

Chapter III

Monitoring Mechanism for Appeal Cases in CBIC

3.1 Appeals in Central Excise and Service Tax

While collecting the Government revenue, there is bound to be difference of opinions and disputes between the Department and the assessee. To provide a level playing field a well defined mechanism of dispute resolution has been evolved in the Department.

Every proceeding starts with the issue of a Show Cause Notice (SCN) for recovery of revenue due to non/short levy of duty or some other reasons. The SCN puts forth the grounds, on which the department has made a particular opinion. While setting out the said grounds, the Department discloses all the relevant facts, evidences, reports and law to the noticee and gives the details of offences committed and the action that is proposed against him alongwith the dues short paid or non-paid. The SCN is then adjudicated by the competent authority. Against the adjudication order, assessee as well as the Department can go for Appeal.

3.2 Process of Appeals in CBIC

Chapter VI A of the Central Excise Act, 1944 lays down the provisions for Appeals. Sections 35 and 36 of the Act provide for Appeals to Commissioner (Appeals), Appellate Tribunal, High Court, and the Supreme Court. The provisions of the Act relating to Appeals have been made applicable to Service Tax as per Section 83 of the Finance Act, 1994.

Both the assessee and the Department have been conferred with a right of multi stage remedies against the orders passed under the Act and Rules. For the orders passed by officers lower than the rank of Commissioner of Central Excise, the first Appeal lies to the Commissioner (Appeals) and there from to the Appellate Tribunal, High Court and finally to the Supreme Court.

3.3 Monitoring of Appeal Cases

Appeal cases are monitored at Commissionerates, Divisions and Ranges and all the data are maintained by them. Appeals to be filed upto High Court level are decided by field formations while Appeals to be filed in Supreme Court are decided at Board level and monitored by the Directorate of Legal Affairs (DLA) in the Board through Monthly Performance Reports (MPRs) furnished by field formations.

3.4 Audit Coverage

To examine the adequacy of data maintenance and monitoring of Appeal mechanism at Board level, we examined records/data of DLA in respect of

Appeals pending at various fora. We also examined data/records of 28 Commissionerates¹⁸ pertaining to Appeals in CESTAT, High Court and Supreme Court.

3.5 Audit Findings

We observed instances of non-maintenance of field formation data at Board level, discrepancy in data maintained at Board and field level and non-compliance of Board's instructions by field formations i.e. delay in review of Court decisions, non-filing of Appeals for early hearing, bunching of cases on similar issues, delay in filing Appeals and lapses on part of the Department leading to dismissal of departmental Appeals. The observations are discussed in succeeding paragraphs.

3.5.1 Appeal cases pending at various fora

Based on data furnished by the Board, pendency of Appeals in different fora in respect of Central Excise is depicted in the table 3.1 below:

Table 3.1: Pendency of Appeals in Central Excise

(₹ in crore)

Year	Forum	Appeals pending at the end of the year					
		Details of Departmental Appeals		Details of party's Appeals		Total	
		No. of Appeals	Amount Involved	No. of Appeals	Amount Involved	No. of Appeals	Amount Involved
FY17	Supreme Court	977	5,804	581	2,267	1,558	8,071
	High Court	3,170	10,329	3,528	9,005	6,698	19,334
	CESTAT	7,120	11,915	30,201	65,760	37,321	77,675
	Settlement Commission	0	0	71	77	71	77
	Commissioner (Appeals)	2,243	359	12,711	3,047	14,954	3,406
	Total	13,510	28,407	47,092	80,156	60,602	1,08,563
FY18	Supreme Court	1,054	9,121	501	2,644	1,555	11,765
	High Court	3,149	9,325	3,285	10,045	6,434	19,370
	CESTAT	4,660	11,374	23,136	58,668	27,796	70,042
	Settlement Commission	0	0	28	50	28	50
	Commissioner (Appeals)	1,687	492	8,249	2,999	9,936	3,491
	Total	10,550	30,312	35,199	74,406	45,749	1,04,718

Source: Figures furnished by the Ministry

¹⁸ Ahmedabad North, Belagavi, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Bolpur, Chennai Outer, Daman, Delhi East, Delhi North, Delhi South, Delhi West, Dibrugarh, Guwahati, Haldia, Howrah, Hyderabad, Kochi, Kolkata North, Kolkata South, Mangalore, Mysore, Shillong, Siliguri, Surat and Trichy.

The table indicates that 45,749 cases involving revenue of ₹ 1,04,718 crore were pending in Appeals at the end of FY18 registering a marginal decrease of 3.50 per cent over the amount pending at the end of FY17. Further, it is observed that party's Appeals have been reduced from 47,092 involving ₹ 80,156 crore in FY17 to 35,199 involving ₹ 74,406 crore in FY18. While departmental Appeals, though, decreased in number from 13,510 in FY17 to 10,550 in FY18 but the revenue involved increased from ₹ 28,407 crore in FY17 to ₹ 30,312 in FY18. It is also observed that amount of cases pending at the Supreme Court had increased from ₹ 8,071 crore in FY17 to ₹ 11,765 crore in FY18.

As no action can be initiated for recovery of revenue till the Appeal is pending, efforts for early disposal by the various authorities to bring in possible revenue of ₹ 1,04,718 crore to the Government coffers, is important.

Pendency of Appeals in different fora in respect of Service Tax is depicted in the table 3.2 below:

Table 3.2: Pendency of Appeals in Service Tax

(₹ in crore)

Year	Forum	Appeals pending at the end of the year					
		Details of departmental Appeals		Details of party's Appeals		Total	
		No. of Appeals	Amount Involved	No. of Appeals	Amount Involved	No. of Appeals	Amount Involved
FY17	Supreme Court	508	6,116	220	2,031	728	8,147
	High Court	917	3,067	2,549	9,383	3,466	12,450
	CESTAT	5,610	15,506	21,737	78,821	27,347	94,327
	Settlement Commission	0	0	75	189	75	189
	Commissioner (Appeals)	2,513	497	16,720	6,398	19,233	6,895
	Total	9,548	25,186	41,301	96,822	50,849	1,22,008
FY18	Supreme Court	615	6,578	251	7,032	866	13,610
	High Court	1,023	5,338	2,721	10,086	3,744	15,424
	CESTAT	4,584	13,401	20,076	72,748	24,660	86,149
	Settlement Commission	1	1	58	253	59	254
	Commissioner (Appeals)	2,332	764	12,057	4,706	14,389	5,470
	Total	8,555	26,082	35,163	94,825	43,718	1,20,907

Source: Figures furnished by the Ministry

The table indicates that cases involving Service Tax revenue of ₹ 1,20,907 crore were pending in Appeals at the end of FY18 registering one per cent decrease over the amount pending at the end of FY17. It is also observed that though the total Appeals reduced from 50,849 in FY17 to 43,718 in FY18, there was an increase of Appeal cases from 728 cases

involving ₹ 8,147 crore in FY17 to 866 cases involving ₹ 13,610 crore in FY18 in the Supreme Court and from 3,466 cases involving ₹ 12,450 crore in FY17 to 3,744 cases involving ₹ 15,424 crore in FY18 in High Courts.

The Ministry stated (October 2018) that Appeal cases are being monitored regularly and DLA is responsible for maintaining and monitoring data in this respect. Arrears of revenue are tracked by Tax Arrear Recovery cell at apex level.

The Ministry's reply is general in nature as there is no significant reduction in pending Appeal cases and amount involved therein. During our examination, we observed that codal provisions in respect of Appeals were not being complied with by field formations as mentioned in succeeding paragraphs.

3.5.2 Disposal of Appeal cases

Status of cases disposed during last two years in different fora in respect of Central Excise is depicted in the table 3.3 below:

Table 3.3: Breakup of Central Excise Appeal cases decided during last two years

Year	Forum	Department's Appeal				Party's Appeal			
		Decided in favour of the Deptt.	Decided against the Deptt.	Remanded	% of Successful Appeal of the Deptt.	Decided in favour of party	Decided against party	Remanded	% of Successful Appeal of party
FY17	Supreme Court	27	204	8	11.30	21	36	8	32.31
	High Court	165	1,212	26	11.76	296	359	80	40.27
	CESTAT	422	3,179	275	10.89	4,260	1,056	1,199	65.39
	Settlement Commission	0	0	0	0	13	45	4	20.97
	Commissioner (Appeals)	395	573	51	38.76	4,759	3,328	383	56.19
	Total	1,009	5,168	360	15.44	9,349	4,824	1,674	59.00
FY18	Supreme Court	37	79	12	28.91	93	38	35	56.02
	High Court	142	693	69	15.71	302	300	147	40.32
	CESTAT	674	1,769	392	23.77	5,080	1,975	2,302	54.29
	Settlement Commission	0	0	0	0	5	27	8	12.50
	Commissioner (Appeals)	895	916	111	46.57	4,685	5,692	1,028	41.08
	Total	1,748	3,457	584	30.20	10,165	8,032	3,520	46.81

Source: Figures furnished by the Ministry

The table indicates that success rate of the Department's Appeals has increased significantly from 15.44 per cent in FY17 to 30.20 per cent in FY18, while success rate of party's Appeals has decreased from 59.00 per cent in FY17 to 46.81 per cent in FY18. It is also observed that success rate of the

Department's Appeals was very low in comparison to party's Appeals in CESTAT (23.77 per cent against 54.29 per cent), High Court (15.71 per cent against 40.32 per cent) and Supreme Court (28.91 per cent against 56.02 per cent) in FY18.

Status of cases disposed during last two years in different fora in respect of Service Tax is depicted in the table 3.4 below:

Table 3.4: Breakup of Service Tax Appeal cases decided during last two years

Year	Forum	Department's Appeal				Party's Appeal			
		Decided in favour of the Deptt.	Decided Against the Deptt.	Remand-ed	% of Successful Appeals	Decided in favour of party	Decided against party	Remand-ed	% of Successful Appeals
FY17	Supreme Court	9	14	4	33.33	2	6	9	11.76
	High Court	29	204	10	11.93	139	346	79	24.65
	CESTAT	198	1,508	135	10.76	1,560	644	635	54.95
	Settlement Commission	0	0	0	0	17	53	4	22.97
	Commissioner (Appeals)	485	781	122	34.94	4,026	3,803	2,098	40.56
	Total	721	2,507	271	20.61	5,744	4,852	2,825	42.80
FY18	Supreme Court	1	61	26	1.14	3	4	6	23.08
	High Court	20	171	117	6.49	124	286	110	23.85
	CESTAT	393	754	274	27.66	1,920	855	1250	47.70
	Settlement Commission	0	0	0	0	6	35	13	11.11
	Commissioner (Appeals)	631	847	341	34.69	4,140	6,462	1,849	33.25
	Total	1,045	1,833	758	28.74	6,193	7,642	3,228	36.29

Source: Figures furnished by the Ministry

The table indicates that over all success rate of the Department's Appeals has increased from 20.61 per cent in FY17 to 28.74 per cent in FY18. It is also observed that success rate of the Department's Appeal was very low in comparison to party's Appeal in CESTAT (27.66 per cent against 47.70 per cent), High Court (6.49 per cent against 23.85 per cent) and Supreme Court (1.14 per cent against 23.08 per cent) in FY18. Further, the success rate of the Department's Appeals in Supreme Court cases has decreased from 33.33 per cent in FY17 to 1.14 per cent in FY18. Similarly, in High Court cases, it decreased from 11.93 per cent in FY17 to 6.49 per cent in FY18.

The Ministry stated (October 2018) that it is only statistical data which is being monitored by DLA. No comments have been offered over the low

success rate of the Department and reasons thereof. The Ministry needs to examine the low success rate of the Department's Appeals and take suitable measures.

3.5.3 Monitoring of Appeals at Board level

As envisaged in the Board's order F. No. 275/20/2016-CX.8A dated 10 June 2016, DLA is the nodal agency to monitor legal and judicial work of the Board and its field formations. DLA is required to work in close coordination with the Board, Chief Departmental Representative (CDR) office, Law Ministry, Directorate of Systems, field formations of the Board, Central Agency Section (CAS) under Department of Legal Affairs, Senior Law officers, Government Counsel etc. DLA is also mandated to maintain and monitor the legal and judicial database of Appeals pertaining to Supreme Court, High Court and CESTAT on all India level basis. We examined the system of data maintenance and the adequacy and effectiveness of monitoring mechanism in respect of Appeals at DLA. We noticed some observations as follows:

3.5.3.1 Deficiency in mechanism to monitor the performance of field formations at Board level

We observed that Zone/Commissionerate-wise reports were not maintained at DLA or submitted to higher authorities. On being asked by Audit, DLA stated that only all India level consolidated data was available which is downloaded from the system maintained by Directorate of Data Management (DDM) and submitted to the Board. DLA further intimated that downloading data for all Commissionerates would be a time consuming exercise and would take three months to compile field formation-wise information. Non-maintenance of Zone/Commissionerate wise reports indicates absence of monitoring of status of Appeals in Zone/Commissionerate and planning/review and issue of instructions for disposal of the same by the Board.

The Ministry stated (October 2018) that data pertaining to Appeals pending in various appellate fora is being maintained online by DDM on its website. DLA is functional owner of database and helps in maintaining the data online. Zone-wise and Commissionerates-wise data is available on the DDM website which can be downloaded by feeding customized command. It was further stated that the monthly data of Appeals is used by Board to monitor pendency and to devise plans/strategies, based on which instructions are issued to field formations for disposal of Appeals.

Reply is not tenable as, though the detailed data was available in the system maintained by DDM, DLA was not utilizing the same for monitoring performance of Zones/Commissionerates because the system does not

support downloading of Commissionerate-wise consolidated report. DLA should get the necessary changes made in the system to utilize the data more effectively.

3.5.3.2 Improper maintenance of database regarding pending Appeal cases in Supreme Court.

DLA is the nodal agency of the Board and field formations and mandated to maintain database and monitor the Appeal cases pertaining to Hon'ble Supreme Court. Accordingly, DLA is required to maintain a database to monitor the admitted cases and provide assistance and liaise between field offices and the Central Agency Section of the Ministry of Law and Justice including the Law Officers and Counsels.

We collected details of 3,006 pending cases of Appeals in Supreme Court from DLA. Scrutiny of the details revealed deficiencies in data for the year ended March 2018, as detailed below:

- (i) Civil Appeal Diary number was not mentioned in 146 cases.
- (ii) Civil Appeal/Special Leave Petition number and year was not mentioned in 102 cases.
- (iii) CESTAT/High Court order number was not mentioned in 74 cases.
- (iv) 'Issue involved' was not mentioned in 67 cases.
- (v) 'Date last listed' was not available in 11 cases.
- (vi) Central Agency Section number and year was not mentioned in 1,526 cases.
- (vii) Name of Commissionerate was not mentioned in six cases.
- (viii) Unit of revenue figures was not shown uniformly in the database. It was shown in rupees, in thousand, in lakh or in crore in different cases. Further, in 123 cases, the figure was depicted as zero or column was left blank.

When we pointed this out (June 2018), the Ministry admitted the observation (October 2018) stating that the discrepancies pointed out by Audit have been rectified/are being rectified by DLA in consultation with Central Agency Section (CAS) and the field formations.

Audit is of the view that incompleteness/deficiencies in data not only affects the monitoring of Appeal cases in the DLA, but also depicts incorrect picture of revenue involved and other information to the Board.

3.5.3.3 Discrepancy in data of Appeal cases depicted in Monthly Performance Reports (MPRs)

As part of the monitoring mechanism, all field formations are required to provide status of Appeal cases pending in various fora in the form of MPRs and the DLA is required to consolidate the MPRs and submit all India status to the Board.

We noticed some discrepancies in the MPR data maintained by the DLA which are detailed below:

- (i) Closing balance of number and amount of Appeal cases, shown in the MPRs of Central Excise and Service Tax for the month March 2018 was incorrect (closing balance calculated as opening balance plus new cases appealed during the year minus cases disposed during the year), as detailed in table 3.5.

Table 3.5: Discrepancy in Closing Balance as shown in the MPR of March 2018

(₹ in crore)

	Appeals filed by	Closing Balance (As per MPR March 2018)		Closing Balance (As per Audit calculation)		Difference	
		No	Amount	No.	Amount	No.	Amount
Central Excise	Department	10,550	30,312	11,806	35,547	(-)1,256	(-)5,235
	Party	35,199	74,406	41,632	86,518	(-)6,433	(-)12,112
Service Tax	Department	8,555	26,082	10,003	35,596	(-)1,448	(-)9,514
	Party	35,163	94,825	40,810	1,21,430	(-)5,647	(-)26,605

One of the reasons for difference was that closing balance in the MPR of the month of June 2017 was not taken correctly in the opening balance of MPR of July 2017. Similar discrepancies were noticed at field formations as we observed in Delhi North Commissionerate that closing balance of June 2017 (73 cases amounting to ₹ 217.37 crore) was taken incorrectly in the opening balance for the month of July 2017 (8 cases, amounting to ₹ 46.93 crore). Similarly, in Delhi East Commissionerate, closing balance of June 2017 (42 cases, amounting to ₹ 112.05 crore) was taken incorrectly in the opening balance for the month of July 2017 (15 cases, amounting to ₹ 3.26 crore).

- (ii) We also observed discrepancy in figures of cases disposed of, as the figures did not match with their break up i.e. decided in favour of the Department, decided in favour of the assessee, partly allowed, remanded and transferred in respect of Central Excise (as per statement DLA-CE-1 and DLA CE-2) and Service Tax (as per statement DLA-ST-1 and DLA-ST-2), as detailed in table 3.6:

Table 3.6: Difference in number of total Appeal cases disposed w.r.t. their breakup shown in MPR of March 2018

	Appeals filed by	Total cases disposed (1)	Break Up- of cases- decided during FY 18					Difference [col. 1-(2+3+4+5+6)]
			Decided in favour of the Deptt. (2)	Decided against the Deptt. (3)	Partly allowed (4)	Remanded (5)	Transferred (6)	
Central Excise	Department	6,697	1,748	3,457	238	584	132	538
	Party	26,611	8,032	10,165	1,932	3,520	489	2,473
Service Tax	Department	4,042	1,045	1,833	142	758	21	243
	Party	22,463	7,642	6,193	3,598	3,228	450	1,352

When we pointed this out (June 2018), the Ministry stated (October 2018) that MPR is maintained online at the DDM website and observations pertain to DDM. Mis-match of closing balance is due to error in the software. The Audit observation had been forwarded (August 2018) to DDM requesting them to rectify the errors and submit compliance to the Audit directly with a copy to DLA.

Reply is not tenable as DLA being the nodal agency to monitor the Appeal cases have to ensure correctness of data rather than passing the Audit observation to DDM for intimating to Audit directly. It also indicates that being the functional owner of the data, DLA is not monitoring the data maintained by the DDM. The Ministry may take steps to ensure correctness of data, being submitted to the Board, at each level.

3.5.3.4 Discrepancy in data maintained by DLA in respect of Supreme Court cases and MPR

There was difference between the total Appeal cases¹⁹ maintained by the DLA in respect of Supreme Court and the figures of the same depicted in MPRs as detailed below:

Table 3.7: Discrepancy in data of Supreme Court Appeal cases

Year	Total cases as per MPR provided by DLA	Total cases as per detailed data maintained by DLA	Difference
FY16	2,925	2,975	50
FY17	2,946	3,323	377
FY18	3,080	3,006	(-)74

When we pointed this out (July 2018), the Ministry stated (October 2018) that mismatch of manual data is a normal phenomenon. Special Monitoring Cell under DLA updates its data sheet daily, whereas, field formations do the same upon receipt of certified copies of the judgement and after following

¹⁹ Includes appeal cases of Central Excise, Service Tax and Customs

certain administrative procedures, which consumes time. Reconciliation of such mis-match is an exercise undertaken periodically and the same had been reconciled in the present case also.

The Board/Ministry need to take necessary steps to ensure timely reconciliation of data and correctness of data furnished to the Board for effective monitoring. Differences in basic data regarding cases to be followed up in the Commissionerates is a serious matter and need to be reconciled on urgent basis.

3.5.3.5 Non-compliance of Board's instructions for early disposal of high revenue cases

The Board vide D.O. No. 1080/24/DLA/Tech/Meeting-Litigation/17 (Part) dated 25 August 2017, observed that 3,047 cases involving revenue of ₹ 10 crore or more were pending for more than one year in Supreme Court/High court/CESTAT as on 30 June 2017 and directed all Pr. Chief Commissioners/Chief Commissioners/Pr. Commissioners, Central GST and Customs to liquidate the pending cases of Supreme Court/High Court/CESTAT by way of filing Miscellaneous Applications for early hearing/vacation of stay for early disposal of pending cases in a time bound manner.

On examination of action taken by field formations and its monitoring at DLA, we observed (July 2018) that 63 Interlocutory Applications (IA) for the cases pertaining to Supreme Court involving revenue of ₹ 10 Crore and above for early listing of those cases have been filed. Also, 197 applications have been filed in CESTAT and High Court. Thus, out of 3,047 cases, action was taken only in 260 cases (8.53 per cent).

The Ministry stated (October 2018) that out of 3,047 cases involving revenue of ₹ 10 Crore and above in each case, 201 is the total number of Department's cases pending in the Supreme Court. Out of these, early hearing applications have already been filed in 63 cases, and in 11 cases, drafting of early hearing applications are under process. In party filed Appeals where stay has been granted, the Department has initiated steps for getting the stay vacated by filing IA in cases where the revenue involvement is large. Further, 197 such applications have been filed in CESTAT and High Courts as per the reports received from field formations.

It is evident from the Ministry's reply that out of 3,047 cases, action was taken/being taken in 271 cases (8.89 percent) only.

The Board/Ministry need to ensure that its instructions in this regard are complied with by all concerned.

3.5.4 Monitoring of Appeal cases in field formations

We also examined maintenance of database in respect of Appeal cases and monitoring thereof in 28 Commissionerates. We observed discrepancy in data maintained by field formations in respect of Appeal cases. We also observed instances of non-compliance of procedures/instructions resulted in non-disposal of cases as well as disposal of cases against the Department. The observations are discussed in succeeding paragraphs:

3.5.4.1 Improper maintenance of data of Appeal cases

(i) We observed discrepancy in data maintained by four Commissionerates²⁰ and depicted in their MPRs as mentioned below:

- In Ahmedabad Commissionerate, 345 cases were shown as pending at CESTAT (Annexure ST-2), for less than one year against the actual 224 cases pending.
- In Kochi Commissionerate, number of cases pending in CESTAT as depicted in MPR (933) was different from the figure maintained by Review Cell (1,461).
- In Delhi South Commissionerate, four cases involving amount of ₹ 1,515.02 crore shown as pending in Supreme Court (Annexure CE-6) were not available in the data maintained by Legal Cell.
- In Hyderabad Commissionerate, there was variation in the closing balance of number and amount of High Court cases in the statement CE-1 (23 cases, ₹ 9.60 Cr.), CE-2 (7 cases, ₹ 9.19 Cr.), CE-6 (0, ₹ 54.93 Cr.), ST-1 (4 cases, ₹ 61.71 Cr.), ST-2 (14 cases, ₹ 4.20 Cr.), ST-6 (1 case, ₹ 60.80 Cr.)
- In Hyderabad Commissionerate, similar variation was noticed in CESTAT cases in CE-2 (1 case, ₹ 0.65 Cr.), ST-1 (211 cases, ₹ 799.38 Cr.), ST-2 (452 cases, ₹ 2,830.04 Cr.) and ST-6 (59 cases, ₹ 2,133.91 Cr.)

The Ministry stated (October 2018) that in all the Commissionerates, discrepancy had been reconciled.

(ii) We also observed discrepancy in figures provided by the Department to Audit and figures shown in their MPRs in five Commissionerates²¹ as mentioned below:

²⁰ Ahmedabad, Kochi, Delhi South, Hyderabad

²¹ Chennai Outer, Bengaluru South, Ahmedabad, Surat, Kolkata South

- In Chennai Outer Commissionerate, total number of pending High Court (209 cases) and CESTAT (126 cases) were different from the figures shown in MPR High Court (211 cases) and CESTAT (18 cases). Also, number of cases disposed during FY18 in High Court (24 cases) and CESTAT (94 cases) were different from the figures shown in MPR High Court (0) CESTAT (1 case).
- In Bengaluru South Commissionerate, number of cases decided in favour of assesseees during FY16 (16 cases), FY17 (22 cases), FY18 (28 cases) were different from figures in MPR FY16 (33 cases), FY17 (67 cases), FY18 (93 cases).
- In Ahmedabad Commissionerate, number of Appeal cases disposed in CESTAT during FY16 (30 cases), FY17 (42 cases) and FY18 (84 cases) were different from the figures available in MPR for FY16 (184 cases), FY17 (247 cases) and FY18 (85 cases).
- In Surat Commissionerate, number of cases disposed in CESTAT during FY18 (352 cases) were different from the figures in MPR for FY18 (285 cases).
- In Kolkata South Commissionerate, figures of pending Appeal cases for FY18 at the Commissionerate for CE (344 cases) and ST (481 cases) were different from the figures available with Chief Commissionerate Office CE (403 cases) and ST (490 cases).

The Ministry admitted the observation (October 2018) and stated that in Chennai Outer Commissionerate, certified copies of disposed High Court cases were not received during FY18 and the issue is being addressed. In Ahmedabad Commissionerate, data was not provided by erstwhile Ahmedabad ST Commissionerate to new CGST and CX Ahmedabad south Commissionerate. There is also difference in treatment of multiple cases disposed by CESTAT in composite orders. Discrepancy, however, had been rectified. In Surat Commissionerate, discrepancy arose due to inclusion of only Central Excise cases in MPR. In Kolkata Commissionerate, efforts were being made to rectify the discrepancy. Reply in respect of Bengaluru South Commissionerate was awaited.

Reply indicates that there was lack of due care while compiling the data at field and submission of the same to the higher authority. As data furnished by the field formations to higher authorities is the basis of proper monitoring and policy formulation for disposal of Appeal cases, improper maintenance of data and submission of the same to higher authorities adversely affects the effectiveness of monitoring of Appeal cases. The Department/Ministry needs to ensure accuracy of the data maintained by the field formation.

3.5.4.2 Pendency of Appeal cases in field formations

We observed that in 28 Commissionerates, 19,721 cases involving ₹ 69,362 crore were pending in various fora at the end of FY18. Out of 19,721 cases, 880 cases had revenue of more than ₹ 10 crore each, involving total revenue of ₹ 46,451 crore. Also, 721 cases were pending for more than 10 years. 20 Commissionerates, where amount involved in cases pending in Appeals was more than ₹ 1,000 crore, are depicted in the table below:

Table 3.8: Commissionerates where Appeal cases involving more than ₹ 1,000 crore were pending
(₹ in crore)

Commissionerate	Cases pending at the end of the year 2017-18		Age-wise breakup of pending cases				Cases where amount involved is more than ₹10 cr.	
	No.	Amount	1-3 years	3-5 years	5-10 years	>10 years	No.	Amount
Delhi South	548	8,516.02	325	148	68	7	71	8,913.61
Bengaluru North	819	6,896.68	411	213	188	7	74	5,814.59
Hyderabad	1,004	6,271.75	636	127	204	37	124	5,860.32
Delhi North	264	4,489.79	181	35	43	5	12	4,251.43
Kolkata North	1,101	4,421.84	559	150	290	102	77	2,615.88
Siliguri	1,058	4,092.91	570	185	246	57	5	78.90
Daman	1,633	4,053.97	1,228	260	132	13	28	2,462.72
Kolkata South	740	3,665.24	353	115	215	57	74	2,088.13
Surat	1,291	3,330.50	569	413	268	41	47	2,355.35
Bengaluru South	918	2,906.17	257	249	391	21	53	1,885.53
Bolpur	781	2,814.63	486	141	121	33	59	1,554.53
Howrah	788	2,255.33	539	123	53	73	43	140.27
Kochi	1,977	1,894.99	1,441	348	177	11	18	361.05
Bengaluru East	970	1,727.33	459	220	247	44	35	795.42
Haldia	409	1,711.27	193	17	183	16	21	1,312.40
Mangalore	968	1,492.60	469	246	229	24	19	1,002.52
Delhi East	286	1,480.16	191	45	38	6	14	591.23
Ahmedabad	1,063	1,336.34	687	148	214	14	15	891.32
Bengaluru North West	606	1,112.62	211	209	177	9	12	581.62
Trichy	659	1,017.61	273	179	188	19	19	546.53
Total	17,883	65,487.74	10,038	3,571	3,672	596	820	44,103.36

It is observed that in 20 Commissionerates, 17,883 cases involving revenue of ₹ 65,488 crore were pending in Appeals at the end of FY18. Out of 17,883 cases, 3,672 cases were pending for five to ten years while 596 cases were pending for more than 10 years. Further, there were 820 cases involving total amount of ₹ 44,103 crore where amount involved in each cases was more than ₹ 10 crore.

The Ministry did not comment on huge pendency at macro level and only forwarded (October 2018) replies received from the Commissionerates as under:

- In Hyderabad, Siliguri, Surat and Mangalore Commissionerates, early hearing applications were being filed wherever required and efforts were being made to reduce pendency.
- In Kolkata North and Kolkata South Commissionerates, Appeals were being monitored by the Commissionerates.
- In respect of Haldia Commissionerate, only statistics of Appeal cases has been provided.
- In Trichy Commissionerate, status of 19 cases of more than 10 crore, had been intimated.
- In Bolpur and Bengaluru East Commissionerates, it was intimated that 392 and 177 cases were disposed respectively during April 2018 to August 2018.
- Reply in respect of Bengaluru South, Ahmedabad and seven²² other Commissionerates was awaited

Blocking of large amount in Appeals is a matter of concern. The Ministry needs to monitor and ensure that its instructions for making efforts for early disposal of high revenue cases, are being complied with by the field formations.

3.5.5 Non-compliance with Act/Rules/Procedures by field formations resulting in dismissal of Appeals

To ensure proper monitoring and compliance of Act/Rules/Procedures and instructions of the Board by the field formation, in 28 Commissionerates, out of total 4,286 Appeal cases disposed, we examined 1,833 cases and observed that in 60 cases (3 per cent) pertaining to 13 Commissionerates, involving revenue of ₹ 126.33 crore, Appeals were dismissed by CESTAT/High Court due to lapses on part of the Department as detailed in table 3.9:

²² Delhi South, Bengaluru North, Delhi North, Daman, Howrah, Kochi and Delhi East.

Table 3.9: Appeals dismissed in CESTAT/High Court due to departmental lapses
(₹ in Crore)

Sl. No.	Name of the Commissionerate	No. of Appeals dismissed	Amount	Lapse of the Department
1	Daman	37	51.75	Non-removal of office objections
2	Bengaluru North	1	0.04	Issuing fresh SCN without filing an Appeal against the refund sanctioned initially
3	Six Commissionerates ²³	8	65.81	SCN being time-barred
4	Bengaluru South	1	0.08	Not providing adequate opportunity and basic documents to the assessee during adjudication
5	Mangalore	2	0.78	Not filing the Appeal in appropriate forum
6	Belgaum	1	2.18	Not demanding penalty in SCN but confirming the same at the adjudication stage
7	Five Commissionerates ²⁴	9	5.64	Incorrect or insufficient information in the SCN
8	Hyderabad	1	0.05	Not issuing a separate SCN, proposing for rejected amount of refund and not affording any opportunity to the appellant
Total		60	126.33	

One case is illustrated below:

We observed that in case of an assessee falling under Daman Commissionerate (revenue involved ₹ 2.15 crore), the Department filed (February 2004) an Appeal in Gujarat High Court against CEGAT order. Petition of the Department was disposed on 26 April 2004 for non-removal of office objections²⁵. However, this fact of disposal of the case became known to the Department in October 2016 when the status of the case was updated in the website of the High Court in August, 2016 (till then its status was shown as pending by the Department). Further, we noticed that an application for early hearing was also filed for the case (Stamp No. 350/2004) on 27 August 2004 although the case had already been disposed of in April 2004.

Thus, the Department failed in ascertaining the status of the said Appeal through Government Standing Counsel. This indicates poor follow-up and monitoring of Appeal cases.

²³ Bengaluru East, Bengaluru South, Belgaum, Haldia, Kolkata North, Kolkata South

²⁴ Bolpur, Guwahati, Haldia, Hawra, Shillong

²⁵ Minor objections relating to procedural lapses in the paperwork

The other 36 similar Appeals (revenue involved ₹ 49.60 crore) filed by the Department between 2012 to 2016 in respect of assessee's pertaining to Daman Commissionerate were dismissed by the Gujarat High Court on similar grounds. Out of these 36 cases, the Department became aware of disposal of 16 cases, after a period of more than 2 years of their disposal by the Court. This implies that there is a serious lacuna in the follow up and monitoring mechanism of Appeal cases.

When we pointed this out (August 2018), the Ministry stated (October 2018) that out of 37 Appeals, 18 Appeals have been withdrawn/under process of withdrawal due to revised norms of monetary limit for Appeal. In remaining cases, restoration Appeals have been filed in the High Court. The Ministry stated various reasons like accumulation of Appeal cases, filing of Appeals in Mumbai High Court due to jurisdictional change, restructuring of the Department, non-intimation of status by Government Counsels and non-updation of High Court website for the delay in monitoring the case.

In respect of remaining 23 cases, the Ministry in 12 cases replied as follows while reply was awaited in 11 cases:

Out of eight cases (Sl. No. 3), in four cases, the Ministry provided the details which indicated that invocation of extended period in SCN was not accepted by Tribunal/Courts. In four cases, reply was awaited.

In two cases (Sl. No. 5), it was stated that cases were dismissed as same were filed with CESTAT though they were to be filed with Revision Application (RA).

In one case (Sl. No. 6), it was stated that penalty was imposed under inappropriate section in the SCN and Department's Appeal for imposition of penalty under appropriate section was dismissed. Departmental lapse, resulted in loss of revenue of ₹ 2.18 core.

Out of nine cases (Sl. No. 7), in five cases, it was stated that cases were disposed on merit but details has not been provided. In four cases, reply was awaited.

In three more cases (Sl. Nos. 2, 4 and 8), reply was awaited.

3.5.6 Other issues of non-compliance by field formations

Along with the non-compliance with the rules and procedures resulting in the dismissal of cases due to departmental lapse as discussed in the para 3.5.5, we also observed other issues of non-compliance of Act/Rules/Procedures and Board's instructions by field formations as discussed below:

3.5.6.1 Delay in receipt and review of CESTAT/High Court final orders

As per section 35G of the Central Excise Act 1944, an Appeal shall lie to the High Court from every order passed in Appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of Excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law. The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an Appeal to the High Court and such Appeal under this sub-section shall be filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner or the other party. The High Court may admit an Appeal after the expiry of the period of one hundred and eighty days, if it is satisfied that there was sufficient cause for not filing the same within that period. 'Standard Operating Procedures on Litigation in Appellate Forums' issued by DLA, CBIC, New Delhi, stipulates a time period of 90 days for filing an Appeal in Supreme Court against High Court.

Out of total 813 cases in four Commissionerates²⁶, we examined 163 cases and observed that in Chennai Outer Commissionerate, in 11 cases (9 per cent) involving revenue of ₹ 2.27 crore, orders of CESTAT and High Court were reviewed with delay while 4 cases involving revenue of ₹ 5.13 crore were yet to be reviewed, as detailed below:

Table 3.10: Delay in Review of orders

Name of Commissionerate	Court	No. of Cases	Amount (₹ in crore)	Range of Delay (in Days)
Chennai Outer	CESTAT	7	1.18	23-222
	High court	4	1.09	90-300
	High Court	4	5.13	90-450 (Yet to be reviewed)

One case is illustrated below:

The Order of the High Court of Madras dated 30 August 2017 in respect of CMA No. 2704/2017 relating to an assessee (involving an amount of ₹ 1.24 crore) was received by the Department on 27 December 2017. The Assistant Commissioner (Legal) addressed the AC, Gummidipoondi Division on 25 January 2018 seeking comments and opinion with regard to acceptability of the impugned High Court Order and also sent a reminder to the Division for the same purpose on 27 February 2018. Further, it was observed that even after a lapse of 90 days from the date of receipt of the Orders of the High Court, the review was still pending and also the opportunity for the

²⁶ Chennai Outer, Trichy, Hyderabad and Siliguri.

Department to prefer an Appeal, if any, was lost due to limitation of time of 90 days. The comments of the Division were communicated to the Commissioner, Chennai Outer Commissionerate vide letter dated 09 March 2018 which was received by the Legal Section on 12 March 2018. Even after a lapse of more than 4 months the review was still pending (August 2018).

Thus, the time limit fixed by the Board was not adhered to by the Department and absence of intra-departmental coordination was also one of the factors responsible for delay in review of court orders. Such delay defeats the very objective of Review by the Department, specifically, in cases where the decision is made against the Department and there is no possibility of appealing against the order as the cases become time-barred.

When we pointed this out (August 2018), the Ministry admitted the audit observations (October 2018) and stated that the delay is due to the transfer of offices and files during GST transition period.

Board needs to establish robust mechanism to ensure business continuity during transitional phase and to ensure that legacy issues are not neglected after implementation of GST.

3.5.6.2 Non-filing of applications for Early Hearing

The Board vide Circular No.746/62/2003-CX dated 22 September 2003, had directed that the Commissionerates should file Miscellaneous Applications, for out-of-turn early hearings of the cases with high revenue stakes, indicating clearly the grounds for such prayer before Supreme Court/High Court/CESTAT.

Out of 3,422 total cases in 17 Commissionerates²⁷, we examined 852 cases and observed that in seven Commissionerates, in 41 cases (5 per cent) involving revenue of ₹ 1,109.56 crore, miscellaneous early hearing petitions were not filed as detailed below:

Table 3.11: Cases where early hearing applications were not filed

Sl. No.	Name of the Commissionerate	No. of cases	Amount in (₹ In crore)	Pending at
1	Delhi East	2	242.97	Supreme Court
2	Delhi South	7	345.94	Supreme Court and High Court
3	Delhi West	1	26.26	High Court
4	Chennai Outer	11	449.90	High Court
5	Kochi	6	2.47	High Court and CESTAT
6	Ahmedabad	13	41.49	High Court
7	Belagavi	1	0.53	CESTAT
Total		41	1,109.56	

²⁷ Ahmedabad North, Belagavi, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Chennai Outer, Delhi East, Delhi North, Delhi South, Delhi West, Hyderabad, Kochi, Mangalore, Mysore, and Trichy.

One case is illustrated below:

An SCN was issued (July 2014) to an assessee in Chennai Outer (erstwhile Chennai III) Commissionerate, proposing a demand of ₹ 32.12 crore under proviso to Section 73 of Finance Act, 1994 along with interest and penalty under Sections 77 and 78, respectively. Aggrieved by the Order-in-Original, the assessee filed Writ Petition No. 26122 and 26123/2014 before High Court of Madras challenging the order passed by the Commissioner. Though the case is in Appeal for more than four years, no action has been taken by the Department for accelerating its disposal through filing of early hearing petition.

Thus, the Board's instructions were not followed by the Department resulting in long pendency of Appeal cases involving huge revenue.

When we pointed this out (August 2018), the Ministry replied (October 2018) that in case of the assessee, instructions had been issued to the standing counsel for filing of application of early hearing and filing of Appeal was under process.

In respect of Delhi East Commissionerate, application for early hearing has since been filed. In four Commissionerates²⁸, instructions had been issued to the standing counsel for filing of application of early hearing.

In respect of Delhi West Commissionerate, the Ministry stated that the actual value of Revenue was ₹ 4.38 crore only but indicated inadvertently as ₹ 26.25 crore in the Monthly Technical Report. As the amount involved is less than ₹ 10 crore, application for early hearing was not required to be filed as per Board's Circular No. 416/62/2003-CX dated 22 September 2003.

Reply in respect of Delhi South Commissionerate was awaited (October 2018).

The Ministry's reply in Delhi West Commissionerate is not acceptable as there is no prescribed monetary limit in the said circular and it was instructed that early hearing should be filed in those cases where significant revenue is involved. Further, in four Commissionerates instructions had been issued to the Standing Counsel to file an application for early hearing in 23 cases where amount is less than 10 crore. This shows that there is no uniformity among the field formations regarding the applications of early hearing.

The Ministry may issue appropriate instructions with monetary limit for filing of early hearing so that there is uniformity among the field formations in this regard. The Ministry may also sensitize its field formations for effective monitoring of the pending cases.

²⁸ Chennai Outer, Kochi, Ahmedabad, Belagavi

3.5.6.3 Bunching of cases

Board, vide Circular No. 296/34/2004-CX.9(Pt), dated 11 August 2004, stipulated that the Jurisdictional Commissioner should also organise bunching of cases on similar issues involving substantial revenue and request the Tribunal for common hearing for their early clearance.

Out of total 2,635 cases in four Commissionerates²⁹, we examined 300 cases and observed in three Commissionerates that 145 cases (48 per cent) involving revenue of ₹ 211.85 crore, were fit for bunching under 21 similar issues, as detailed below:

Table 3.12: Cases where bunching was not done

Sl. No.	Name of the Commissionerate	No. of cases	Amount in (₹ in crore)	No. of similar issues involved
1	Chennai outer	24	71.51	5
2	Trichy	104	137.66	11
3	Kochi	17	2.68	5
	Total	145	211.85	21

However, no action for bunching of these cases and requesting tribunal for common hearing was taken.

When we pointed this out (August 2018), the Ministry stated (October 2018) that in Chennai Outer and Trichy Commissionerate instructions had been issued to the Standing Counsel to file a petition for bunching of cases involving similar issues. In respect of Kochi Commissionerate, the Ministry stated that out of 17 cases, in 11 cases the amount involved is less than 20 lakhs and therefore these cases have to be withdrawn on the basis of Board's instructions. In remaining six cases reply not furnished.

Though, the Ministry admitted the audit observation in these three Commissionerates and issued instructions to the Standing Counsels, the fact remains that the required action has been taken only after being pointed out by the audit. Audit had raised this issue earlier also vide para No. 2.8.4 of the CAG Audit Report No. 3 of 2017 and Para No. 2.8.4 of CAG Audit Report No. 41 of 2016 for which, the Ministry had assured that bunching was being done.

In view of the huge pendency of Appeal cases, the Ministry may sensitize its field formations for effective monitoring of the pending Appeal cases.

²⁹ Chennai Outer, Trichy, Kochi, Hyderabad

3.5.6.4 Delay in filing of Appeal

'Standard Operating Procedures on Litigation in Appellate Forums' issued by DLA, CBIC, New Delhi, stipulates a time period of 90 days for filing an Appeal in Supreme Court against High Court and period of 180 days for filing Appeal in High Court against CESTAT order.

Out of 7,331 total cases in 28 Commissionerates, we examined 1,969 cases and observed in four Commissionerates that in 12 cases (0.6 per cent) involving revenue of ₹ 25.33 crore, Appeals were filed with delay ranging from 10 days to 577 days as detailed below:

Table 3.13: Cases where Appeals were filed with delay

Sl. No.	Name of the Commissionerate	No. of cases	Amount (in ₹ Crore)	Forum of Appeal	Range of Delay (in days)
1	Surat	4	1.83	Supreme Court	33
2	Ahmedabad	4	5.56	High Court	10
3	Delhi West	3	11.47	Supreme Court	59-363 (Appeals yet to be filed)
4	Delhi North	1	6.47	High Court	577
	Total	12	25.33		

One case is illustrated below:

In Delhi North Commissionerate, scrutiny of files related to Appeal case of an assessee involving revenue of ₹ 6.47 crore revealed that the Department had filed application for condonation of delay on the ground that the certified copy of impugned CESTAT final order dated 14 February 2013 was received by the Department on 24 September 2014. There was inordinate delay of 577 days in filing the Appeal challenging the final order of CESTAT dated 14 February 2013. In this case, the High Court dismissed (July 2015) the application on the grounds of delay and merit of the case. Thus, non-adherence of the time limit for filing the Appeals by the Department resulted in dismissal of the Appeal.

When we pointed this out (August 2018), the Ministry admitted the delay in three Commissionerates³⁰ and stated that in two cases High Court and Supreme Court condoned the delay. Reply in respect of remaining Commissionerates was awaited.

The Ministry may take appropriate action and ensure adherence to prescribed time limit by field formations in the interest of revenue.

³⁰ Surat, Ahmedabad, Delhi West

3.5.6.5 Non-maintenance of pre-deposit information

Section 35F of the Central Excise Act, 1944 provides for mandatory pre-deposit of duty confirmed or penalty imposed for filing Appeal before Commissioner (Appeals) or CESTAT in Central Excise cases which is also applicable for Service Tax vide Section 83 of the Finance Act, 1994 and Section 129E of the Customs Act, 1962.

Section 35FF of the Central Excise Act, 1944 read with Section 129 EE of the Customs Act, 1962 with respect to refund of pre-deposit stipulates "Where the Appellate Authority has decided the matter in favour of the appellant, amount pre-deposited is to be refunded with interest 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".

Further, Procedure and Manner of making the pre-deposits stipulates that "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".

Out of 3,735 total cases in 21 Commissionerates³¹, we examined 1,822 cases and observed in Kolkata South Commissionerate, that stay orders were issued in 20 cases (1 per cent) wherein pre-deposits of ₹ 2.74 crore were to be deposited by the applicants/assessee for the period from October 2014 to July 2015. However, no document evidencing pre-deposits was found in records. Non-maintenance of pre-deposit records indicates non-compliance of codal provisions which may result in delayed/erroneous refund claims, if any.

When we pointed this out (August 2018), the Ministry stated (October 2018) that the action has been taken to update the record.

³¹ Belagavi, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Bolpur, Chennai Outer, Dibrugarh, Guwahati, Haldia, Howrah, Hyderabad, Kochi, Kolkata North, Kolkata South, Mangalore, Mysore, Shillong, Siliguri and Trichy.

3.5.6.6 Improper maintenance of database/Appeal registers in field formations

Out of 10 test checked Commissionerates³², we observed in two Commissionerates that the database and Appeal registers were not maintained properly as detailed below:

- (i) In Delhi East Commissionerate, Audit observed that there was no centralised database with detail of assessee i.e. name of the party, case number, year, issue involved etc. for Appeal cases pending at CESTAT.
- (ii) During verification of CESTAT Register for Appeal filed by the Department for FY16 to FY18 at Ahmedabad Commissionerate, it was observed that same was not maintained properly as the requisite columns were found blank and incomplete. Information/entries related to 'last date of review', 'details of filing of Appeal', 'whether accepted by the Department' etc., were not entered in the register.

Thus, the Department did not ensure maintenance of important details in respect of Appeal cases which affect the proper monitoring of Appeal cases.

When we pointed this out (August 2018), the Ministry admitted the audit observations (October 2018) in respect of both the Commissionerates and stated that the remedial action has been initiated/taken and the officers have been sensitized.

3.6 Conclusion

Despite large amount of revenue blocked in Appeals, monitoring mechanism of Appeal cases at Board as well as field level is inadequate as evidenced by the instances of improper data maintenance, non-follow up of Board's instructions such as filing application for early hearing, bunching of cases, and lapses by the Department resulting in dismissal of Appeals. The Ministry needs to strengthen the mechanism for proper monitoring and disposal of Appeal cases.

³² Delhi East, Delhi South, Delhi North, Delhi West, Ahmedabad North, Chennai Outer, Trichy, Hyderabad, Kolkata South and Shillong.