

# Application for Advance Ruling under GST Laws



20th April 2020

CMA Niranjan Swain, Advocate & Tax  
Consultant. Reached at -  
nswain2008@gmail.com

## Advance Ruling under GST Laws

**Advance ruling** means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; [Section 95(a)].

Advance Ruling can be sought for the following questions:-

- (a) classification of any goods or services or both
- (b) applicability of a notification issued under the provisions of CGST Act
- (c) determination of time and value of supply of goods or services or both
- (d) admissibility of input tax credit of tax paid or deemed to have been paid

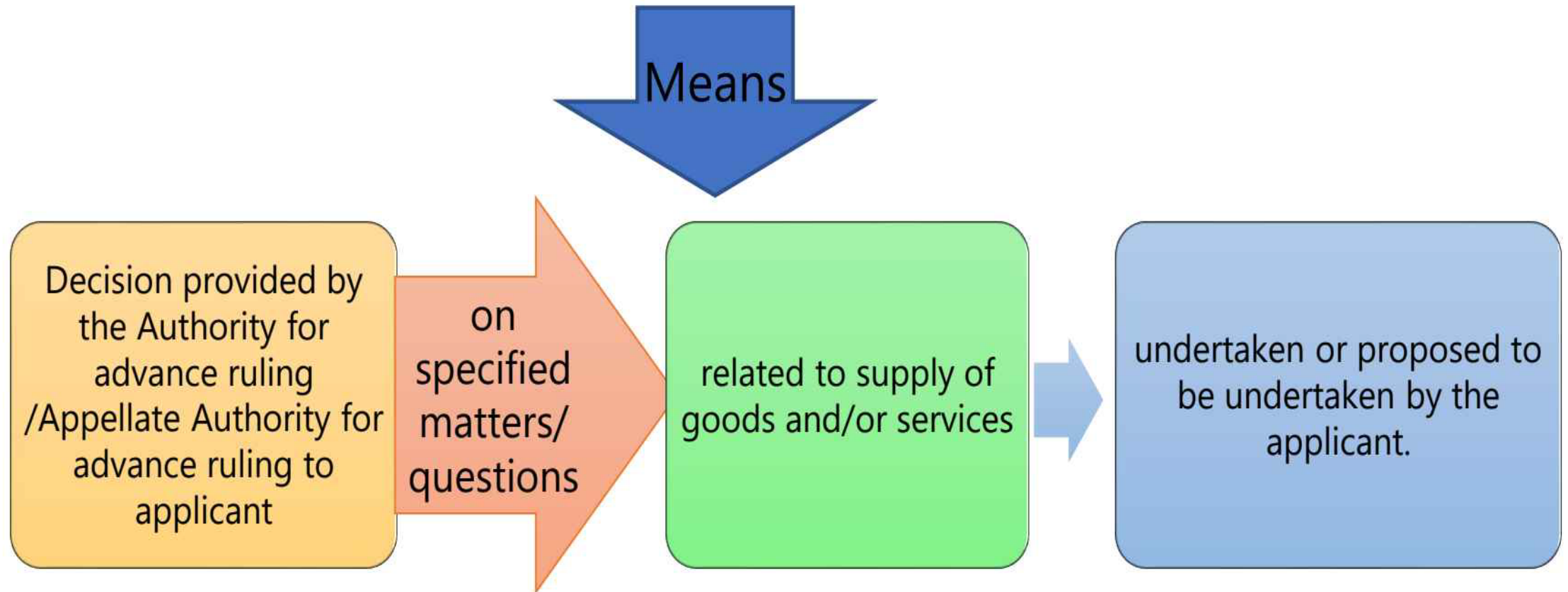
- (e) determination of the liability to pay tax on any goods or services or both
- (f) whether applicant is required to be registered
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

### **Note: Matters which cannot be questioned before AAR are:-**

Question already pending in any proceedings in the case of an applicant under any of the provisions of the Act

Question already decided in any proceedings in the case of an applicant under any of the provisions of the Act

# ADVANCE RULING



## Questions for which advance ruling can be sought [Section 97]

### Questions for seeking advance ruling

Classification of any goods and/or services

Applicability of a notification

Determination of time & value of supply of goods and/or services.

Admissibility of ITC of tax paid or deemed to have been paid.

Determination of the liability to pay tax.

Whether applicant is required to be registered.

Whether any particular thing with respect to goods and/or services amounts to supply within the meaning of that term.



## **Authority for Advance Ruling and Appellate Authority for Advance Ruling – Section 96 and 99**

- ❖ The Authority for advance ruling constituted under the provisions of State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory under the CGST Act, 2017 also.
- ❖ The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. [Rule 103]
- ❖ The Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory under the CGST Act, 2017 also.
- ❖ Thus, it can be seen that both the Authority for Advance Ruling (AAR) & the Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act. This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. It is also for this reason that questions on determination of place of supply cannot be raised with the AAR or AAAR.

## Procedures for filing Advance Ruling

- ❑ An Application for obtaining an advance ruling u/s 97 (1) of CGST Act shall be made on the common portal in Form GST ARA-01 and shall be accompanied by a fee of Rs. 10,000 /- i.e. Rs. 5,000 /- under CGST Act and Rs. 5,000 /- under SGST Act.
- ❑ **Online Deposit of Fees on Common Portal.**
  - ❖ The application for advance ruling, the verification contained therein and all relevant documents accompanying such application shall be signed.
  - ❖ Individual: individual himself or by some other person duly authorised by him
  - ❖ HUF: a Karta or by any adult member of HUF or by the authorised signatory;
  - ❖ Company: the Chief Executive Officer or the authorised signatory;
  - ❖ Government or Gov. agency or local authority: an officer authorised;
  - ❖ Firm: any partner, not being a minor or the authorised signatory;
  - ❖ Any Other Association: any member of the association or the authorised signatory;
  - ❖ Trust: any trustee or the authorised signatory thereof;
  - ❖ Any other person: some person competent to act on his behalf.
- ❑ After submission of an application in form GST ARA-01, the authority may, after examining the application and records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit

## Procedures for filing Advance Ruling

- ❑ An Application for obtaining an advance ruling u/s 97 (1) of CGST Act shall be made on the common portal in Form GST ARA-01 and shall be accompanied by a fee of Rs. 10,000 /- i.e. Rs. 5,000 /- under CGST Act and Rs. 5,000 /- under SGST Act.
- ❑ **Online Deposit of Fees on Common Portal.**
  - ❖ The application for advance ruling, the verification contained therein and all relevant documents accompanying such application shall be signed.
  - ❖ Individual: individual himself or by some other person duly authorised by him
  - ❖ HUF: a Karta or by any adult member of HUF or by the authorised signatory;
  - ❖ Company: the Chief Executive Officer or the authorised signatory;
  - ❖ Government or Gov. agency or local authority: an officer authorised;
  - ❖ Firm: any partner, not being a minor or the authorised signatory;
  - ❖ Any Other Association: any member of the association or the authorised signatory;
  - ❖ Trust: any trustee or the authorised signatory thereof;
  - ❖ Any other person: some person competent to act on his behalf.

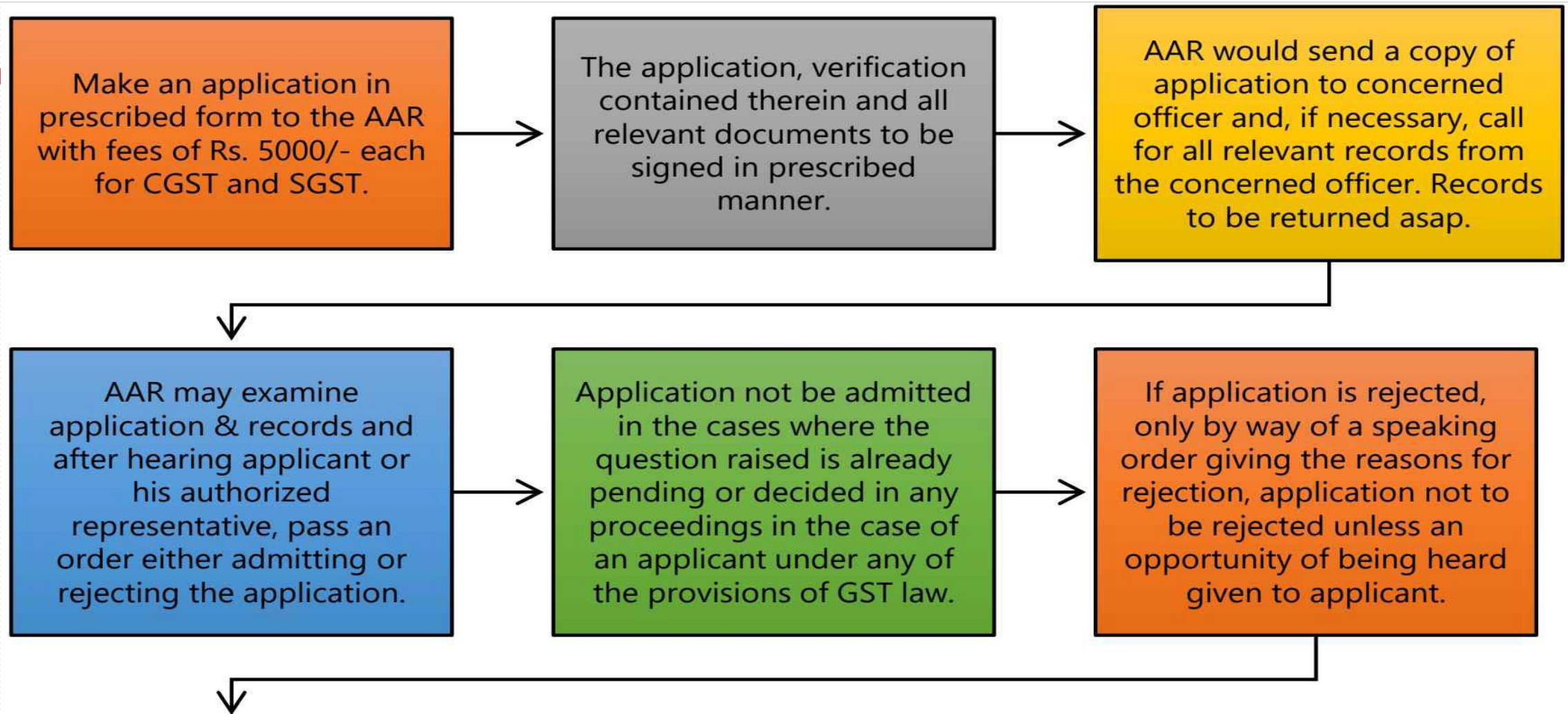
## Procedures for filing Advance Ruling

---

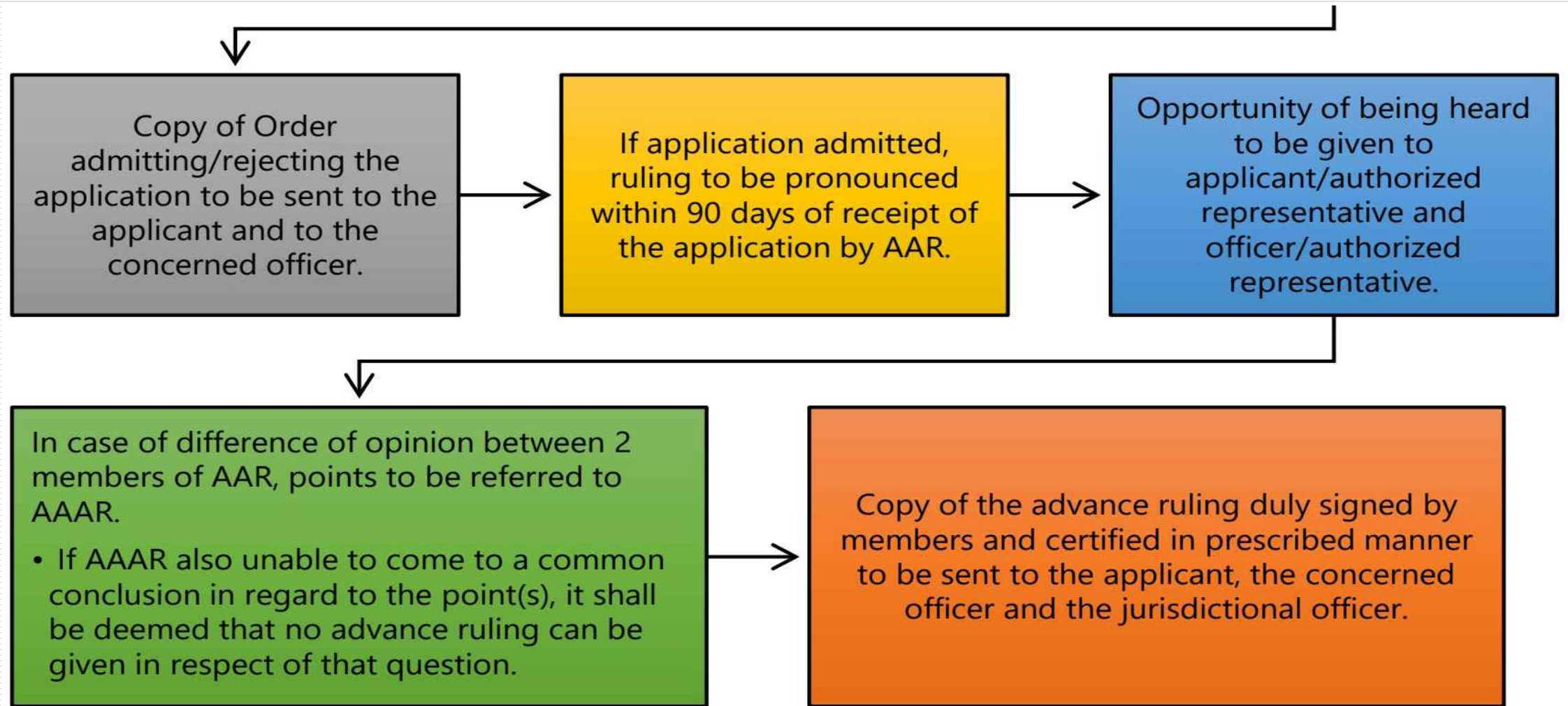
- ❑ After submission of an application in form GST ARA-01, the authority may, after examining the application and records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application under Sec. 98 (2) of CGST Act.
- ❑ A copy of order made under Sec. 98 (2), for admit or reject of application, shall be sent to the applicant and the concerned officer.
- ❖ (a) Where an application is admitted:
  - ❖ The authority shall pronounce its advance ruling on the question specified in the application. o the Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application
- ❖ (b) Where an application is not admitted:
  - ❖ The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act
- ❑ No application shall be rejected unless an opportunity of hearing has been given to the applicant
- ❑ Where the application is rejected, the reasons for such rejection shall be specified in the order.
- ❑ Where the members of the Authority differ on any question. They shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.



## Procedure followed for obtaining Advance Ruling



## Procedure followed for obtaining Advance Ruling



## Procedure for payment of fees

---

- ❑ In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”.
- ❑ After entering the email id and mobile number, a One Time Password (OTP) shall be sent to the email id. ❑ Upon submission of OTP, Systems shall generate a temporary ID and send it to the declared email and mobile number of the applicant.
- ❑ The applicant can make the payment of the fee of Rs. 5,000/- each i.e. CGST Act and SGST Act respectively on the basis of this ID.
- ❑ The applicant is then required to download Form GST ARA-01 and file the application with the Authority for Advance Ruling.



## Appeal against the order of the AAR before Appellate Authority of advance Rulings – Section 100 & 101

---

- ❖ If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with the AAAR.
- ❖ Any appeal must be filed within 30 days from the receipt of the Order of the Advance Ruling Authority. The Appellate Authority may allow for an additional 30 days for filing an appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.
- ❖ The appeal has to be in the prescribed form and has to be verified in the prescribed manner. An appeal has to be filed by the applicant along with fee of ₹ 10,000/- each under CGST and SGST Act. However, if the concerned officer or jurisdictional officer is aggrieved by the decision of AAR, then no fee is required to be paid.
- ❖ The appeal, the verification contained therein and all the relevant documents accompanying such appeal shall be signed-
  - (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
  - (b) in the case of an applicant, in the specified manner.

## Appeal against the order of the AAR before Appellate Authority of advance Rulings – Section 100 & 101

---

- ❖ The Appellate Authority shall pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- ❖ If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal.
- ❖ The said authority can pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to by the Advance Ruling Authority in the case of the difference of opinion.
- ❖ A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.



## Manual Filing and Process:

- ❑ All provisions as applicable to electronic filing will apply mutatis mutandis to manual filing also.
- ❑ Procedure for manual filing has been prescribed in CBE&C Circular No. 25/25/2017- GST dtd. 21.12.2017.
- ❖ Application - Quadruplicate in Form GST ARA-01.
- ❖ Clearly State the question on which the AR is sought.
- ❖ The application fee of Rs. 5,000/- each tax. (Fee is required to be deposited online).
- ❖ The application, the verification contained therein and all the relevant documents accompanying shall be signed by authorized signatory.
- ❑ Form and Manner of Appeal to the Appellate Authority by Applicant.
- ❖ Application - in Quadruplicate in Form GST ARA-02.
- ❖ The application shall be accompanied by a fees of Rs. 10,000/-. (deposited online).
- ❖ The application, the verification contained therein and all the relevant documents accompanying shall be signed by authorized signatory.
- ❑ ❑ Form and Manner of Appeal to the Appellate Authority by concerned officer or jurisdictional officer.
- ❑ Application - in Quadruplicate in Form GST ARA-03.
- ❑ No fee shall be payable by the said office for filing the appeal.
- ❑ Application shall be signed by an concerned officer or jurisdictional officer or by an officer authorised in writing by such officer.

# RECTIFICATION OF MISTAKES [SECTION 102]



AAR & AAAR can amend their order within 6 months from date of order.

Such mistake may be noticed by authority on its own or brought to notice by applicant or the concerned officer /jurisdictional officer.

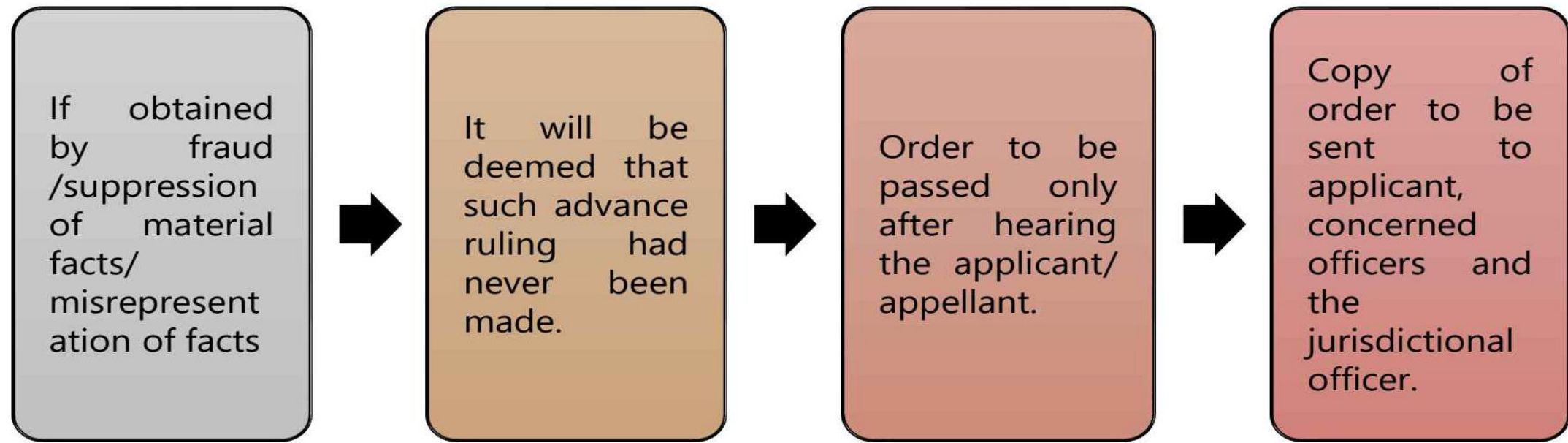
If tax liability increases or ITC reduces due to such rectification, applicant must be heard.

## Advance Ruling to be void under certain circumstances – Section 104

- ❖ Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.
- ❖ If the Authorities (AAR and Appellate Authority) finds that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.
- ❖ Consequently, all the provisions of the CGST Act shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued).
- ❖ An order declaring advance ruling to be void can be passed only after hearing the applicant / appellant.
- ❖ A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

## APPLICABILITY OF ADVANCE RULING [SECTION 103]

- Binding only on applicant and concerned officer/jurisdictional officer. Not applicable to similarly placed other taxable persons in the State.
- Binding till the period when law, facts/circumstances supporting the original advance ruling have not changed.





## Power and Procedure of AAR and AAAR – Section 105 & 106

---

- ❖ Both the AAR and AAAR are vested with the powers of a civil court under Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, issuing commissions and compelling production of books of account and other records.
- ❖ Both the authorities are deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973. Both the authorities are however not treated as civil court for the purpose of Chapter XXVI of the Code of Criminal Procedure, 1973.
- ❖ Any proceeding before the authority shall be deemed to be judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The AAR and AAAR also have the power to regulate their own procedure.



## Whether Appeal can be Filed against Order of Advance Ruling?

---

- ❑ The CGST Act provides that unless the law, facts or circumstances supporting the original advance ruling have changed, the advance ruling pronounced by the AAR or the AAAR shall be binding only on:
  - ❖ The applicant who had sought it in respect of any matter referred for advance ruling;
  - ❖ The concerned officer or the jurisdictional officer in respect of the applicant.
  - ❖ There is no further mechanism provided in the GST law in case the applicant or the jurisdictional officer is aggrieved by the ruling pronounced by the AAAR.
  - ❖ Therefore, many taxpayers are filing writ petition in the High Court challenging the ruling pronounced by AAAR.

## Whether Appeal can be Filed against Order of Advance Ruling?

- ❑ Judgement of the Bombay High Court in the case of JSW Energy Limited [2019-VIL-276-BOM]. The Hon,ble Court.
  - ❖ refused to interfere with the AAAR's order and specifically noted that merely because the statute has not provided any further remedy of appeal, it does not become a fit case for further appeal before the High Court and any such attempt, would amount to converting the proceedings under Article 226/227 of the Constitution of India, which are essentially proceedings seeking judicial review, into appellate proceedings.
  - ❖ noted that even though they will not look into the merits / de-merits of the impugned order, they are empowered to judicially review the order on the basis of the principles of natural justice to check whether the order has been passed in conformity with the same
- ❑ Therefore, the validity or otherwise of the impugned orders will have to be examined by applying the principles of judicial review and not the principles which apply in case of an appeal.

## Whether Appeal can be Filed against Order of Advance Ruling?

---

- ❑ Judgement of the Bombay High Court in the case of JSW Energy Limited [2019-VIL-276-BOM].
- ❖ Hon'ble Court relied on the judgement of the Supreme Court in the case of **Appropriate Authority and Another v. Smt. Sudha Patil and Anr. [(1999) 235 ITR 118 (SC)]** who held that merely because no appeal mechanism was provided for against the order of an appropriate authority directing compulsory acquisition by the government, the supervisory power of the High Court would not get enlarged nor can the High Court exercise an appellate power.
- ❖ held that the principles of judicial review, normally do not concern themselves with the decision itself, but are mostly confined to the decision-making process and such proceedings are not an appeal against the decision in question, **but a review of the manner in which such decision may have been made.**
- ❖ In judicial review, the court determines the correctness of the decision-making process and not the correctness of the decision itself. In exercise of powers of judicial review, the court is mainly concerned with issues like **whether the decision-making authority exceeded its jurisdictional limits, committed errors of law, acted in breach of principles of natural justice or arrived at a decision which is ex-facie unreasonable or perverse.**

## Whether Appeal can be Filed against Order of Advance Ruling?

- ❑ No. There is no provision available regarding appeal against the order of Advance Ruling Authority.
- ❑ However, writ petition can be filed against the order of Advance Ruling Authority.
- ❑ **Columbia Sportswear [2012 (8) TMI 105 - SUPREME COURT]**: it was held that
  - ❖ an advance ruling of the authority should not be permitted to be challenged before the High Court under Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution.
  - ❖ Also held that in this Special Leave Petition, we do not find that a substantial question of general importance arises nor is it shown that a similar question is already pending before this Court for which the petitioner should be permitted to approach this Court directly against the advance ruling of the Authority.
  - ❖ We accordingly dispose of this Special Leave Petition granting liberty to the petitioner to move the appropriate High Court under Article 226 and/or 227 of the Constitution.
  - ❖ We request the concerned High Court to ensure that the Writ Petition, if filed, is heard by the Division Bench hearing income-tax matters and we request the Division Bench to hear and dispose of the matter as expeditiously as possible.



# Appeals under GST laws



# *Audit, Assessment & Investigation – Different powers*

## Assessment – Chapter XII

- Self Assessment (S. 59)
- Provisional Assessment (S. 60)
- Scrutiny of Returns (S. 61)
- Assessment of Non-filers of returns (S. 62)
- Assessment of unregistered persons (S. 63)
- Summary assessment in certain special cases (S. 64)



## Audit – Chapter XIII

- Audit by Tax Authorities (S. 65)
- Special Audit (S. 66)



## Investigation – Chapter XIV

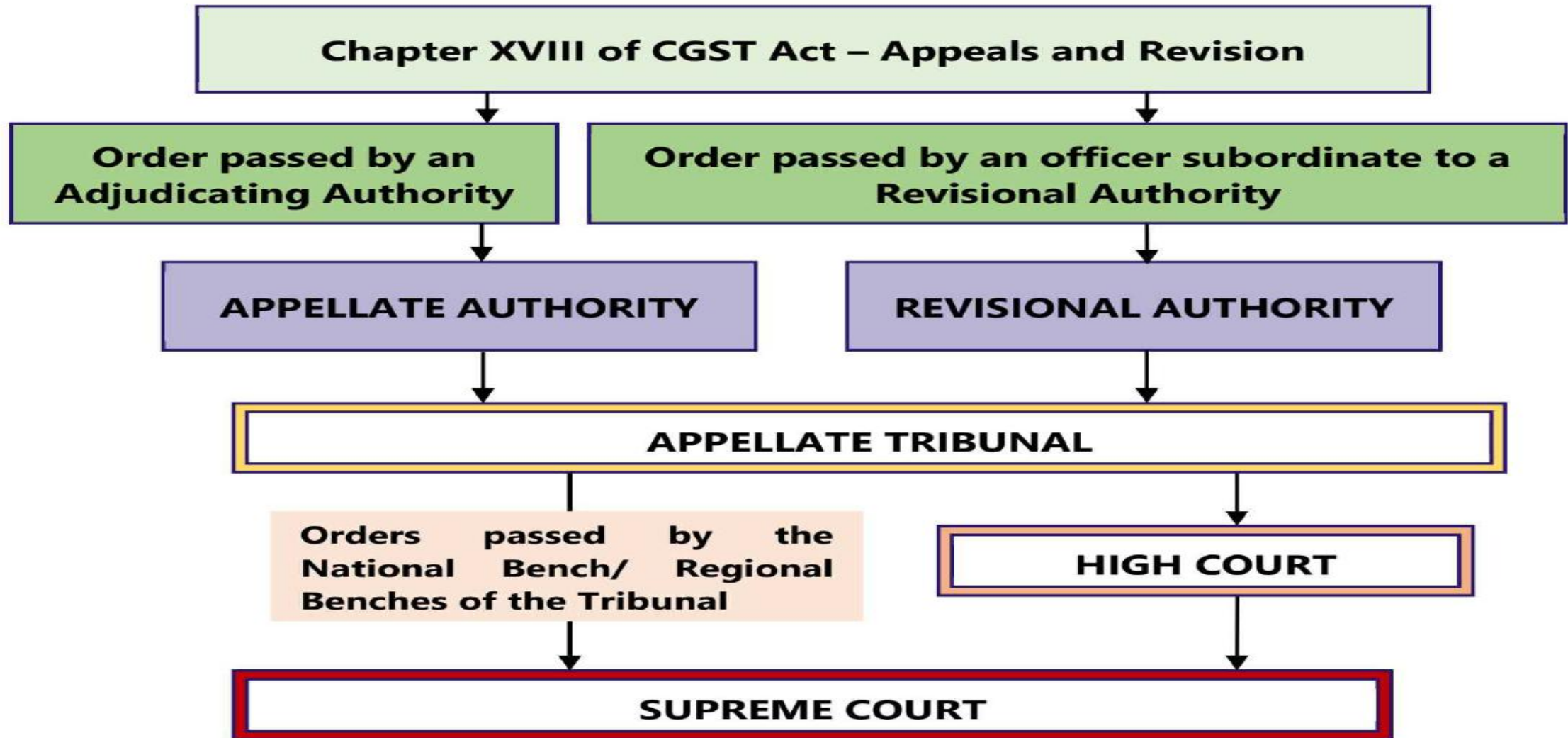
- Power of inspection, search & seizure (S. 67)
- Inspection of goods in movement (S. 68)
- Power of Arrest (S. 69)
- Power to summon persons to give evidence and produce documents (S. 70)



## Demands & Recovery – Chapter XV

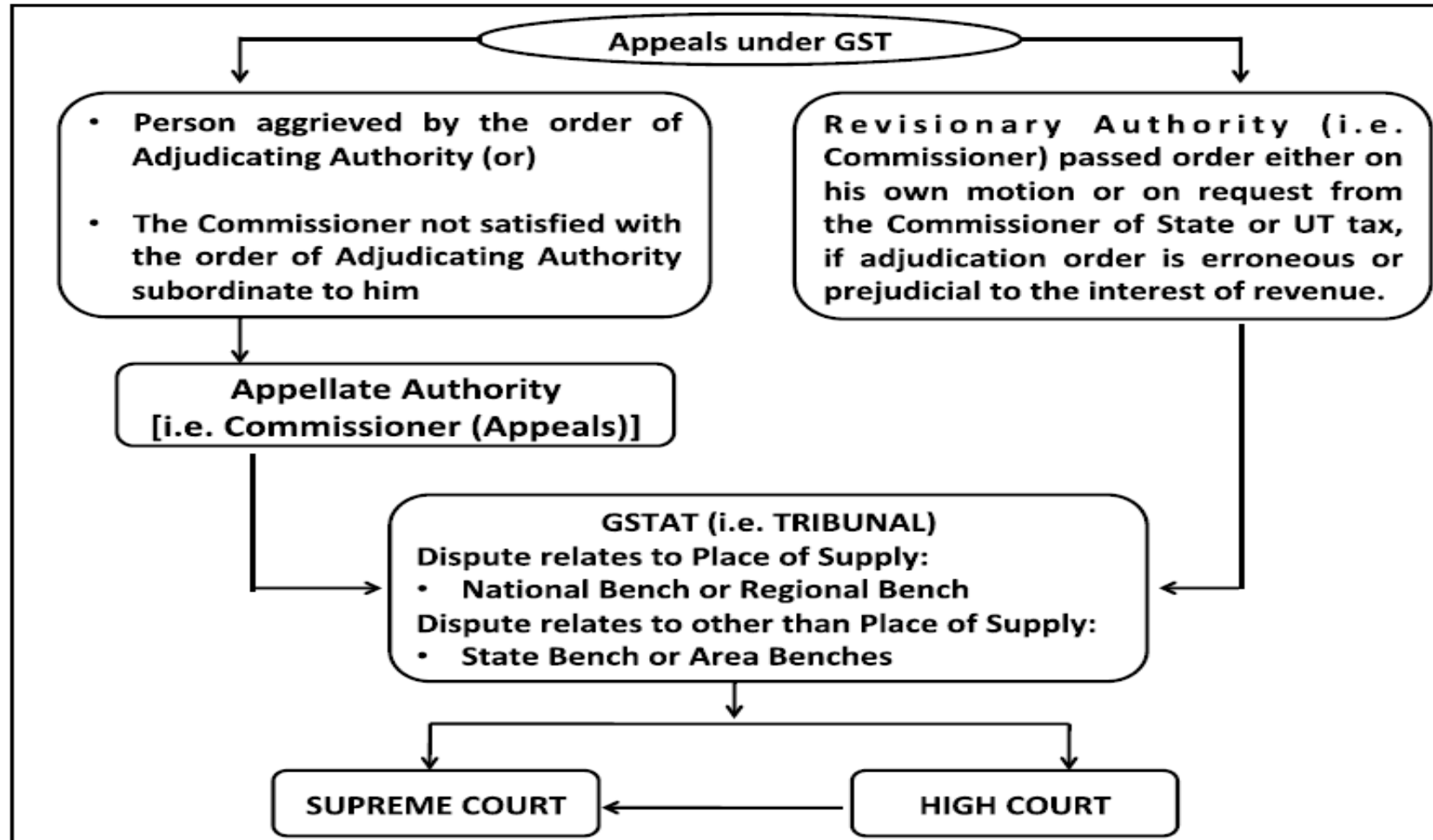
- Adjudication of taxes – Matters not involving fraud etc. (S. 73)
- Adjudication of taxes – Matters involving fraud etc. (S. 74)

## HIERARCHY OF APPEALS AND REVISION



## Appointment of Appellate Authority [Notification No. 60/2018-CT, dated 30.10.2018]

A new rule 109A has been inserted in CGST Rules to appoint Appellate Authority as under:



## Appointment of Appellant Authority Rule 109A

❑ **Any Officer not below the rank of Joint Commissioner (Appeals)**

❖ Where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent

❑ **Commissioner (Appeals)**

❖ Where such decision or order is passed by the Additional or Joint Commissioner

If the decision/order against which the appeal is to be filed, is passed by the Additional or Joint Commissioner

Appellate Authority

Commissioner (Appeals)

If the decision/order against which the appeal is to be filed, is passed by the Deputy or Assistant Commissioner or Superintendent

Appellate Authority

Any officer not below the rank of Joint Commissioner (Appeals)

## **Appeal to Appellate Authority by the Aggrieved person – Taxpayer [Section 107]**

### **Step by step approach:**

1. Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to Appellate Authority (AA).
2. Time limit for filing appeal is 3 months from the date on which the decision or order is communicated. However, the Commissioner (Appeals) namely Appellate Authority is empowered to condone delay of 30 days if sufficient cause is shown.
3. Appeal has to be filed in Form GST APL-01. A provisional acknowledgement shall be issued to the appellant immediately on filing appeal.
4. A hard copy of the appeal then shall be submitted in triplicate and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within 7 days of filing electronic appeal. Acknowledgment shall be issued by the Department in Form GST APL-02.
5. The date of filing will be issuance of provisional acknowledgement if the hard copy is submitted after 7 days, then relevant date would be this date of submission.



## Pre-deposits & Stay of demand

---

### Pre-Condition for Filing of Appeal Sec. 107(6)

#### 100% of Admitted Demand

- ☐ No appeal shall be filed unless the appellant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him

#### 10% of the remaining amount of tax in Dispute

- ☐ a sum equal to 10% of the remaining amount [25% in case of order u/s 129(3)] of tax in dispute arising from the said order, in relation to which the appeal has been filed (subject to maximum of 25 crore rupees under each act. [reduced to 20 Crs])

### Stay of Demand Sec. 107(7)/(8)

#### Automatic Stay

- ☐ Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed

#### Opportunity of being heard

- ☐ The Appellate Authority shall give an opportunity to the appellant of being heard

## **Note: Filing APL-01 Manually**

***However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-***

- (i) the Commissioner has so notified, or***
- (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the Common portal,***

***and in such case, a provisional acknowledgement shall be issued to the appellant immediately.***

Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

## 'Appeal' by Department – 107(2)/(3)

---

- ☐ The Commissioner may, on his **own motion**, or **upon request from the Commissioner of State tax** or the Commissioner of Union territory tax,
- ☐ **call for and examine the record of any proceedings** in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act,
- ☐ **for the purpose of satisfying himself as to the legality or propriety of the said decision or order** and may, by order,
- ☐ **direct any officer subordinate to him to apply** to the Appellate Authority **within six months** from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.
- ☐ Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, **such application shall be dealt with by the Appellate Authority as if it were an appeal** made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to GST appeals shall apply to such application.

## Acknowledgement issued against GST APL-1 and GAST APL-03 Present Issues

---

Where the decision/order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of 7 days from the date of filing of Form GST APL-03.

The final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of Form GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.



# Appeal process to be followed by the Appellate Authority [

## Duties of the AA

The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds of appeal (if found reasonable), etc.

## Orders of the AA

- ❑ The AA can make further inquiry and pass its order (i.e. Order-in-Appeal) which may **confirm, modify or annul** the decision/order appealed against. However, the AA shall not refer the case back to the adjudicating authority that passed the said decision/order.
- ❑ The AA can also increase the “rigour” of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or ITC, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order.

# Appeal process to be followed by the Appellate Authority [

## Duties of the AA

The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds of appeal (if found reasonable), etc.

## Orders of the AA

- ❑ The AA can make further inquiry and pass its order (i.e. Order-in-Appeal) which may **confirm, modify or annul** the decision/order appealed against. However, the AA shall not refer the case back to the adjudicating authority that passed the said decision/order.
- ❑ The AA can also increase the “rigour” of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or ITC, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order.

## Power to enhance or demand (Opportunity of being Heard) Sec. 107(11)

---

### Power to Enhance

- ❑ Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order

### Power to Adjudicate Demand

- ❑ Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

## Withdrawal of Appeal – Section 107(11)

---

- ❑ Rule 109C [Notification No.26/ 2022-CT] states that the applicant can file an application for withdrawal of an appeal at any time before the show cause notice or order under Section 107(11) is issued, whichever is earlier.
- ❑ This is in respect of any appeal filed in Form GST APL-01 or Form GST APL-03.
- ❑ The application for withdrawal of the appeal will need to be submitted using the new Form GST APL-01/03W.
- ❑ In cases where the final acknowledgment in Form GST APL-02 has been issued, then the withdrawal of the said appeal will require the approval of the appellate authority.
- ❑ The appellate authority must make a decision on the application for withdrawal of the appeal within seven days of the applicant filing the same.
- ❑ Any fresh appeal filed by an appellant after such withdrawal should be **within the time limits specified under Section 107.**



**“FORM GST APL-01/03 W**

*[See rule 109C]*

**Application for Withdrawal of Appeal Application**

1. GSTIN:
2. Name of Business (Legal) (in case appeal is filed under sub-section (1) of section 107)
3. Name and designation of the appellant (in case appeal is filed under sub-section (2) of section 107):
4. Order No.& Date:
5. ARN of the Appeal & Date:
6. Reasons for Withdrawal:
  - i. Acceptance of order of the adjudicating authority.
  - ii. Acceptance of order of a Higher Appellate Authority/ Court on similar subject matter
  - iii. Need to file appeal again after rectification of mistakes/omission in the filed appeal
  - iv. Amount involved in appeal is less than the monetary limit fixed for Appeal by the Board/Commissioner
  - v. Any other reason
7. Declaration (applicable in case appeal is filed under sub-section (1) of section 107):

I/We <Taxpayer Name> hereby solemnly affirm and declare that the information given herein is true and correct to the best of my/ our knowledge and belief and nothing has been concealed therefrom.

Place:

Signature

Date:

Name of Applicant /Applicant Officer  
Designation/ Status.”.

## Additional Grounds of Appeal & Power to Pass Order Sec. 107(10)/(11)

---

### ☐ Additional Grounds of Appeal

- ❖ The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

### ☐ Power to pass Order

- ☐ The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against
- ☐ The AA shall not refer the case back to the adjudicating authority that passed the said decision or order.

## Procedure in Appeal Sec. 107(12)/(13) and Sec. 107(14)/(15)/(16)

---

- ❑ **Speaking Order Sec. 107(12)**
  - ❖ The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.
- ❑ **Time Limit for passing Order: Sec. 107(13)**
  - ❖ The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of 1 year from the date on which it is filed (period of stay shall be excluded)
- ❑ **Communication of the Order Sec. 107(14)**
  - ❖ On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- ❑ **Copy of Order to jurisdictional commissioner Sec. 107(15)**
  - ❖ A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
- ❑ **Appeal Order shall be final & binding – Sec 107(16)**
  - ❖ Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties

## **Appeals to Appellate Authority [i.e. Commissioner (Appeals)] [Section 107 of the CGST Act, 2017]:**

- 
- 9. The Appellate Authority can also allow to add/include grounds of appeal if satisfied that their omission was not willful or unreasonable.
- 10. The Appellate Authority as far as possible within ONE year of appeal, shall pass such order in writing, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed.
- 11. The Appellate Authority shall not remanded the matter back to the adjudicating authority. Accordingly AA shall also issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed.



## Summary of the provisions of section 107

### APPEALS TO APPELLATE AUTHORITY [SECTION 107]

The Commissioner may direct any Officer subordinate to him to apply to the AA to determine specified points relating to legality and propriety of an order of any adjudicating authority passed under the GST laws

**Time limit** - Within 6 months from the date of communication of the said decision/order. Delay of 1 month can be condoned by the AA

**Form of Application** – GST APL 03

Any person aggrieved by any decision/order passed by an adjudicating authority passed under the GST laws

**Time limit** - Within 3 months from the date of communication of the said decision/order to the appellant. Delay of 1 month can be condoned by the AA

**Form of Appeal** – GST APL 01

Pre-deposit of tax, interest, fine, fee, and penalty arising from the impugned order, as admitted by the appellant along with 10% of the “tax in dispute”

The AA will give the appellant a chance to be heard.

The AA may allow the appellant during the hearing to add any ground of appeal not specified in the grounds of appeal and can grant up to 3 adjournments.

The AA may confirm, modify, annul the decision or order appealed against after making further inquiry, as necessary.



# Q&A

---

■

