

TAX ALERT

Pre-Deposit while filing appeal before Appellate Authority

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INTRODUCTION

The Finance Act, 2004 enacted on 06.08.2014, prescribed for the provision of mandatory pre-deposit at the time of filing appeal to Commissioner(Appeals) or Tribunal under Customs, Central Excise and Service Tax. Such pre-deposit is calculated as a percentage of duty demanded 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 quantum of deposit to be made are as follows:

1. 7.5% of demand while filing appeal to Commissioner(Appeals)
2. 7.5% of demand while filing appeal to Tribunal against the order of Commissioner
3. 10% of demand while filing second appeal to Tribunal.

Provisions specified against serial no. 3 above, gave rise to confusion and doubts among trade bodies, industry associations and field formations etc. on the quantum of pre-deposit to be made before the Tribunal in the second appeal having already paid 7.5% while filing first appeal. The dispute arose as to whether the applicant is required to deposit 10% of the demand or only differential 2.5% of demand while filing second appeal to the Tribunal.

To implement the provisions of statute smoothly the position was clarified via issue of **Circular no. 984/08/2014-CX dated 16.09.2014** by CBEC. It was clarified therein that the pre-deposit while filing second stage appeal has to be calculated as 10% of the duty or penalty demanded by Commissioner(Appeals). This demand need not be the same as confirmed in Order-in-Original. As the pre-deposit made by applicant while filing first stage appeal was calculated at 7.5% of the demand confirmed by Adjudicating Authority, the same cannot be adjusted against the pre-deposit required at second stage appeal which is calculated on the demand in Order-in-appeal.

Although the Board has clarified categorical about payment of 10% at the time of second stage appeal, the language in the statute and logic was contested before the Tribunal and Courts on the ground that having paid 7.5% pre-deposit before the first stage appeal, the second stage appeal required only payment of 2.5%, otherwise, demanding justice from the Tribunal would be a costly affair ***for the small concern***. As demand for more than 50 lakhs (now 2 crore) is being adjudicated by the Commissioner and the first appeal lies before the Tribunal.

1. **Hon'ble Bombay High Court** in the case of **Greatship (India) Pvt. Ltd.**ⁱ on the principle of interpretation of Taxing statutes observed that the Courts have to adhere to literal interpretation. The statute should not be interpreted by adding words which are not found in the statute. However attempt should be made to derive natural meaning by examining the language of statute. It is further settled that an equitable construction, is not admissible in a taxing statute, where the Courts can simply adhere to the words of the statute. Common sense approach, equity, logic, ethics and morality have no role to play while interpreting the taxing statute. Resort to purposive construction would be permissible only in limited type of cases where the ambiguous language leads to more than one interpretation.
2. **Hon,ble CESTAT** in the case of **Essar Oil Ltd**ⁱⁱ held that the tax paid at the time of filing appeal before first Appellate Authority cannot be adjusted against amount of deposit required to be made while filing appeal before Tribunal. In the said case the assessee contended that they are liable to deposit only 2.5% of demand instead of 10% since they had already deposited 7.5% while filing appeal before Commissioner (Appeal) in pursuance of Section 129E of Customs Act. However Revenue argued that such an interpretation is not possible without inserting the words not present in the statute. After perusal of the contentions argued and referring to the decision of Hon'ble Bombay High Court as cited above, CESTAT dismissed the case by not allowing deposit adjustment.

CONCLUSION

Considering the above discussion and stated facts, it is clear that the meaning of Sections relating to mandatory pre-deposit has to be derived by plain reading of the language of statute and not otherwise which can lead to different interpretation. Thus, the applicant has to deposit mandatorily 7.5% of demand at the first stage appeal and another 10% of demand while filing appeal at second stage before Tribunal.

ⁱ 2015 (39) STR 754 (Bom.)

ⁱⁱ 2017-TIOL-285-CESTAT-AHM

