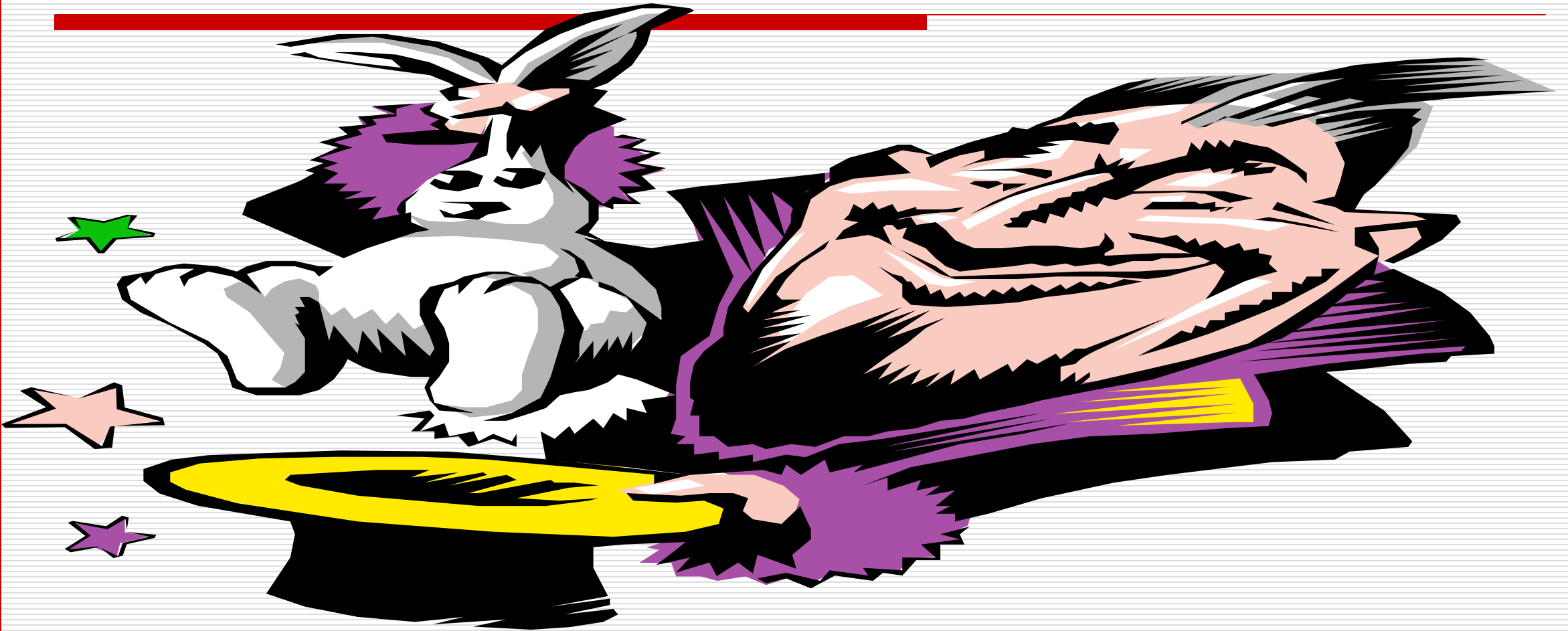


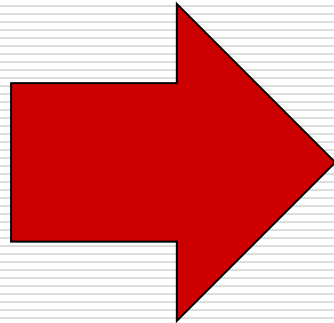
# Appeals under GST Laws – Key Aspect & Procedures

By CMA Niranjan Swain. B.Com,CS,FCMA, LLB



# Obligations of Tax Payers under GST laws

- **Levy Related** – scope of levy, taxable value, tax rate etc
- **Procedure related-** registration, filing of return, payment of tax etc
- **Verification by Department Authorities:** Undertaking scrutiny, audit, anti evasion proceedings etc
- **Non compliances** resulted disputes as regards, Tax, Interest, Penalty, Fee and Other Liabilities



- **Demand that not agreed to be contested -**
- ❖ **Appeals:** To correct error or clarify and interpret the law and involve rehearing on questions of law as well on the facts of the case.
- ❖ **Review:** It Challenges the correctness of a judicial order based on new evidence or facts/ evidence not considered earlier. Review can be done only after the passing of the order and generally by the same authority
- ❖ **Revision:** Revision involves a superior authority examining the legality of an order by a subordinate authority . It involve cases i.e erroneous inference, non-exercise, or improper jurisdictional exercise.
- ❖ **Rectification:** Order passed by the same authority passing the order to rectify any mistake or error which is apparent from the records.

# *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)

## Appealable Orders against which appeals to be filed

- All the order against which appeal can be filed are known as appealable orders.
  - Therefore, all the **orders of the adjudicating authority or any other order passed by any officer other than those mentioned under Section 121 of the CGST Act** are known as appealable orders.
  - Assessment in terms of **Sec 61** if not consented by taxable person SCN need to be issued by the proper officer.
- ❑ “142. Notice and order for demand of amounts payable under the Act
  - ❑ (5) A summary of the order issued under **section 52 (TCS) or section 62 (Assessment non filer of return) or section 63 (Assessment of unregistered person) or section 64 (summery assessment) or section 73 or section 74 (short paid / not paid / erroneously refunded) or section 75 (determination of tax) or section 76 (tax collected but not paid) or section 122 (penalty for offence) or section 123 (penalty for failure to furnish information) or section 124 (Finance for failure) or section 125 (general penalty) or section 127 (impose penalty) or section 129 ( detention seizure etc) or section 130 ( confiscation of goods)** shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

## Appealable Orders - 'Decision' or 'Order' – Examples

### ❑ Taxpayer can appeal against following types of Assessment Demand Orders:

- ❖ Best Judgment Assessment order of non filers u/s 62
- ❖ Best Judgment Assessment order of unregistered person u/s 63
- ❖ Summery Assessment order under section 64
- ❖ Acceptance or Rejection of application filed u/s 64 (2)
- ❖ Withdrawal of Assessment order issued u/s 64
- ❖ Order under section 125 imposing penalty
- ❖ Order u/s 122, 125, 127 for dropping penalty proceedings
- ❖ Order against remanded cases (DRC-07 also in case of remand under 73./74/76)
- ❖ Assessment Order for the proceedings under section 73/74 /76 + Summary of the order [ Adjudication]
- ❖ Order for dropping the proceedings u/s 73/74
- ❖ Rectification of Order

❖ Order of rejection of application for rectification u/s 29 & revocation u/s 30

❖ Order for dropping proceedings U/s 63

### ❑ A taxpayer can appeal against following types of Enforcement Orders:

❖ Order of Demand of Tax and Penalty

❖ Order of Confiscation of Goods and Conveyance and Demand of Tax, Fine and Penalty for proceeding u/s 129

❖ Order of Confiscation of Goods and Conveyance and Demand of Tax, Fine and Penalty for proceeding u/s 129

❖ Order of Rectification/modification in DRC-08 for MOV-09/11

❖ Order of Rectification/modification in DRC-08 for MOV-09/11

## Non-Appealable Decisions and Orders Sec. 121

❑ **No appeal shall lie against any decision taken or order passed in case of following matters:**

- ❖ an order to direct transfer of proceedings from one officer to another officer
- ❖ an order pertaining to the seizure or retention of books of account, register and other documents.
- ❖ an order sanctioning prosecution under this Act
- ❖ an order passed u/s 80 (Payment of tax due in instalment)

❑ **Bar on Jurisdiction of Civil Courts -CGST Act, 2017 -Section 162:**

- ❖ Save as provided in sections 117 (Appeal to High Court) and 118 (Appeal to Supreme Court), no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

❑ **Who can File Appeal under GST?**

- ❖ Any person aggrieved by any decision or order passed
- ❖ The Commissioner may, on his own motion, or upon request from the Commissioner of State tax/UT tax

## **Appealable Order against which Applicant file Appeal before Appellate Authority**

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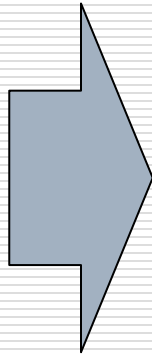
### **Structure of Appeal”**

- ❖ **Applicable Form - [GST APL-01 – Commissioner Appeal / GST APL-05 - Tribunal]**
- ❖ **Statement of Facts**
- ❖ **Grounds of Appeal**
- ❖ **Prayer**
- ❖ **Verification**

## Adjudicating Authority – Sec. 2(4) of CGST Act, 2017

Sec. 2 (4)  
**“adjudicating  
authority” means**

☐ any authority,  
appointed or  
authorised to  
pass any order  
or decision  
under this Act,  
but does not  
include



- ☐ the Central Board of Indirect Taxes and Customs,
- ☐ the Revisional Authority,
- ☐ the Authority for Advance Ruling,
- ☐ the Appellate Authority for Advance Ruling,
- ☐ the National Appellate Authority for Advance Ruling,
- ☐ the Appellate Authority,
- ☐ the Appellate Tribunal and
- ☐ the Authority referred to in sub-section (2) of section 171 – Antiprofitteering Authority

## Upon issuance of Adjudication Order

### First Appellate Authority

- u/s 107 of CGST Act.
- Read with Rule 108,109 and 112
- **Within 3 + 1 months from date of communication.**

### Appeal to Tribunal

- u/s 112 of CGST Act.
- Read with Rule 110,111 and 112
- **Within 3 + 3 months from date of communication**

### Appeal to High Court

- u/s 117 of CGST Act.
- Read with Rule 114
- Within 180 days + as may be allowed by High Court.

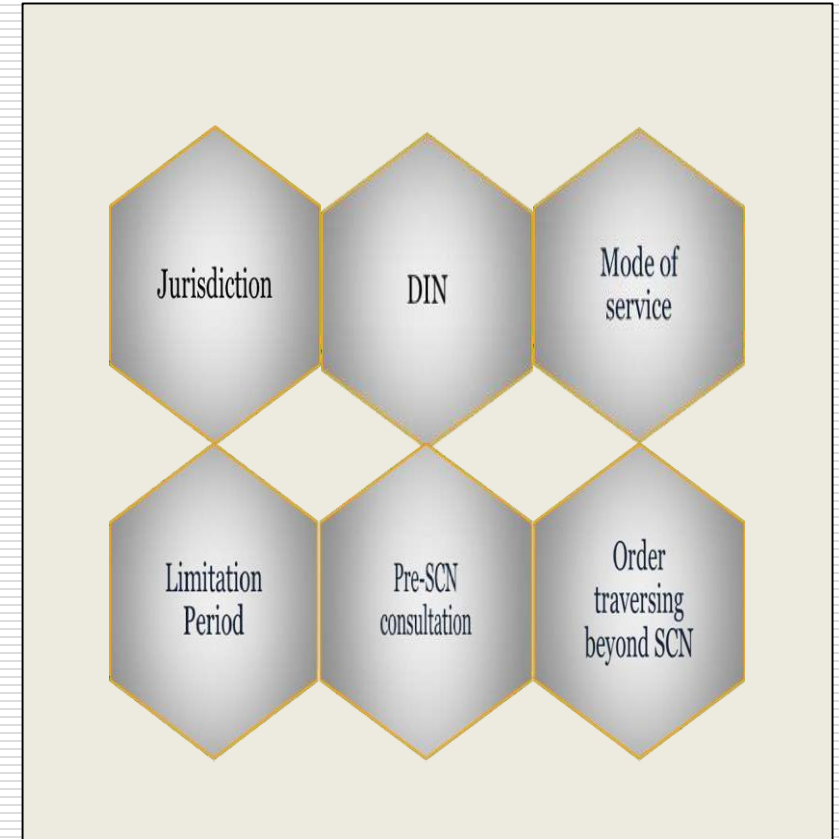
### Appeal to Supreme Court

- u/s 118 of CGST Act.
- Read with Rule 115
- Within 60 days from date of Communication

# ORDER OF APPEAL IN GST

## Communication of the Appealable Orders

- ❑ CBIC vide its **Circular No 128/47/2019 – GST** has mandated that in all the communications (except in exceptional circumstances) with the assessee (including on e-mails), Document Identification No is required to be mentioned.
- ❑ DIN can be confirmed by the assessee online at **Cbic.gov.in**
- ❑ All the communication with the assessee which does **not contain DIN shall be treated invalid** and shall be considered as never been issued.
- ❑ Ensure whether authority passing the order had jurisdiction to pass the order.
- ❑ Governed by the provisions of **Sec. 3 to Section 6** of CGST Act, 2017.
- ❑ **Notification No. 02/2017** – CT dated 19.06.2017 specifies the jurisdiction.
- ❑ **Monetary limits** are also to be verified.

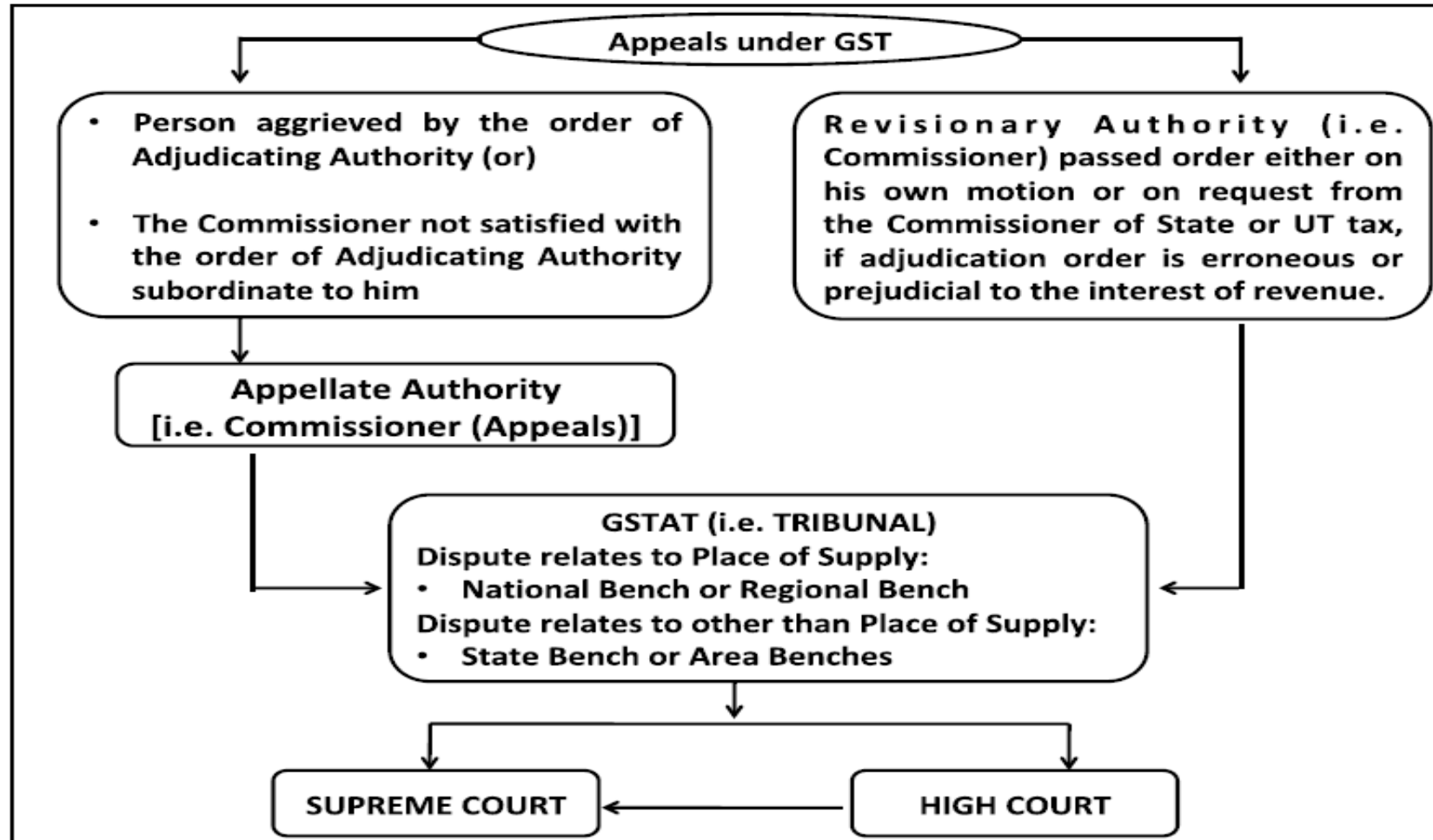


## Modes of Service

	<b>Sec. 169 of CGST Act, 2017 (Applicable where no specific mode provided in section)</b>
	<p>(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by <b><u>any one of the following methods</u></b>, namely :—</p>
Initial modes	<ul style="list-style-type: none"> <li>• By tendering directly or through <b>registered post / speed post / approved courier with acknowledgement</b> due or proof of delivery</li> <li>• By sending <b>communication</b> to <b>registered e-mail id</b>.</li> <li>• <b>By making it available on GSTN portal</b></li> <li>• <b>By publication</b> in a <b>local newspaper</b></li> </ul>
To be followed as last resort	<p>If not-serviceable in above manner, by affixing to a conspicuous (attracting notice/attention) part of the place of business or usual place of residence</p> <p>If cannot be serviced in above two ways, then by affixing on the Notice Board of the Officer or the authority issuing the Notice</p>

## 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)

### **List of Forms**

<b>Sr. No</b>	<b>Form No.</b>	<b>Content</b>
1.	GST APL-01	Appeal to Appellate Authority
2.	GST APL-02	Acknowledgement of submission of appeal
3.	GST APL-03	Application to the Appellate Authority under sub-section (2) of Section 107
4.	GST APL-04	Summary of the demand after issue of order by the Appellate Authority, Tribunal or Court
5.	GST APL-05	Appeal to the Appellate Tribunal
6.	GST APL-06	Cross-objections before the Appellate Authority / Appellate Tribunal
7.	GST APL-07	Application to the Appellate Tribunal under sub section (3) of Section 112
8.	GST APL -08	Appeal to the High Court under section 117

## **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

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### 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.

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

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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.

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- ❑ 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)

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### 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)

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- ❑ 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)

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- ❑ **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.

Dashboard	Services ▾	GST Law	Search Taxpayer ▾	Help ▾	e-Way Bill System
Registration	Ledgers	Returns	Payments	User Services	Refunds
My Saved Applications	My Applications				
View/Download Certificates	View Notices and Orders				
View My Submissions	Contacts				
Search HSN / Service Classification Code	Holiday List				
Feedback	Grievance / Complaints				
Locate GST Practitioner (GSTP)	Engage / Disengage GST Practitioner (GSTP)				

## My Applications

• indicates mandatory fields

Application Type•

Appeal to Appellate Authority ▼

From Date

DD/MM/YYYY



To Date

DD/MM/YYYY



SEARCH

NEW APPLICATION

## GST APL-01:Appeal to Appellate Authority

**GSTIN/Temporary ID/UIN -**  
07AJIPA1572E01X

**Legal Name -** ANGAD JASBIRSINGH ARORA

**Trade Name -** AutomationsTest

**Address -** 1, MG, ECITY, Central Delhi, Delhi, 110019

Order Type\*

Order No\*

SEARCH

## Order Details

Order Date\*

03/04/2018

Demand Id

ZA0704180000236

Date of communication\*

03/04/2018



Category of the case under dispute\*

Select



ADD

Period of Dispute

From\*

01/02/2018



To\*

28/02/2018



Category of the case under dispute •

Select ▼

Select

1. Misclassification of any goods or services or both
2. Wrong applicability of a notification issued under the provisions of this Act
3. Incorrect determination of time and value of supply of goods or services or both
4. Incorrect admissibility of input tax credit of tax paid or deemed to have been paid
5. Incorrect determination of the liability to pay tax on any goods or services or both
6. Whether applicant is required to be registered
7. Whether any particular thing done by the applicant results in supply of goods or services or both
8. Rejection of application for registration on incorrect ground
9. Cancellation of registration for incorrect reasons
10. Transfer/Initiation of recovery/ Special mode of recovery
11. Tax wrongfully collected/Tax collected not paid to Government
12. Determination of tax not paid or short paid
13. Refund on wrong ground/Refund not granted/ Interest on delayed refund
14. Fraud or wilful suppression of fact
15. Anti profiteering related matter
16. Others

## DISPUTED AMOUNT/ PAYMENT DETAILS

Upload Annexure to GST APL-01 ●

No file chosen

- ❗ Only PDF file format is allowed.
- ❗ [Click Here](#) to download Annexure to GST APL-01 template.
- ❗ Maximum file size for upload is 5MB.
- ❗ [Click Here](#) to view the steps for converting the filled application word template to PDF file format.

**Annexure to FORM GST APL-01**  
**Appeal to Appellate Authority**

9. Details of the case under dispute -

- (i) Brief issue of the case under dispute –
- (ii) Description and classification of goods/ services in dispute-
- (v) Market value of seized goods –

10. Whether the appellant wishes to be heard in person – Yes / No

11. Statement of facts-

12. Grounds of appeal -

13. Prayer -

16. Whether appeal is being filed after the prescribed period - Yes / No

17. If 'Yes' in item 16–

- (a) Period of delay –
- (b) Reasons for delay -

**Note: *Please convert the word file into PDF and upload while filing appeal online***

## DISPUTED AMOUNT/ PAYMENT DETAILS

Upload Annexure to GST APL-01 <sup>•</sup>

**Choose File** No file chosen

**i** Only PDF file format is allowed.

**i** [Click Here](#) to download Annexure to GST APL-01 template.

**i** Maximum file size for upload is 5MB.

**i** [Click Here](#) to view the steps for converting the filled application word template to PDF file format.

**GSTIN/Temporary ID/UIN -**

07AJIPA1572EO1X

**Legal Name -** ANGAD JASBIRSINGH ARORA**Trade Name -** AutomationsTest**Address -** 1, MG, ECITY, Central Delhi, Delhi, 110019

• Indicates Mandatory Fields

**Disputed Amount/ Payment Details****Amount under Dispute**

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Amount of dispute	Tax/Cess	0	0	30000	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	

**Amount Of Demand created and admitted**

**Amount Of Demand created and admitted**

Description		Central tax ( ₹ )	State/ UT tax ( ₹ )	Integrated tax ( ₹ )	Cess ( ₹ )	
Amount of demand created (A)	Tax/Cess	0	0	33944	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	
Amount of demand admitted(B)	Tax/Cess	0	0	3944	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	

**Details of payment of admitted amount and pre-deposit****Pre-deposit % of disputed tax**

10

ⓘ Minimum of 10% of the disputed amount needs to be paid as pre-deposit before filing an appeal. Lower percentage may be declared here with relevant approvals from the competent authorities.

**Details of payment required**

### Details of payment of admitted amount and pre-deposit

Pre-deposit % of disputed tax

10

Minimum of 10% of the disputed amount needs to be paid as pre-deposit before filing an appeal. Lower percentage may be declared here with relevant approvals from the competent authorities.

### Details of payment required

Central tax ( ₹ )	State/ UT tax ( ₹ )	Integrated tax ( ₹ )	Cess ( ₹ )	Total Amount ( ₹ )	
0	0	3944	0	3944	6944
0	0	0	0	0	
0	0	0	0	0	
0	0	0	0	0	
0	0	0	0	0	
0	0	3000	0	3000	

Detailed IGST							
Place of Supply	IGST Amount	Tax/Cess	Interest	Penalty	Fees	Others	Action
	Initial Amount	1000	100	100	0	100	
Delhi ▾	Disputed Amount	<input type="text" value="1000"/>	<input type="text" value="100"/>	<input type="text" value="100"/>	<input type="text" value="0"/>	<input type="text" value="100"/>	NA
	Admitted Amount	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	

Pay using the cash or ITC lying in the electronic ledger: The taxpayer can make the payment by either utilising the cash or the balance of ITC available for utilisation in the ledger.

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Step 7: Add supporting documents if needed. Enter the document description and then choose the file for upload. Follow the criteria given in the below image:

The screenshot shows a web interface for uploading supporting documents. On the left, there is a text input field labeled "Enter Document Description" with a red border. Below it is a "Choose File" button, also with a red border, followed by the text "No file chosen". On the right side, there are four numbered instructions:

- ❶ Only PDF & JPEG file format is allowed.
- ❷ Maximum file size for upload is 5MB.
- ❸ Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy
- ❹ Click on Add Document button to add the uploaded Supporting Document.

☐ I, ANGAD JASBIRSINGH ARORA, hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and belief and nothing has been concealed therefrom.

Name of Authorized Signatory\*

Select ▼

Place\*

Enter Place

Designation / Status

Date

05/09/2018

BACK

PREVIEW

PROCEED TO FILE



I, ANGAD JASBIRSINGH ARORA, hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and belief and nothing has been concealed therefrom.

Name of Authorized Signatory \*

ANGAD ARORA

Place \*

Enter Place

Designation / Status

Director

Date

05/09/2018

BACK

PREVIEW

PROCEED TO FILE

✔ Your form has been signed successfully through EVC

## Provisional Acknowledgement on submission of Form of Appeal

❗ Please submit certified copies within 7 days to get appeal admitted.

Your appeal has been successfully submitted against AD070618000010S

GSTIN/Temporary ID/UIN	07AJIPA1572EO1X
Date of filing	14/06/2018
Time of filing	14:25
Place of filing	Bangalore
Name of the Taxpayer	ANGAD JASBIRSINGH ARORA
Address	1, MG, ECITY, Central Delhi, Delhi, 110019
Name of the person who is filing Appeal	ANGAD JASBIRSINGH ARORA
Amount of pre-deposit	₹3000

*It is a system generated acknowledgement and does not require any signature.*

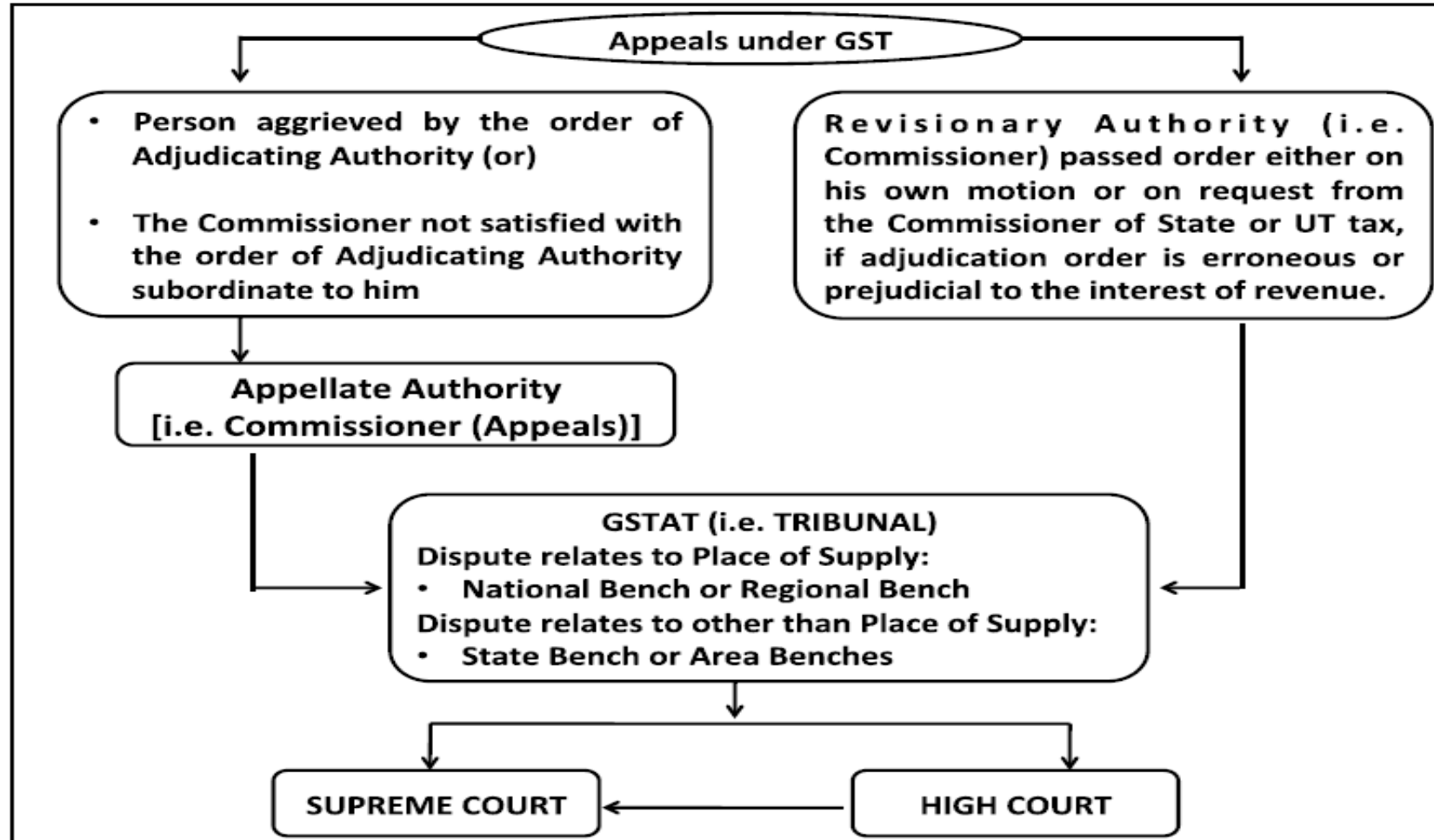
DOWNLOAD



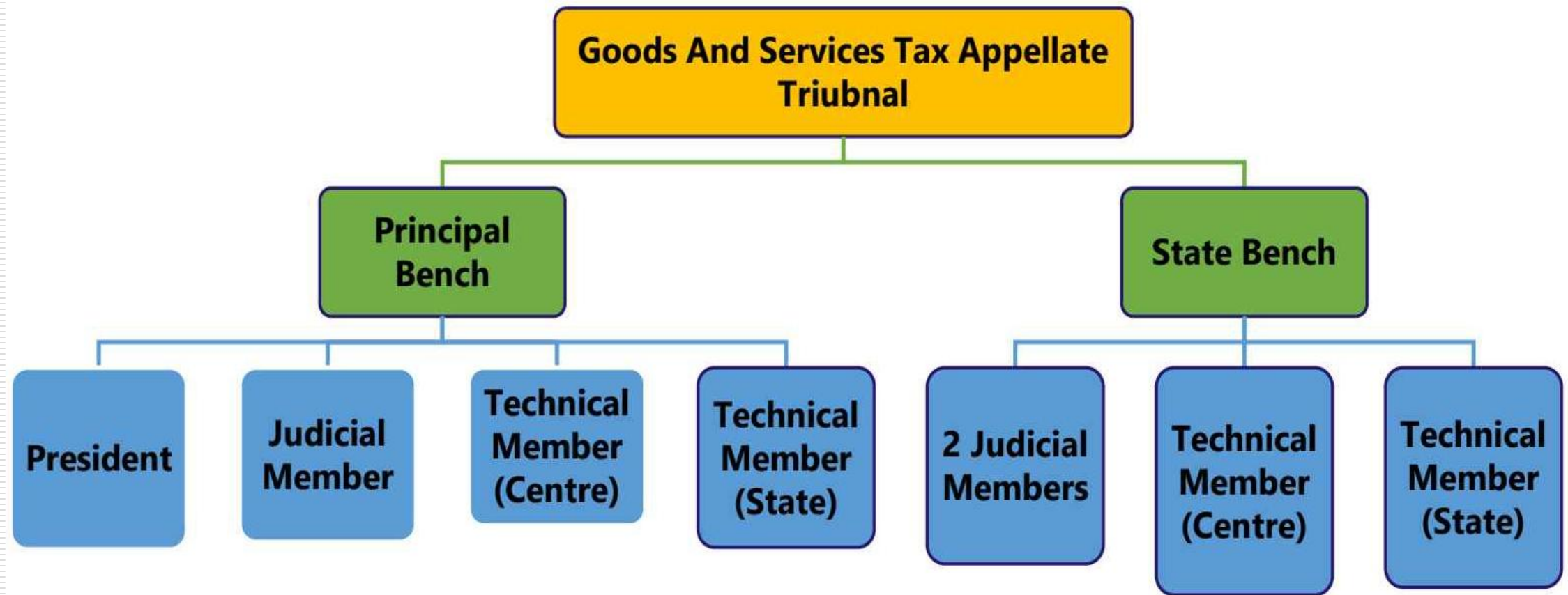
## **Appeal before Tribunal under GST Laws – GSTAT**

## 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:



# Constitution and structure of Appellate Tribunal [Section 109]



### Single member bench:

Appeals, where the tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed ₹ 50,00,000 and which does not involve any question of law may, with the approval of the President, and subject to prescribed conditions on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

Accordingly, the cases can be heard by a bench consisting of a single member, if following conditions are fulfilled:

- Amount of tax or ITC involved or the amount of fine, fee or penalty determined does not exceed ₹ 50,00,000
- Matter does not involve any question of law
- Prior approval of the President has been obtained
- Any other prescribed conditions.

## Procedure before Appellate Tribunal [Section 111]

- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (h) any other matter which may be prescribed.

### **List of Forms**

<b>Sr. No</b>	<b>Form No.</b>	<b>Content</b>
1.	GST APL-01	Appeal to Appellate Authority
2.	GST APL-02	Acknowledgement of submission of appeal
3.	GST APL-03	Application to the Appellate Authority under sub-section (2) of Section 107
4.	GST APL-04	Summary of the demand after issue of order by the Appellate Authority, Tribunal or Court
5.	GST APL-05	Appeal to the Appellate Tribunal
6.	GST APL-06	Cross-objections before the Appellate Authority / Appellate Tribunal
7.	GST APL-07	Application to the Appellate Tribunal under sub section (3) of Section 112
8.	GST APL -08	Appeal to the High Court under section 117

## **Procedure before Appellate Tribunal [Section 111]**

- 
- (iii) Order of the Appellate Tribunal may be enforced in the same manner as if it were a decree made by a court in a suit pending therein. The Appellate Tribunal can send for execution of its orders to the court within the local limits of whose jurisdiction,—
  - (a) in the case of an order against a company, the registered office of the company is situated; or
  - (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

## **Procedure before Appellate Tribunal [Section 111]**

- 
- (iv) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code. The Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

# Appeal to Appellate Tribunal

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## **Appeal by the aggrieved person (taxpayer)**

### **(i) Orders appealable to Appellate Tribunal**

Any person aggrieved by an order passed against him by an AA or RA under CGST Act/SGST Act/ UTGST Act may appeal to the Appellate Tribunal.

### **(ii) Time limit for filing appeal**

The appeal can be filed before the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

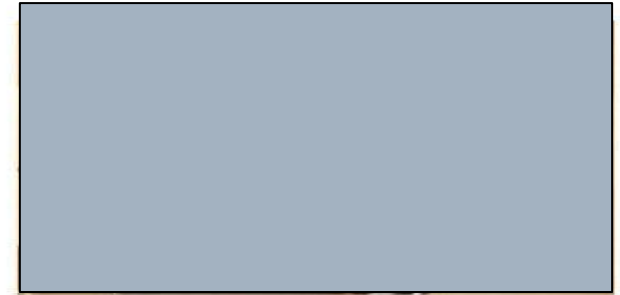
The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.

# Appeal to Appellate Tribunal

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## **(iii) Form for filing appeal**

The appeal shall be filed in Form GST APL-05 either electronically or otherwise as may be notified by the Registrar on the common portal and a provisional acknowledgement shall be issued to the appellant immediately. A certified copy of the decision/order appealed against shall be submitted to the Registrar within 7 days of filing the appeal and a final acknowledgement shall be issued thereafter.



## **(iv) Date of filing appeal**

If the certified copy of the decision/order is submitted within 7 days from the date of filing appeal in GST APL-05, the date of filing the appeal shall be the date of the issue of the provisional acknowledgement. However, if the said copy is submitted after 7 days, the date of filing the appeal shall be the date of the submission of such copy.

The appeal shall be treated as filed only when the final acknowledgement is issued.

# Appeal to Appellate Tribunal

## **(v) Power of Tribunal to refuse to admit an appeal**

The Appellate Tribunal can refuse to admit an appeal if

- ☐ the tax or ITC involved or
- ☐ the difference in tax or ITC involved or
- ☐ the amount of fine, fee or penalty determined by such order does not exceed ₹ 50,000.

## **(vi) Memorandum of cross objections**

The law also provides for filing of cross-objections by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal.

## Appeal to Appellate Tribunal


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### **(vii) Fees for filing appeal**

The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed ₹ 25,000.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

### **(viii) Mandatory pre-deposit for filing appeal**

No appeal can be filed before the Appellate Tribunal unless a specified amount of pre-deposit is made by the appellant. 



## **Departmental appeal**

- (i)** The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any order passed by the AA or RA under the CGST Act/SGST Act/ UTGST Act for the purpose of satisfying himself as to the legality or propriety of such order.
- (ii)** The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified him
- (iii)** The application shall be made in GST APL-07 either electronically or otherwise on the common portal.
- (iv)** Such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the AA or RA.

There is no requirement of making a pre-deposit in the case of departmental appeal.

## Orders of the Appellate Tribunal [Section 113]

- (i) The Tribunal, after hearing both sides may
  - ☐ pass such orders thereon as it thinks fit, **confirming, modifying or annulling** the decision or order appealed against or
  - ☐ refer the case back to the AA or to the RA, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.
- (ii) For reasons of natural justice (reasonable opportunity), it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to hearing of appeal to either side.
- (iii) The law provides an advisory time limit of 1 year from the date of filing of appeal for the Tribunal to decide the appeal.
- (iv) The Tribunal shall send a copy of its order to
  - AA/RA/Original adjudicating authority
  - Appellant
  - Jurisdictional Commissioner or the SGST/UTGST Commissioner
- (v) Every order passed by the Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

## **Rectification of errors [Section 113(3)]**

- ☐ The Tribunal can correct its own order for any apparent mistakes, but it has no power of review.
- ☐ The Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the Commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of 3 months from the date of the order.
- ☐ No amendment which has the effect of enhancing an assessment or reducing a refund or ITC or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.

## **Withdrawal of appeal or application filed before the Appellate Tribunal**

***The appellant may, at any time before the issuance of the order, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal/application, by filing an application in Form GST APL-05/07W.***

***Where the final acknowledgment in GST APL-02 has been issued, the withdrawal of the said appeal/application, would be subject to the approval of the Appellate Tribunal within 15 days of filing of such application.***

***Any fresh appeal/application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in A or B above.***



## **SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL ETC. [SECTION 119]**

Sums due to the Government as a result of an order passed by the Principal Bench/State Benches of the Appellate Tribunal or the High Court, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, shall be payable in accordance with the order so passed.

## 14. APPEAL NOT TO BE FILED IN CERTAIN CASES

### [SECTION 120]

In tax disputes, the tax department is always an opposite party. From a practical standpoint, many appeals at the tribunal, High Court, Supreme Court levels are instituted by the tax department.

This section contains provisions that aim at limiting the filing of appeals by the CGST officers in non-complex matters or the matters involving small tax amount. While providing for non-filing of appeal by the CGST officers in certain cases, this section also provides that such steps should not stop the tax department to file appeal in other similar cases.

- (i) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.

- (ii) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
- (iii) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- (iv) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

## Mandatory Pre- Deposits

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Section 107(6) provides that no appeal shall be filed before the AA, unless the appellant has paid—

- (a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him; **and**
- (b) a sum equal to 10% of the remaining amount of **tax in dispute** arising from the impugned order, subject to a maximum of ₹ 25 crore (₹ 50 crore in case of IGST\*).

*\* As per section 20 of the IGST Act.*

The payment of pre-deposit ensures staying of the recovery proceedings for the balance amount of demand in dispute.

## Mandatory Pre- Deposits

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Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits<sup>1</sup>

- (a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him, **and**
- (b) 20% of the remaining amount of **tax in dispute**, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 50 crore (₹ 100 crore in case of IGST), in relation to which appeal has been filed.

*\* As per section 20 of the IGST Act*

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount of demand in dispute shall be deemed to be stayed till the disposal of the appeal.

## **Pre- Deposit – In absence of functioning of GSTAT**

***It is important to note that if any person files an appeal in accordance with the requirement of section 112(8) (i.e., on payment of prescribed pre-deposit), the recovery proceedings for the balance amount is deemed to be stayed till disposal of the appeal as per section 112(9). However, as the taxpayers were not able to file appeal under section 112 in Appellate Tribunal against the orders of Appellate Authority and therefore, were not able to make the pre-deposit, the tax officers were taking a view that there is no stay against recovery as per section 112(9).***

***For this purpose, it has been clarified vide Circular No. 224/18/2024 GST dated 11.07.2024 that taxpayer can make the payment of an amount equal to the amount of pre-deposit by navigating to Services >> Ledgers>> Payment towards demand, from his dashboard on GST portal. The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal. Consequently, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed.***

## **Pre- Deposit – In absence of functioning of GSTAT**

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***The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the prescribed timelines. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed.***

***If any taxpayer has already paid the full amount that was intended to have been paid towards a demand, through a prescribed form. In such cases, the said person can file an application electronically on the common portal, to adjust the payment made towards the said demand. Till the time such functionality is made available on the common portal, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the proper officer may not insist on recovery.***

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Under pre-GST regime as well, the very question of CENVAT credit being utilised for payment of pre-deposit was contested in various cases until the CESTAT issued a circular in August 2014 clarifying that CENVAT credit can be used for payment of pre-deposit of service tax and central excise. Board has also issued a clarificatory circular on 6<sup>th</sup> July 2022 after five years of GST implementation interalia clarifying that ECL can be used for making any payment towards output tax, whether self-assessed in the return ***or payable as a consequence of any proceeding instituted under the provisions of GST Laws.*** Though the circular has not specifically talked about the pre-deposit payment however Bombay HC has interpreted that such pre-deposit payments shall also fall within it and thus can be made from ECL. This decision of Bombay HC has come as a welcome relief for all taxpayers in reducing the fund blockage in availing the

# Production of Additional Evidence

- (i) Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the AA or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.
- (ii) **Exceptions**

However, the rule provides the following exceptional circumstances where the production of additional evidence before the AA or the Tribunal could be allowed:

  - (a) where the adjudicating authority or, as the case may be, the AA has refused to admit evidence which ought to have been admitted; or
  - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the AA; or
  - (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or
  - (d) where the adjudicating authority or, as the case may be, the AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (iii) No additional evidence shall be admitted unless the AA or the Appellate Tribunal records in writing the reasons for its admission.



## Production of Additional Evidence

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- (iv)** The AA or the Appellate Tribunal shall not take any additional evidence unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -
  - (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
  - (b) to produce any evidence or any witness in rebuttal of the additional evidence produced by the appellant.
- (v)** The provisions of this rule shall not affect the power of the AA or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

## **‘Rectification’ under GST Law**

### **Rectification of errors apparent on the face of record - Section-161**

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- **Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:**

## **‘Rectification’ under GST Law**

### **Rectification of errors apparent on the face of record - Section-161**

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- **Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:**
- **Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:**
- **Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification**

## Appeal Before High Court – Section 117

- ❑ **Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal** may file an appeal to the High Court.
- ❑ **Appeal to be filed in Form APL-08**
- ❑ **High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law and shall formulate the same.**
- ❑ **The Appeal is to be filed within a period of one hundred and eighty (180) days from the date on which the order appealed against is received by the aggrieved person.**
- ❑ ***The High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.***

Recently, the Supreme Court, in the matter of *Nazir Mohamed v. J. Kamala And Ors.* on 27 August, 2020 pronounced that to be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

For instance, the question as regards applicability of an exemption notification to a taxpayer due to two possible interpretations of the notification could be a question of law. Conversely, determination of the quantum of the exemption available to a taxpayer could be a question of fact.

## Appeal Before High Court

- ❑ The High Court may determine **any issue which has—**
  - (a) not been determined by the State Bench or Area Benches; or**
  - (b) been wrongly determined** by the **State Bench or Area Benches**, by reason of a decision on such question of law.
- ❑ Appeal to be heard by at least **two judges of High Court** and be decided according to the majority.
- ❑ Where there is **no such majority**, the Judges shall state the point of law upon which they differ and the case shall, then, **be heard upon that point only, by one or more of the other Judges of the High Court** and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

- ❖ HC shall formulate the Question.
- ❖ Any other substantial question of Law can be heard
- ❖ HC may determine the issue which is not decided by Tribunal
- ❖ Two Judges to decide case. Majority decision will play.

Pre-deposit of all tax dues is required to be made; otherwise the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.

## Appeal to High Court – Section 117

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### (ii) Time limit for filing appeal

Appeals to the High Court are to be filed within 180 days from the date on which the order appealed against is received by the aggrieved person. However, the High Court has the power to condone the delay on being satisfied of sufficient cause for the same.

### (iii) Form of appeal

The appeal shall be filed in GST APL 08.

- ❖ HC shall formulate the Question.
- ❖ Any other substantial question of Law can be heard
- ❖ HC may determine the issue which is not decided by Tribunal
- ❖ Two Judges to decide case. Majority decision will play.

Pre-deposit of all tax dues is required to be made; otherwise the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.

## Appeals before Supreme Court – Section 118

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- ❑ An appeal to the Supreme Court can be made against :
  - The **order passed by** the National Bench or Regional Benches of the Appellate Tribunal;  
or
  - any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, **the High Court certifies to be a fit one for appeal to the Supreme Court.**
- ❑ The provisions of the **Code of Civil Procedure, 1908**, (5 of 1908.) would apply to the **appeals to the Supreme Court.**
- ❑ *Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.*

## DRAFTING

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▪

Statement of  
Facts

- Actual Position

Finding/Dept.  
Case

- Basis on which demand is confirmed

Grounds of  
Appeal

- Contentions of Appellant

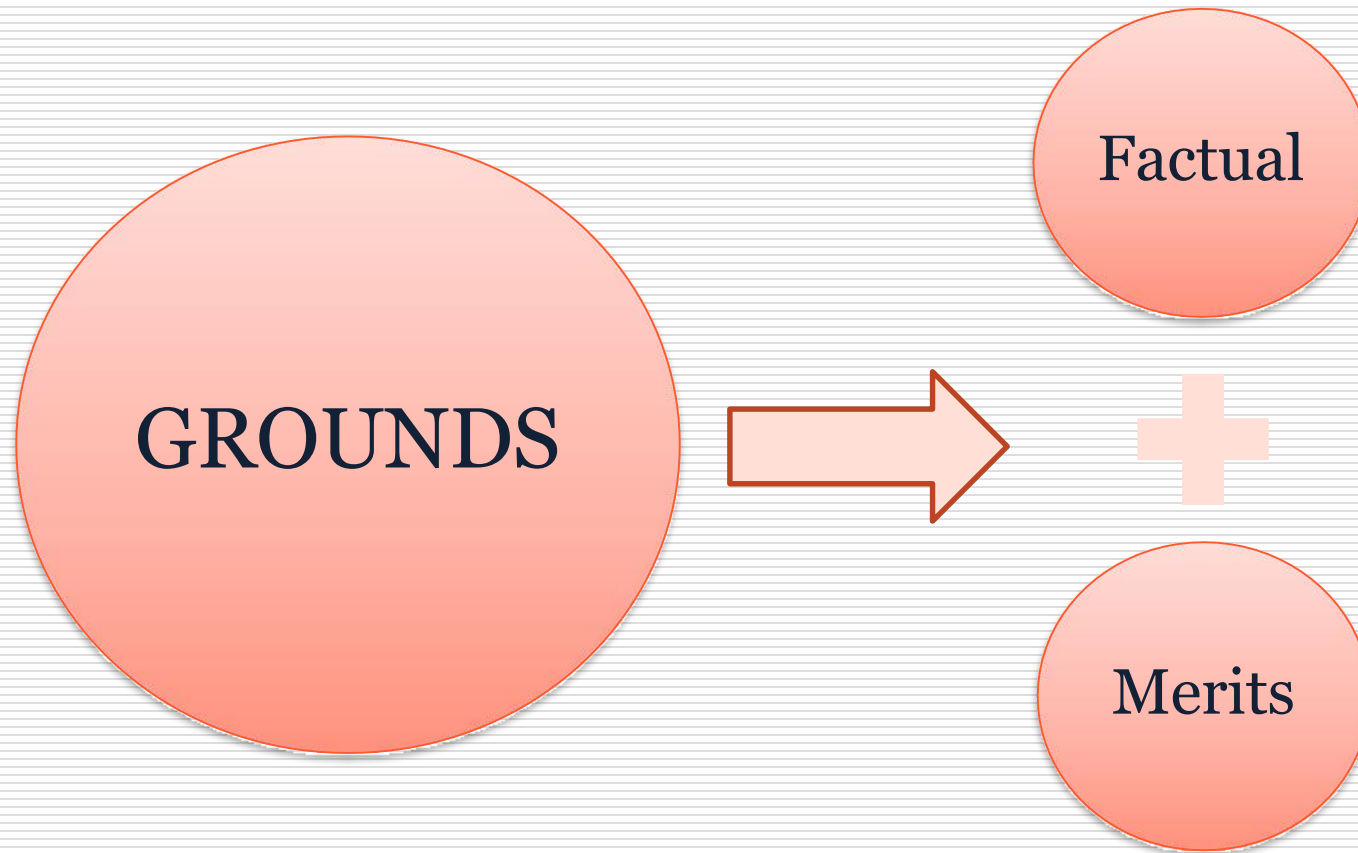
## Grounds of Appeal

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- ❖ Widest possible grounds should be taken in Appeal.
  - ❖ Grounds of appeal should be simple, clear, precise, concise and without any ambiguity.
  - ❖ In case of more than one issue involved in Appeal, draft separate ground for separate issue.
  - ❖ In case of more than one ground involved in Appeal, preference of grounds should be decided.
  - ❖ Avoid using long sentences.
-

# GROUND

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Jurisdiction

DIN

Mode of  
service

Limitation  
Period

Pre-SCN  
consultation

Order  
traversing  
beyond  
SCN

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**LEGAL - ASPECT**

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■

■

Non-  
Speaking

Interpretations

Procedural  
Lapse

Relevant  
Provisions

Computation  
Aspects

## COMMON GROUNDS

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### ❖ **PENALTY**

- ✓ *No Mens rea*
- ✓ *No malafide intention to evade payment of tax*
- ✓ *No suppression of facts in case of information available in public domain*
- ✓ *Transaction recorded in books*
- ✓ *Interpretation issue*
- ✓ *Contradictory decisions of courts or other appellate authorities.*
- ✓ *Revenue neutrality*
- ✓ *Assessee is a Government Organisation*

## Miscellaneous

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- ❖ File condonation of delay in case appeal is not filed on time.
- ❖ Pay proper fee to be paid when appeal is filed to Tribunal
- ❖ Whether tax which is self – assessed or which has been collected from the recipient has been deposited.
- ❖ If required, deposit under protest.
- ❖ Mention page no each page including the annexures attached.
- ❖ Proviso to Section 116 inserted but yet to be notified. Appeal against seizure of goods and vehicle 25% of penalty to be paid
- ❖ Reference from the favourable circulars issued by the department.
- ❖ Request for additional grounds
- ❖ Opportunity of being heard is a matter of right but to be specified [Section 75 (4)]
- ❖ Only 3 adjournments can be sought on the basis of sufficient cause [Section 75 (5)].
- ❖ Ensure that all enclosures are legible.

## Miscellaneous

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- ❖ Make an Index clearly showing all the documents attached.
- ❖ Whether amount deposited by the assessee has been appropriated.
- ❖ External evidences are more reliable than internal.
- ❖ To be drafted on exhaustive basis and all grounds should be taken 'without prejudice to each other'.
- ❖ Time limits are required to be strictly followed:
  - Appellate Authorities: Within 3 months (+ 1 month)
  - Appellate Tribunals: Within 3 months ( + 3 months COD)
  - Maximum 3 adjournments can b sought from Appellate Authority.
- ❖ Commissioner Appeal Order passed by Addl. Commissioner / Joint Commissioner
- ❖ Joint Commissioner Appeal – Order passed by AC/DC/Suptd.

## Miscellaneous

### ❖ To be Filed in prescribed formats:

- ✓ Appellate Authority: GST APL – 01
- ✓ Appellate Tribunal: GST APL – 05

### ❖ Pre-deposit required for filing of appeals:

- ✓ Appellate Authority: 10% of Tax in dispute (Max Rs 50 Cr)
- ✓ Appellate Tribunal: 20% of Tax in dispute (Max Rs 100 Cr)
- ✓ Admitted liability to be deposited in full

❖ All the grounds taken in SCN should be taken in Appeal as well.

❖ Additional Grounds on the basis of discussion and findings.

❖ Address all the findings recorded by the authority.

❖ Try to provide evidences in respect of all your submissions.

❖ Remember to rebut all the case laws relied upon by the authority.

❖ Ensure politeness but firmness in all communications with tax authorities.

## ADDITIONAL GROUNDS

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- ❖ **Additional Legal Ground can be added at the discretion of Appellate Authority [Sec. 107(10)]**
- ❖ **Additional evidence before Appellate Tribunal [Rule 112]:**
  - ✓ *Adjudicating/Appellate Authority refused to admit*
  - ✓ *Applicant was prevented by the sufficient cause*
  - ✓ *Order passed without giving opportunity of being heard*
  - ✓ *Reasons to be recorded in writing*
  - ✓ *Can suo moto call for any evidence*
- ❖ **The Appellate Authority can accept the additional grounds which are not included in the Grounds of Appeal at the time of hearing.**
- ❖ **However, such addition shall be allowed to make only if the Appellate Authority is satisfied that omission of that ground was not willful.**

## Representation before the Authorities

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- ❖ Prepare short notes that would help you while appearing before the adjudicating authority/ appellate authority.
- ❖ Explain the entire case to the Authority and your submissions in respect of the same.
- ❖ Do not rush to the conclusion.
- ❖ Prepare a synopsis of your appeal which should be crisp and short. These synopses are particularly more helpful during e-appeal.
- ❖ Speak slowly and softly but firmly.
- ❖ Should be very careful in voice modulations.
- ❖ Stress more on the points that are directly in your favour.
- ❖ A compilation of statutory provisions, circulars and case laws which you wish to rely upon with proper indexation should be handed over.

## Memorandum of cross objection (MOCO)

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- ❑ **Party against whom an appeal is filed may file MOCO u/s 112(5) of CGST Act.**
- ❖ In *State of Tamil Nadu vs. TVL Jevan Lal Ltd.* reported as 1997(91) E.L.T. 268(S.C.)-Hon'ble Supreme Court has, inter alia, held that if one party files appeal against part of the order which is against him, other party can file cross objections in respect of part of order which is against him, as the entire order comes within the purview of Appellate Authority.
- ❖ In *CCE vs. Godrej & Boyce Mfg. Co. Ltd.* reported as (2009) 233 E.L.T. 446 (Bom. HC DB), it was inter alia held that even if appeal was not filed, cross objection can be filed. Cross objection is treatable as appeal against that part of order only against which no appeal has been preferred.

## Memorandum of cross objection (MOCO)

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- ❖ MOCO should be filed within 45 days of receiving the notice that appeal has been filed.
- ❖ GSTAT can condone the delay for a maximum period up to 45 days on the sufficient cause.
- ❖ In *CCE vs. Godrej & Boyce Mfg. Co. Ltd.* reported as (2009) 233 E.L.T. 446 (Bom. HC DB), it was inter alia held that even if appeal was not filed, cross objection can be filed. Cross objection is treatable as appeal against that part of order only against which no appeal has been preferred.

## Department Appeal / Writ Jurisdiction

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- ❖ Department can also file an appeal against an order.
- ❖ Department can file an appeal to the Appellate Authority within 6 + 1 months from the date of communication.
- ❖ Department can also file an appeal to GSTAT within 6+ 3 months from date of communication.
- ❖ Writs can be filed to High Court as per Article 226 of the Constitution of India.
- ❖ A writ can be filed:
  - When the vires of the act is required to be challenged.
  - When there is a violation of principle of natural justice.
  - Where the alternative remedy is onerous or burdensome or inadequate
  - The order or proceedings are wholly without jurisdiction;
  - A writ petition cannot be filed in case where alternatively suitable equally efficacious remedy is available to the party.

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❖ *Oryx Fisheries Pvt. Ltd. v. Union of India — 2011 (266) E.L.T. 422 (S.C.)* If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defense.

❖ The latest judgment of the Hon'ble Supreme Court in the case of *M/s Radha Krishan Industries 2021 (4) TMI 837 - SUPREME COURT* can also be referred in this regard.

## Various Forms



Various Forms for Appeals under GST	
Form No.	Particulars
<b>GST APL-01</b>	Form of appeal to the Appellate Authority filed by aggrieved person, under section 107(1) of the Act
<b>GST APL-02</b>	Final acknowledgement, indicating appeal number issued by the Appellate Authority or an officer authorized by him or the Registrar
<b>GST APL-03</b>	Application to the Appellate Authority filed by the Commissioner, for examination of records of any proceedings, under section 107(2) of the Act
<b>GST RVN-01</b>	Notice under Section 108 to the person in case of Revision
<b>GST APL-04</b>	Summary of the demand after issue of order by the appellate authority, Revisional authority, tribunal or court
<b>GST APL-05</b>	Form of appeal to the Appellate Tribunal filed by aggrieved person, under section 112(1) of the Act
<b>GST APL-06</b>	Form of Memorandum of cross-objections to the Appellate Tribunal
<b>GST APL-07</b>	Application to the Appellate Tribunal filed by the Commissioner, for examination of records of any Order, under section 112(3) of the Act
<b>GST APL-08</b>	Form of appeal to the High Court containing grounds of appeal and the form of verification

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## Major Documents in Filing First Appeal

Facts of the Case

Grounds of Appeal

Relied upon Documents

GST APL – 01

Annexure to APL-01

### Major Considerations in Drafting the 'Facts of the Case'

About the Supplier & Business Profile

Chronology of events happened

Clean Facts and No Mixing of Grounds with Facts

Reference to ASMT-10, SCN etc.

Reference to Submissions and Personal Hearing

Reference to finding by Adjudicating Officer &

Order

## Major 'Technical/Legal' Grounds in Filing Appeal

Jurisdiction

Limitation Period

Opportunity of Being Heard

Speaking Order

Consideration of all Reply/Documents Submitted

Challenge of 'Vires' – Act, Rule, Notification

## Few practical aspects while drafting the Appeal before First Appellate Authority

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- ❑ Following steps would be of use while drafting the appeal:
- ❖ Discussion with the client on the nature of business, collection of documents like returns, supporting documents like invoices, challans, on which reliance is placed.
- ❖ Discussion with client on strong and weak areas in the order and intimating the client the chances of success in each of these areas and the exposure involved.
- ❖ Comparison of tax demanded, tax as per returns and tax as per books. Remittance of 10% of the disputed tax.
- ❖ Remittance of undisputed tax.
- ❖ Drafting should be in a chronological order which would facilitate easy comprehension by the Appellate Authority.
- ❖ Preparation of Form APL-01 with disputed amounts with break-up of individual issues.

## Few practical aspects while drafting the Appeal before First Appellate Authority

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### ❑ **Facts of the case should contain brief details of**

- ❖ 1. Dealer (hereinafter referred as Appellant).
- ❖ 2. Dealer's nature of business.
- ❖ 3. Details of inspection, statements given, notice served, reply to notice, points dropped by authority after considering the reply, taxes paid at the stage of reply to notice and finally the points raised in the order.
- ❖ 4. The detailed facts of the case including the facts not brought out at the stage of replying to the notice.
- ❖ 5. The statement of facts should not be argumentative and should be supported by documentary evidence.
- ❖ The facts should only narrate the sequence of events and circumstances leading to the appeal.
- ❖ The documents annexed to the appeal should support the facts narrated by the appellant.
- ❖ 6. The Issues and demands raised should match the break-up of disputed amounts mentioned in the Form of Appeal.

## Few practical aspects while drafting the Appeal before First Appellate Authority

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- ❑ The Grounds of Appeal should bring out the following:
  - ❖ 1.Capitalise on errors contained in the order like failure of Assessing Authority to enter findings though tax has been demanded.
  - ❖ 2.The grounds should support the facts narrated. There should be simplicity of language, clarity of expression, short sentences, brevity and concise form of pleadings.
  - ❖ 3.Case laws should be cited wherever required.
  - ❖ Only relevant case laws should be given along with gist of the relevant paragraphs in the case law. Thorough research should be made to find the relevance to the current case. In case there are many supporting case law, the same can be listed under a separate annexure.
  - ❖ 4.

Jindal Pipes Ltd. v. State of U.P.

[2020] 114 taxmann.com 467/78 GST 248/ 34 GSTL 48 (All.)

- ❑ Learned counsel for the petitioner has submitted that in the counter affidavit in paragraph 5, it had been admitted that order for depositing ₹ 2,79,397.48 was served upon the driver of the vehicle, Sri Narendra Kumar who was a driver of the transport agency and, therefore, the order was neither served on the consignee nor on the consignor. Learned counsel relied upon a judgment of this Court reported in S/S. Patel Hardware v. Commissioner of State GST [2021] 127 taxmann.com 284/[2019] 21 GSTL 145 (All.) wherein it has been specifically held that the order by which tax was levied and the penalty was imposed had to be served upon a person who was likely to be aggrieved by the order. It specifically holds that the driver was not a “person aggrieved” to whom the order ought to have been communicated and, therefore, the order definitely was not served upon a person who was likely to be aggrieved and, therefore, learned counsel for the petitioner submits that the appeal which was filed on 6.3.2019 was well within the limitation provided by section 107 of the Act.
- ❑ Having heard the learned counsel for the petitioner and the learned Standing Counsel, I am of the view that the order was served on the driver and, therefore, was definitely not served on a person who would have been aggrieved by the order and, therefore, the service on the driver was no service at all.

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Meritas Hotels (P.) Ltd. v. State of Maharashtra , 2021] 133 taxmann.com 222/[2022] 89 GST 453  
(Bom.)

18. In the light of the above discussion, we are of the considered opinion that it was incumbent upon the petitioner to file the appeal within the statutory period of limitation prescribed by subsection (1) and sub-section (4) of Section 107 of the said Act, to be reckoned taking into consideration the date of communication of impugned assessment order as April 20, 2019, which the petitioner failed to do. Consequently, we find n merit in the writ petition .The writ petitio is dismissed with no order as to costs.

Modern Steel v. Addl. Commissioner

**Citation: [2023] 156 taxmann.com 452 (All.)**

- **Held: 12. Now coming to the second issue as to the period of extension of limitation for filing the appeal, this Court finds that no plausible ground has been taken in the appeal filed by the assessee for condoning the delay except that the earlier counsel, to whom papers were handed over, did not file the appeal and by mistake the delay had occurred. Moreover, Section 107(4) of the Act provides that the Appellate Authority may, if satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three or six months, as the case may be, allow it to be presented within further period of one month. Once it is found that limitation period having been prescribed in the statute had expired, the Appellate Authority rightly proceeded to dismiss the appeal.**

**Penuel Nexus (P.) Ltd. v. Addl. Commissioner**  
**[2023] 152 taxmann.com 208/98 GST 957/75 GSTL 582 (Ker.)**  
**Date of Order: 13-06-2023**

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- ❑ Held: 10. The Central Goods and Services Tax Act is a special statute and a self-contained code by itself. Section 107 has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted.
- ❑ 11. On an appreciation of the language of Section 107(4) and the above analysed factual and legal background, this Court is of the view that there is no illegality in the action of the 1st respondent in rejecting the appeal as time-barred.

# Appeal to Appellate Authority of Advance Ruling

# Q&A

