeal where the party / assessee shows to the jurisdictional authorities:

- (i) proof of payment of stipulated amount as pre-deposit of 7.5% / 10%, subject to a limit of Rs.10 crores, as the case may be; and
- (ii) the copy of appeal memo filed with the appellate authority.

4.3 Recovery action, if any, can be initiated only after the disposal of the case by the Commissioner (Appeal) / Tribunal in favour of the Department. For example, 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 unless the order of the Tribunal is stayed by the High Court/Supreme court. The recovery, in such cases, would include the interest, at the specified rate, from the date duty became payable, till the date of payment.

### 5. Refund of pre-deposit:

5.1 Where the 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 prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.

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5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the 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.

5.3 If the Department contemplates appeal against the order of the Commissioner (A) 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.

5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.

5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

5.6 It is reiterated that 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. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 *supra*.

### 6. Procedure and Manner of making the pre-deposits:

6.1 E-payment facility can be made use of by the appellants, wherever possible.

6.2 A self attested copy of the document showing satisfactory proof of payment shall be submitted before the appellate authority as proof of payment made in terms of Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

6.3 Column 7 of EA.1, column 6 of CA.1 and column 6 of ST.4 for filing appeal before Commissioner (Appeals), seek details of the duty/penalty deposited. The same may be used for indicating the deposits made under amended Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962.

6.4 The appeal filed before the CESTAT are filed along with the appeal memo in prescribed format (Form EA-3 for Central Excise Appeals and Form CA-3 for the Customs Appeals). Column 14(i) of the said appeal forms seeks information of payment of duty, fine, penalty, interest along with proof of payment (challan). These columns may, therefore, be used for the purpose of indicating the amount of deposit made, which shall be verified by the appellate authority before registering the appeal.

6.5 As per existing instructions, a copy of the appeal memo along with proof of deposit made shall be filed with the jurisdictional officers.

### 7. Procedure for refund:

7.1 A simple letter from the person who has made such deposit, requesting for return of the said amount, along with a self attested Xerox copy of the order in appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the

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document evidencing payment of such deposit, addressed to Jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of the amount deposited along with interest at the rate specified.

7.2 Record of deposits made under Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 should be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.

### 8. Amendment to Preamble of Orders:

8.1 In order to make the new provisions known to the assessee / trade every adjudicating authority lower in rank to the Commissioner is directed to incorporate the following sentence in the Preamble to the order being issued by them –

*“An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.”*

8.2 The following may be added in the preamble of the orders issued by the Commissioner (Appeals) –

*“An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute”.*

8.3 The following may be added in the preamble of the orders issued by the Commissioner as original adjudicating authority –

*“An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute”.*

9. Receipt of the Circular may please be acknowledged.

10. Hindi version follows.

### 6.4 Circular No. 993/17/2014-CX New Delhi, dated 5.1.2015 [Issued from F. No. 390/Budget/1/2012-JC]

Sub: Mandatory pre-deposit of duty or penalty for filing appeal– reg.

Attention is invited to Circular No 984/08/2014-CX, dated 16th September, 2014 on the captioned subject. While para 6 of this Circular laid down the procedure and manner of refund, para 7.2 clearly directed that the Commissionerates should maintain a database of the record of deposits made so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.

2. In order to maintain uniformity in the database being maintained, the following columns are suggested to be maintained in a separate register (e-register preferably) in the Review Cell of

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each Commissionerate. The following columns need to be filled in on receipt of each appeal memo as directed in Para 6.2 of the Circular mentioned above. The data should be maintained separately in respect of appeals before CESTAT and Commissioner (Appeals)-

- (i) Sl. No.
- (ii) Name of the Appellant/ Party
- (iii) Details of duty paying document viz Challan etc
- (iv) Amount of pre-deposit paid
- (v) Order No and date of the order of Commissioner(A)/Tribunal

3. Rule 17 of the CESTAT (Procedure) Rules, 1982 stipulates that a copy of the appeal memo is to be sent to the Departmental Representative as well as to the Executive Commissionerate. This is required to be done by the Tribunal registry where the appeal memo is received. It has been brought to the notice of the Board that appeals filed before the Tribunal on or after 6th August are not being sent to the Commissionerate. Therefore, it is emphasized that Rule 17 ibid has to be followed and the Tribunal Registry must send a copy of the appeal memo to the Commissionerate immediately after receipt. Similarly, a copy of the appeal memorandum filed before the Commissioner (Appeal) must be sent to the Commissionerate concerned by the office of the Commissioner (Appeals). This would help in processing the refund claims quickly.

4. Para 1.2 of the Circular ibid stated that amended provisions would apply to appeals filed after 6<sup>th</sup> of August, 2014. An Act of Parliament comes in to effect on the date it received the assent of the President of India. Hence, the amended provisions regarding filing of appeal along with stipulated percentage of pre-deposit shall apply to all appeals filed on or after 6<sup>th</sup> August, 2014. Para 1.2 of the earlier Circular stands suitably modified.

5. Several representations have been received by the Board stating that some Commissioners (Appeals) have been insisting on pre-deposit in cases of demand of erroneous drawback granted. It has been represented that drawback is not a duty and hence the amended provisions would not apply to such cases.

6. The issue has been examined. Drawback, like rebate in Central Excise, is refund of duty suffered on the export goods. Section 129E stipulates that appellant filing appeal before the Commissioner (Appeals) shall pay 7.5% of the duty demanded where duty and penalty are in dispute. Accordingly, it is clarified that mandatory pre-deposit would be payable in cases of demand of drawback as the new section 129E would apply to such cases.

7. The ambit of the Section 129E of the Customs Act, 1962 in the legislation 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).

**6.5 Text of notification No. 24 / 2014 –CE (N.T.), dated 12.08.2014**

In exercise of powers conferred by section 35FF of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby fixes the **rate of interest at six percent per annum** for the purpose of the said Section.

**6.6 Text of notification No. 70 / 2014 - Customs (N.T.), dated 12.08.2014**

GSR...(E) In exercise of powers conferred by section 129EE of the Customs Act, 1962 (52 of 1962), the Central Government hereby fixes **the rate of interest at six percent per annum** for the purpose of the said Section.

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