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**Mandatory pre-deposit  
for 2<sup>nd</sup> appeal against  
Commissioner order is  
10% over and above  
the 7.5% already paid  
for 1<sup>st</sup> appeal**

**Issue no:** IDT/2/2017

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## Summary

The Hon'ble Larger Bench of the Customs Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi, held that an appellant is required to deposit separately 10% of the amount of the duty confirmed or penalty imposed (as the case may be), for preferring a second appeal before the Tribunal, against an order of Commissioner (Appeals).

## Background

- The dispute arises due to conflict in decisions of different benches of the Tribunal. The Delhi Bench of the Tribunal in *Balajee Structural (India) Pvt Ltd. v. CCE, Raipur*, held impliedly deposit of 10% of the amount of duty and penalty as the case maybe, for preferring an appeal before the Tribunal against Commissioner (Appeals) order. This is inclusive of 7.5% deposited at the time of preferring appeal before the first appellate authority from the adjudication order.
- Whereas, on the other hand, decision of the Kolkata Bench in *Hindalco Industries Ltd. 2016-TIOL-3050-CESTAT-KOL* and of the Ahmedabad Bench in *ASR Multimetals Pvt. Ltd. 2016-TIOL-3154-CESTAT-AHM*, held that pre-deposit of 10% of the amount of duty and penalty needs to be deposited over and above the amount mandated to be deposited before the first appellate authority.

## Issue

Whether an appellant has to pay 10% mandatory deposit over and above the mandatory deposit of 7.5% of the duty liability/penalties, for preferring second appeal before the Tribunal, as provided under Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962.

## Decision of the Hon'ble Larger Bench of Delhi Tribunal

- The intention of the legislature is very clear vide CBEC Circular dated 16.09.2014, specifically paragraph 2.1, which states that in the event of appeal against order of Commissioner (Appeals) before the Tribunal, an amount of 10% as pre-deposit is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals).

- First appeal can be entertained only on deposit of 7.5% and on conclusion of the proceedings, if the appeal is disposed of, amount pre-deposited needs to be refunded in accordance with law.
- In order to prefer an appeal before the Tribunal, an appellant needs to deposit 10% of the amount of duty confirmed or the penalty imposed irrespective of the amounts equivalent to 7.5% deposited by them, for preferring an appeal to the first appellate authority.
- The statutory right of second appeal must be considered as an independent right and proceeding subsequent to pre-deposit of the amount to exercise first appeal, needs to be considered as having come to closure.
- Decision of the Tribunal Regional Bench at Ahmedabad in the case of ASR Multimetals Pvt. Ltd. 2016-TIOL-3154-CESTAT-AHM was affirmed.

**Hon'ble Larger Bench of Delhi Tribunal's Interim Order No. 39/2017 dated 20.04.2017**

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# Contacts

## Ahmedabad

19<sup>th</sup> Floor, Shapath - V  
SG Highway,  
Ahmedabad – 380 015.  
Tel: + 91 (079) 6682 7300  
Fax: + 91 (079) 6682 7400

## Coimbatore

Shanmugha Manram  
41, Race Course,  
Coimbatore  
Tamil Nadu - 641018  
Tel: + 91 (0422) 439 2801  
Fax: +91 (0422) 222 3615

## Kolkata

Bengal Intelligent Park Building  
Alpha, 1st floor, Block EP and GP  
Sector V, Salt Lake Electronics  
Complex,  
Kolkata - 700 091.  
Tel : + 91 (033) 6612 1000  
Fax : + 91 (033) 6612 1001

## Bangalore

Deloitte Centre, Anchorage II,  
100/2, Richmond Road,  
Bangalore 560 025.  
Tel: +91 (080) 6627 6000  
Fax: +91 (080) 6627 6010

## Delhi/Gurgaon

Building 10,  
Tower B, 7th Floor,  
DLF Cyber City,  
Gurgaon 122 002  
Tel : +91 (0124) 679 2000  
Fax : + 91 (0124) 679 2012

## Mumbai

Indiabulls Finance Centre,  
Tower 3, 28th Floor,  
Elphinstone Mill Compound,  
Senapati Bapat Marg, Elphinstone  
(W),  
Mumbai – 400013  
Tel: + 91 (022) 6185 4000  
Fax: + 91 (022) 6185 4101

## Chennai

No.52, Venkatanarayana Road,  
7th Floor, ASV N Ramana Tower,  
T-Nagar,  
Chennai 600 017.  
Tel: +91 (044) 6688 5000  
Fax: +91 (044) 6688 5050

## Hyderabad

1-8-384 and 385, 3rd Floor,  
Gowra Grand S.P.Road,  
Begumpet,  
Secunderabad – 500 003.  
Tel: +91 (040) 6603 2600  
Fax: +91 (040) 6603 2714

## Pune

106, B-Wing, 7<sup>th</sup> Floor,  
ICC Trade Tower,  
Senapati Bapat Road,  
Pune – 411 016.  
Tel: + 91 (020) 6624 4600  
Fax: +91 (020) 6624 4605



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