

Drafting & Filing Appeals

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Agenda

Substantive Law of Appeal

Drafting Appeal

Cross Objections

Filing Appeal

Miscellaneous Matters – COD, Misc Appl,
etc

- **Right of Appeal**
 - Natural or inherent right?
 - No appeal provision in the statute but has civil consequences, can an appeal be filed?
- **Comparison between old ST provisions & Excise Provisions**
 - Finance Act, 1994 modelled around Income Tax Act (Expenditure Tax Act)
 - Appeal provisions under old ST regime
- **Nature of Appeal**
 - Continuing Assessment Proceedings

Appealable Orders

- **Cryptic Letters, Communications & Orders**
 - Can appeals be filed against such communications?
- **Can a successful party appeal against findings adverse to him in that Order?**
 - Emery (India) Pvt. Ltd. V Collector, 1986 (24) ELT 371

Person entitled to file Appeal

- **What is the meaning of person aggrieved?**
 - Assessee – whether covered?
 - Customer of Assessee – whether covered?
 - Usha Agarwal
- **Joint Appeals**
 - Common Appeal by several persons?
 - Common Appeal against several orders?

- **Drafting of Appeal is not conversion of reply to appeal format**
 - Scenario changes between SCN and O-i-O
- **Problem of unchallenged findings in the order**
 - Order requires only one finding to sustain; but requires all findings to be
 - Requirement to deny and challenge all findings
 - Para-wise Rebuttal where necessary
 - When in doubt – record and deny
- **One Ground – One Submission**
 - Avoid duplicity of arguments under a single ground

- **Drafting of Appeal: Keeping the Judge in Mind**
 - Record facts in a clear manner
 - List of Dates is very useful to prepare prior to drafting appeal
 - Proceed chronologically – it is easy to follow facts in the manner
 - Evidence Evidence Evidence – letters, certificates, invoices, returns, etc
 - Verify the facts – don't state unverified, untruthful
 - Arrange the Grounds by the most strong ground
 - Pay attention to the preliminary grounds – jurisdiction, unjust enrichment, etc – they are very useful when you file appeal to High Court / Supreme Court
 - Neutral grounds should not be ignored – revenue neutrality, credit available
 - Penalty, confiscation, redemption fine grounds should be taken

Additional Grounds & Additional Evidence

- **CEGAT procedure Rules**
- **Whether a ground/evidence not taken before the lower authorities can be taken**
 - Character of tax litigation
 - Powers of Appellate Tribunal & Power of Adjudicator – what relation?
 - Establishing some link between additional evidence and existing evidence

Cross Objection/Cross appeals

- When it is filed. ?
- Any fees is to be paid?
- Time limit for filling Cross objection.
- Delay in filling cross objection.

Forms & Procedure for Filing Appeal

- **Appeal to be filed in proper form**
 - Latest Form
 - Choosing between EA-3 & ST-5 Forms
- **Appeal filed in wrong format**
 - Implications?
- **Court Fee & Stamp**

Forms & Procedure for Filing Appeal

- **Enclosures to the appeal**
 - Vakalatnama.
 - Proper font, numbering, annexures
- **Signing and verifying appeal**
 - Implications?
- **Time Limit for filling appeal**
- **Appropriate forum**

Newly inserted section 35 F-stay

- **Mandatory pre deposit.**
 - Additional 2.5% or 10%
- **Constitutional validity**
 - state of Tripura v Manoranjan Chakraborty, (2001) 10 SCC 740
- **Patently frivolous orders.**
- **Applicability**
 - Orders passed prior to introduction of section.

Newly inserted section 35 F-stay

- Payment made during investigation.
- Recovery of amount during the pendency of appeal.
- Whether deposit can be paid through CENVAT Account.
- Remand Proceedings.
- Refund of Pre deposit.

Condonation of Delay

- Date of receipts-How Computed.
- What if the statutory period for filing appeal expired.
- What constitute sufficient cause and what does not.
- Principles governing COD applications.-**28 ELT 185 (SC)**

Miscellaneous Applications

- Application for urging additional grounds.
- Application for early hearing of the appeal.
- Application for putting additional evidence on record.
- Application for rectification of Mistake.
- Application for restoration of the appeal.
- Application for adjournment
- Application for mention.
- Application for condonation of delay.
- Application for extension of stay



Discussions

Adv. L. Badri Narayanan