

Preparatory for filing appeal before GSTAT - – Key Aspect & Procedures



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Filing Appeal before 1st Appellate Authority

<https://www.gst.gov.in/help/video/appeal/filereply>

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Appeal before Tribunal under GST Laws – GSTAT

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)

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.

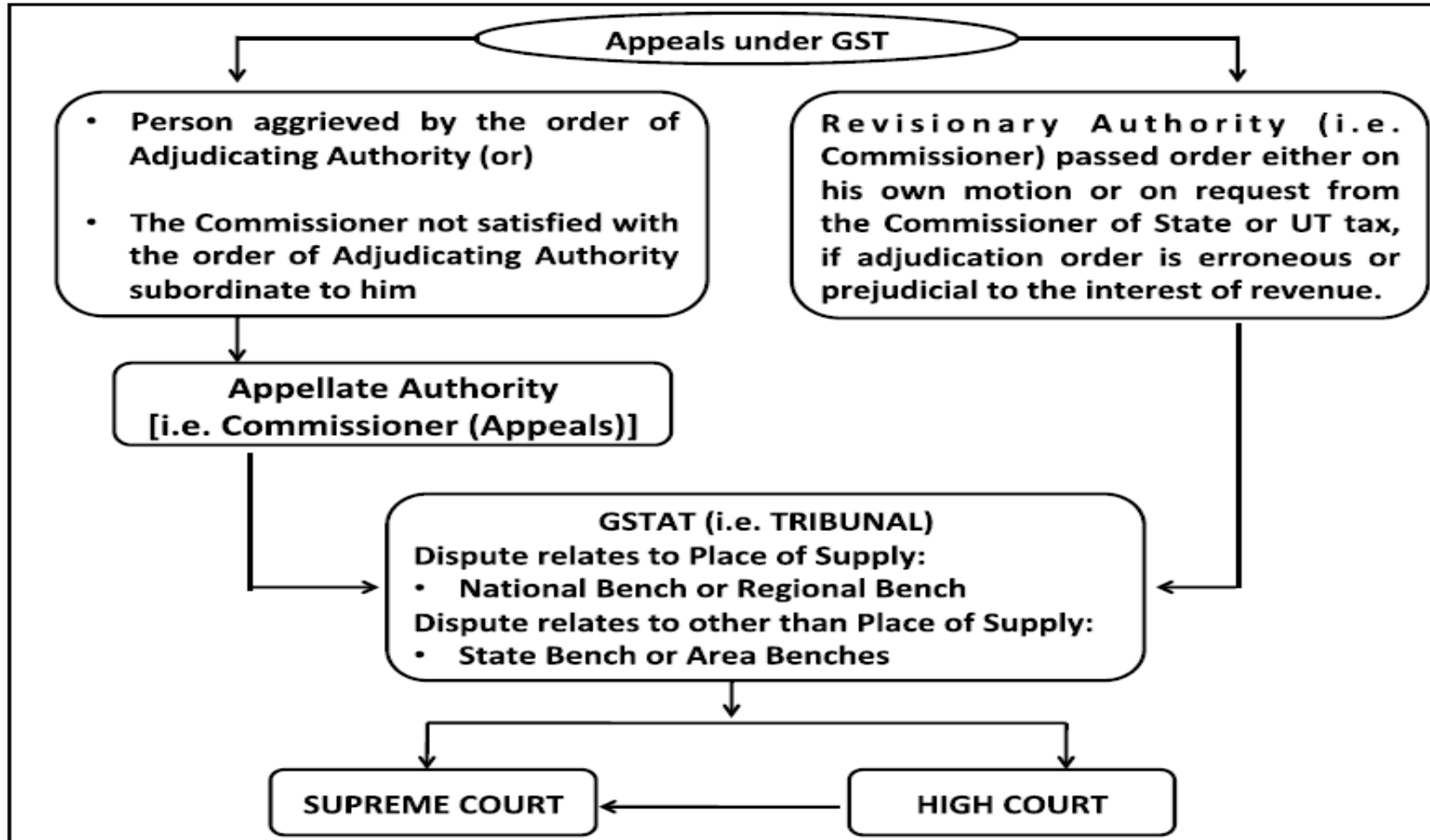
Appeal to Supreme Court

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

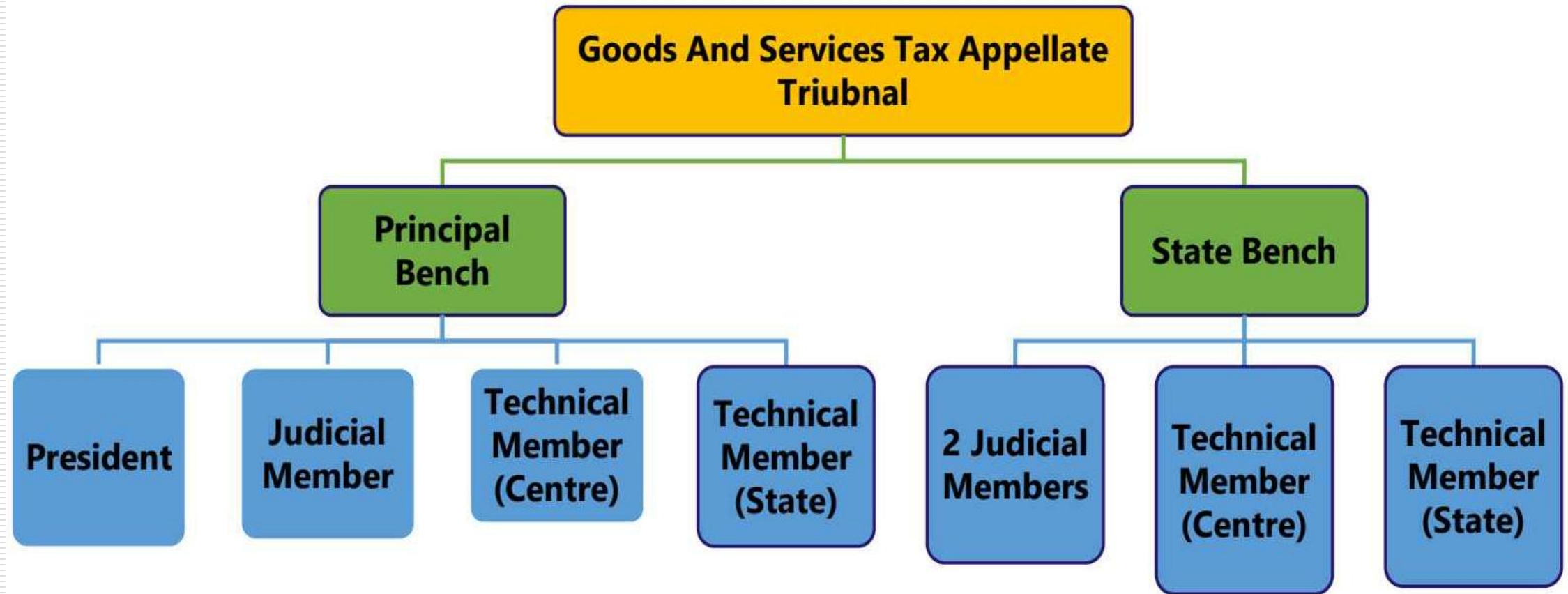
ORDER OF APPEAL IN GST

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]



GSTAT – Jurisdiction – Section 109(5)

Jurisdiction [Section 109(5)]:

- The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority.
- However, the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.
- ***Further, matters referred to in section 171(2) shall be examined or adjudicated only by the Principal Bench:***
- ***Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.***

GSTAT – Incase difference of Opinion

Majority rule in case of difference of opinion

If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—

- **where the appeal was originally heard by Members of a State Bench,** to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;
- **where the appeal was originally heard by Members of the Principal Bench,** to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

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 GSTAT

- (i) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice and shall have power to regulate its own procedure.
- (ii) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;

Procedure before GSTAT

- (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.

Procedure before Appellate Tribunal [Section 111]

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- (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]

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- (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

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.

**As per the CGST (Ninth Removal of Difficulties) Order, 2019, the start of the 3 months period shall be considered to be the later of the following dates:-*

- (i) date of communication of order; or*
- (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.*

Appeal to Appellate Tribunal

(iii) Form for filing appeal

An appeal to the Appellate Tribunal shall be filed in FORM GST APL-05, along with the relevant documents, electronically and provisional acknowledgement shall be issued to the appellant immediately:

An appeal to the Appellate Tribunal may be filed manually in FORM GST APL-05, along with the relevant documents, only if the Registrar allows the same by issuing a special/general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.



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

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 **and a minimum of ₹ 5,000.**

Fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be ₹ 5,000.

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

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.

**As per the CGST (Ninth Removal of Difficulties) Order, 2019, the start of the 6 months period shall be considered to be the later of the following dates:-*

- (i) date of communication of order; or*
- (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.*

Departmental Appeal

(iii) An application to the Appellate Tribunal shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately.

Such application may be filed manually in FORM GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special/general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(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.

Common provisions in case of appeal by the aggrieved person (taxpayer) and Departmental appeal

(I) Memorandum of cross objections

A memorandum of cross-objections to the Appellate Tribunal, if any, shall be filed electronically in FORM GST APL-06.

However, the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special/general order to that effect, subject to such conditions and restrictions as specified in the said order.

Common provisions in case appeal by aggrieved person and Departmental appeal

(II) Date of filing appeal

- (i) **Where the order appealed against is uploaded on the common portal a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal.**
- (ii) **If the order appealed against is not uploaded on the common portal the appellant shall submit/ upload a self-certified copy of the said order within a period of 7 days from the date of filing of FORM GST APL-05/ FORM GST APL-07 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.**

Common provisions in case appeal by aggrieved person and Departmental appeal

(iii) Where the said self-certified copy of the order is submitted/uploaded after a period of 7 days from the date of filing of FORM GST APL-05/ FORM GST APL-07

a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission/uploading of such self-certified copy shall be considered as the date of filing of 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.

Mandatory Pre- Deposits

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 in relation to which the appeal has been filed, subject to a maximum of ₹ 25 crore (₹ 50 crore in case of IGST*).

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

However, no appeal shall be filed before (AA) against an order under section 129(3)¹, unless a sum equal to 25% of the penalty has been paid by the appellant.

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

Mandatory Pre- Deposits

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits¹

- (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

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 6th 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

Interest on refund of pre-deposit [Section 115]

If the pre-deposit made by the appellant before the AA or the Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest as provided under section 56 shall be payable from the date of payment of the amount (and not from the date of the order of the AA or of the Tribunal) till the date of refund of such amount.

Production of Additional Evidence before GSTAT- Rule 112

- (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

Production of Additional Evidence before GSTAT- Rule 112

- (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 before GSTAT- Rule 112

- (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.



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.

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.

Monetary limit of filing Appeals- Circular No.207/1/2024

Clarification regarding monetary limits for filing appeals or applications or Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court³

Following monetary limits have been fixed for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:-

Appellate Forum	Monetary Limit (amount involved in ₹)
GSTAT	20 Lakh
High Court	1 Crore
Supreme Court	2 Crore

Monetary limit of filing Appeals – Circular No.207/1/2024

Amount to be considered for applying the monetary limit for filing appeal has been explained in the below table in relation to the category of disputes:--

S. No.	Dispute pertains to demand of	Amount to be considered for applying the monetary limit for filing appeal
1.	Tax (with or without penalty and/or interest) only	Aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)

Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case

In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

2.	Interest only	Amount of interest
3.	penalty only	Amount of penalty
4.	late fee only	Amount of late fee
5.	Interest, penalty and/or late fee (without involving any disputed tax amount)	Aggregate of amount of interest, penalty and late fee
6.	Erroneous refund	Amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)

Monetary limit of filing Appeals- Circular No.207/1/2024

Exclusions - Monetary limits specified above shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

- i. Where any provision of GST law has been held to be ultra vires to the Constitution of India; or***
- ii. Where any rules/regulations made under GST law have been held to be ultra vires the parent Act; or***
- iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the GST law or the Rules made there under; or***
- iv. Where the matter is related to -***
 - a. Valuation of goods/services; or***
 - b. Classification of goods/services; or***
 - c. Refunds; or***

- d. Place of Supply; or***
- e. Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/ circular/order/instruction etc.; or***
- v. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or***
- vi. Any other case or class of cases, where it is necessary to contest in the interest of justice or revenue.***

Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same/similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

Appearance before GSTAT - AR

(i) Who can be authorized representative?

Broadly an authorised representative can be a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or a GST Practitioner. It is also provided that specified indirect tax gazetted officers having served for at least 2 years, can appear as authorised representative after one year from the date of their retirement/resignation.

(ii) Disqualifications for authorized representative

The GST law also provides some disqualifications for an authorised representative. Section 116(3) lays down that no person,—

- (a) who has been dismissed or removed from Government service; or

Appearance before GSTAT - AR

- (b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods and/or services; or
 - (c) who is found guilty of misconduct by the prescribed authority;
 - (d) who has been adjudged as an insolvent,
- shall be qualified to represent any person—
- (i) for all times in case of persons referred to in clauses (a), (b) and (c); and
 - (ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).
- (iii)** Any person who has been disqualified under the provisions of the SGST Act/ UTGST Act shall be deemed to be disqualified under the CGST Act also.

'Rectification' under GST Law

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

- **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

- **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

(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

- ❑ 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.*

Q&A

