



Disclaimer: This PPT is designed to impart basic knowledge on Assessment in GST for training purpose. This PPT does not claim coverage of exhaustive provisions under CGST Act. Please refer to actual law provisions for use which is different from the intended purpose.

Theory of Appeals in GST in detail



27.07.2022 & 28.07.2022

FCMA Yogesh Chatwani;

Practicing Cost Accountant, IP and Registered Valuer (SFA);

Coverage

Overview of Appeals under GST;
Appeals to Appellate Authority – Section 107;
Powers of Revisional Authority - Section 108;
Appeal to Appellate Authority – Rule 108;
Application to Appellate Authority – Rule 109;
Appointment of Appellate Authority – Rule 109A;
Notice to Person and Order of Revisional Authority in case of Revision – Rule 109B;



Overview of Appeals under GST

Statutory Provisions relating to Appeals

| Chapter | Section | Rule | Description |
|---------|---------|----------------------|---|
| XVIII | 107 | 108, 109, 109A, 144A | Appeals to Appellate Authority |
| XVIII | 108 | 109B | Powers of Revisional Authority |
| XVIII | 109 | | Constitution of Appellate Tribunal and Benches thereof |
| XVIII | 110 | | President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc |
| XVIII | 111 | | Procedure before Appellate Tribunal |
| XVIII | 112 | 89, 110, 111 | Appeals to Appellate Tribunal |
| XVIII | 113 | | Orders of Appellate Tribunal |
| XVIII | 114 | | Financial and administrative powers of President |
| XVIII | 115 | | Interest on refund of amount paid for admission of appeal |

Statutory Provisions relating to Appeals

| Chapter | Section | Rule | Description |
|---------|---------|------|---|
| XVIII | 116 | 116 | Appearance by authorised representative |
| XVIII | 117 | 114 | Appeal to High Court |
| XVIII | 118 | | Appeal to Supreme Court |
| XVIII | 119 | | Sums due to be paid notwithstanding appeal, etc |
| XVIII | 120 | | Appeal not to be filed in certain cases |
| XVIII | 121 | | Non-appealable decisions and orders |

Forms related to Appeals

| Form No. | Rule | Description |
|------------|-------------------|---|
| GST APL-01 | 108(1) | Appeal to Appellate Authority; |
| GST APL-02 | 108(3) | Acknowledgement for submission of Appeal; |
| GST APL-03 | 109(1) | Application to the Appellate Authority U/S 107(2); |
| GST APL-04 | 109B, 113 and 115 | Summary of the demand after issue of order by the Appellate Authority, Revisional Authority, Tribunal or Court; |
| GST APL-05 | 110(1) | Appeal to the Appellate Authority; |
| GST APL-06 | 110(2) | Cross Objection before the Appellate Tribunal U/S 12(5); |
| GST APL-07 | 111(1) | Application to the Appellate Tribunal U/S 112(3) |
| GST APL-08 | 114(1) | Appeal to High Court U/S 117 |
| GST RVN-01 | 109(B) | Notice U/S 108 |

Meaning of Appeal

- In simple words, an “Appeal” is a challenge to a previous legal determination;
- The term ‘Appeal’, in legal context, is generally understood to mean “proceeding” or “Application” preferred by an “aggrieved party” before the higher judicial forum for review of a decision of the lower court;
- The meaning of Appeal as per Black’s Law Dictionary (6th edition) is:
“Resort to a superior (that is appellate) court or administrative agency”;
- The Person pursuing an Appeal is called “Appellant”, while the Person defending an Appeal is the “Respondent”;

Important case law on the “Meaning of Appeal”

In **State of Gujarat vs. Salimbhai Abdulgaffar Shaikh – AIR 2003 SC 3224**, the Supreme Court observed:

- “Though the word ‘Appeal’ is used both in **Code of Criminal Procedure** and **Code of Civil Procedure** and in many other Statutes but **it has not been defined anywhere**. Over a period-of-time, it has acquired a definite connotation and meaning which is as under:
- A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority, specially, the submission of a lower Court's decision to higher Court for review and possible reversal.
- An appeal strictly so called is one in which the question is, whether the order of the Court from which the appeal is brought was right on the material which the Court had before it.
- An appeal is removal of the cause from an inferior to one of superior jurisdiction for the purposes of obtaining a review or retrial.

An appeal generally-speaking is a rehearing by a superior Court on both law and fact.”

Important Definitions

“Adjudicating Authority” means any authority, appointed or authorized 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; - **Section 2(4)**

“Appellate Authority” means an authority appointed or authorized to hear appeals as referred to in section 107; - **Section 2(8)**

“Appellate Tribunal” means the Goods and Services Tax Appellate Tribunal constituted under section 109; - **Section 2(9)**

“Authorized Representative” means the representative as referred to in section 116; - **Section 2(15)**

“Revisional Authority” means an authority appointed or authorized for revision of decision or orders as referred to in section 108; - **Section 2(99)**

Appeals Mechanism under GST

| | |
|--------------------|--|
| Section 107 | First Appeal before the Appellate Authority - read with Section 115 and 116; |
| Section 108 | Provisions relating to Revisionary Authority; |
| Section 109 to 114 | Second appeal before the Appellate Tribunal – read with Section 115 and 116; |
| Section 117 | Appeal to High Court; |
| Section 118 | Appeal to Supreme Court; |
| Section 119 to 121 | Other miscellaneous provisions; |

Impact on “Right to Appeal” due to Dual structure of GST

GST implemented in India is a **dual GST**;

Supply attracting levy will be leviable to **both central tax and state tax**;

Centre and States are vested with **concurrent jurisdiction** to levy tax on the same tax base;

In this circumstances, if a **taxpayer is aggrieved**, to whom shall an **Appeal against the Order passed by an Officer of CGST lie?**

The Appeal shall lie **only to an Officer appointed under the CGST Act.**

Section 6 (3) of the CGST Act specifically mandates that “any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST or UTGST Act”.

Similar provisions exist in SGST/UTGST Act also.

Non-appealable decisions and orders – Section 121

*“Notwithstanding anything to the contrary in any provisions of this Act, **no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:-***

*(a) an order of the Commissioner or other authority empowered to **direct transfer of proceedings from one officer to another officer**; or*

*(b) an order pertaining to the **seizure or retention of books of account, register and other documents**; or*

*(c) an order **sanctioning prosecution** under this Act; or*

*(d) an order **passed under section 80.**”*

Section 80 relates to **Payment of tax and other amount in instalments**;

Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021 –

Circular No. 157/13/2021-GST dated 20/7/2021

Appeals by taxpayers/ tax authorities against any quasi-judicial order:

- Wherever any appeal is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the timeline for the same would stand extended as per the Hon'ble Supreme Court's order.
- Hon. Supreme Court of India, thru Order dated 10/01/2022, has extended timeline till **28/02/2022**;
- The extension granted by Hon'ble Supreme Court order will not be applied to the compliance related matters and non-quasi-judicial matters

Appeal in regard to Non- Constitution of Appellate Tribunal (GSTAT)

Section 109(1) of the CGST Act empowers the Central Government to constitute, on the **recommendation of the GST Council**, from such date as may be specified therein, an **Appellate Tribunal** to hear Appeals against orders made **by the first level Appellate Authority** or the Revisional Authority;

The power of the Appellate Tribunal shall be exercised by the National Bench, the Regional Benches and the State and Area Benches;

The Appellate Tribunal **has not been constituted yet**;

In order to remove difficulty arising in giving effect to Section 122, the Government, on the recommendations of the GST Council, has issued the **CGST (Ninth Removal of Difficulties) Order, 2019, dated December 03, 2019**, in terms of which Appeal to Appellate Tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or **date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later**;

The CBIC, vide **Circular No. 132/2/2020–GST dated 18/03/2020**, clarified that the prescribed time limit to make Application to the Appellate Tribunal will be counted **from the date on which the President or the State President enters office, whichever is later**;

Monetary Limits for issue of SCN and Orders U/S 73 and 74 – Circular 31/2018 dated 09/02/2018

| Officer of Central Tax | Monetary limit of the amount of CGST (including Cess) for issuance of SCN and Orders U/S 73 and 74 of CGST Act | Monetary limit of the amount of IGST (including Cess) for issuance of SCN and Orders U/S 73 and 74 of CGST Act made applicable to IGST U/S 20 | Monetary limit of the amount of CGST and IGST (including Cess) for issuance of SCN and Orders U/S 73 and 74 of CGST Act made applicable to IGST U/S 20 |
|-----------------------------|--|---|--|
| Superintendent | Not exceeding Rs. 10 lakhs; | Not exceeding Rs. 20 lakhs; | Not exceeding Rs. 20 lakhs; |
| Deputy or Asst Commissioner | Above Rs. 10 lakhs & not exceeding Rs. 1 crore; | Above Rs. 20 lakhs & not exceeding Rs. 2 crore; | Above Rs. 20 lakhs & not exceeding Rs. 2 crore; |
| Addl or Joint Commissioner | Above Rs. 1 crore without any limit; | Above Rs. 2 crore without any limit; | Above Rs. 2 crore without any limit; |

Steps of Appeal under GST

| Appeal level | Orders passed by | Appeal to | Relevant Sections |
|-----------------|----------------------------|----------------------------|-------------------|
| 1 st | Adjudicating Authority; | First Appellate Authority; | 107 |
| 2 nd | First Appellate Authority; | Appellate Tribunal | 109, 110 |
| 3 rd | Appellate Tribunal | High Court | 111 – 116 |
| 4 th | High Court | Supreme Court | 117 - 118 |

Writ jurisdiction of the Supreme Court vis-à-vis High Courts

Article 32 of the Indian Constitution empowers the Supreme Court to issue writs;

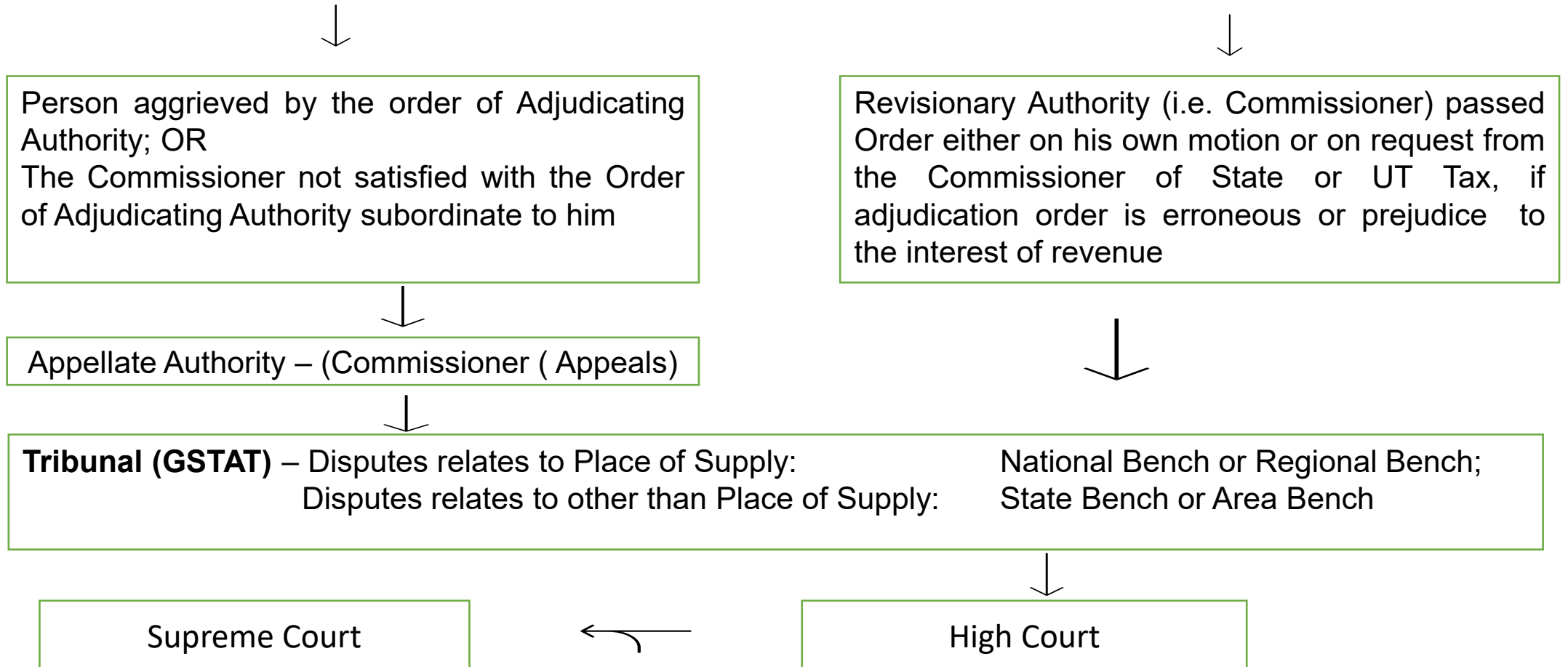
Article 226 empowers the High Courts to issue writs;

The Differences between the writ jurisdiction of both the courts:

| Difference | Supreme Court | High Court |
|--------------------------|---|--|
| Purpose | To enforce Fundamental Rights only; | To enforce Fundamental Rights as well as for other purposes (e.g. legal rights); |
| Territorial Jurisdiction | Against a person or Government throughout India; | Against a person, Government or Authority located within its territorial jurisdiction (outside jurisdiction where cause of action arises within its jurisdiction); |
| Power | Supreme Court may not refuse to exercise its powers to issue writs; | Discretionary – May refuse to exercise its powers o writs; |

Appeals under GST

Appeals under GST





Appeals to Appellate Authority –

Overview and Analysis of related Sections
under CGST Act and Rules under CGST
Rules

Appeals to Appellate Authority – Section 107

(1) **Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.**

(2) **The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.**

(3) **Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorized officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.**

Appeals to Appellate Authority – Section 107

(4) **The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.**

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) **No appeal shall be filed under sub-section (1), unless the appellant has paid-**

(a) **in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and**

(b) **a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.**

Provided that no appeal shall be filed against an order under sub-section (3) of section 129 , unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.

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

(8) **The Appellate Authority shall give an opportunity to the appellant of being heard.**

Appeals to Appellate Authority – Section 107

(9) The **Appellate Authority** may, if sufficient cause is shown at any stage of hearing of an appeal, **grant time to the parties** or any of them and **adjourn the hearing** of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be **granted more than three times** to a party during hearing of the appeal.

(10) 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 willful or unreasonable**.

(11) 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** but shall **not refer the case back to the adjudicating authority** that passed the said decision or order:

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:

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 utilized, 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.

Appeals to Appellate Authority – Section 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.*

(13) *The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:*

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(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.*

(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.*

(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.*

Salient Features of provisions U/S 107

Any Person aggrieved by any decision or Order passed under CGST, SGST or UGST by an Adjudicating Authority may Appeal to Appellate Authority within 3 months;

The Commissioner may call and examine the record of any proceedings and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months for determining such points as may be specified by the Commissioner;

Application made by the Authorized Officer to the Appellate Authority U/S 107(2) shall be deemed to be Appeal made against the decision or order of the adjudicating authority;

Appellate Authority may allow to present Appeal within a further period of one month beyond 3 months or 6 months, as the case may be;

Appeal not to be filed unless Appellant makes Pre Deposit: (a) in full of the admitted amount; (b) 10% of remaining tax dues (25% in cases of detention, seizure and release of goods and conveyance in transit) subject to maximum of **Rs. 25.00 crores**;

Recovery proceedings for the balance amount shall be **deemed to be stayed** on payment of Pre Deposit;

Salient Features of provisions U/S 107

*Appellate Authority to give **opportunity of Hearing**;*

*Appellate Authority to grant adjournment of hearing, **subject to maximum 3 times**, for valid reasons;*

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 provided omission was not wilful or unreasonable;

Appellate Authority shall pass the Order confirming, modifying or annulling the decision aor order appealed against but shall not refer the case back to the adjudicating authority;

Appellant to get an opportunity of showing cause where any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or ITC subject to provisions of Section 73 and 74;

Appellate Authority shall issue speaking order.

*Appellate Authority to dispose off Appeal within one year;
Period of litigation, if any, to be excluded;*

Powers of Revisional Authority –

Section 108

(1) **Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order;**

(2) **The Revisional Authority shall not exercise any power under sub-section (1), if:**

(a) **the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or**

(b) **the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or**

Powers of Revisional Authority –

Section 108

c) the order **has already been taken for revision** under this section at an earlier stage; or

(d) the order **has been passed** in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) **on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that subsection, whichever is later.**

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of **section 113 or section 117 or section 118**, be **final and binding** on the parties.

(4) If the said decision or order involves an issue on which the **Appellate Tribunal or the High Court has given its decision in some other proceedings** and an appeal to the High Court or the Supreme Court against such decision of the **Appellate Tribunal or the High Court is pending**, the period spent **between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation** referred to in clause (b) of sub-section (2) where proceedings for **revision have been initiated by way of issue of a notice** under this section.

Powers of Revisional Authority –

Section 108

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term,-

(i) "record" shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;

(ii) "decision" shall include intimation given by any officer lower in rank than the Revisional Authority.

Appeal to Appellate Authority – Rule 108

(1) An appeal to the Appellate Authority under **sub-section (1) of section 107** shall be filed in **FORM GST APL-01**, along with the relevant documents, either **electronically or otherwise** as may be notified by the **Commissioner**, and a **provisional acknowledgement** shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorized by him in this behalf:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation. -For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Application to the Appellate Authority – Rule 109

*(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be made in **FORM GST APL-03**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.*



(2) A certified copy of the decision or order appealed against shall be submitted within seven days of the filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorized by him in this behalf.

Appointment of Appellate Authority – Rule 109A

(1) Any person aggrieved **by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -**

(a) **the Commissioner (Appeals)** where such decision or order is passed **by the Additional or Joint Commissioner;**

(b) **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, within three months** from the date on which the said decision or order is communicated to such person.

(2) An officer directed under **sub-section (2) of section 107** to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -

(a) **the Commissioner (Appeals)** where such decision or order is passed **by the Additional or Joint Commissioner;**

(b) **any officer not below the rank of Joint Commissioner (Appeals)** where such decision or order is passed by **the Deputy or Assistant Commissioner or the Superintendent, within six months** from the date of communication of the said decision or order.

Notice to person and order of revisional authority in case of revision – Rule 109B

(1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.

(2) The Revisional Authority shall, along with its order under sub-section (1) of section 108 , issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed;

First Appeal Flow Chart



Any Taxpayer or an Unregistered Person aggrieved by any decision or Order passed against him by an **Adjudicating Authority** – **Form GST APL-01** within three months;



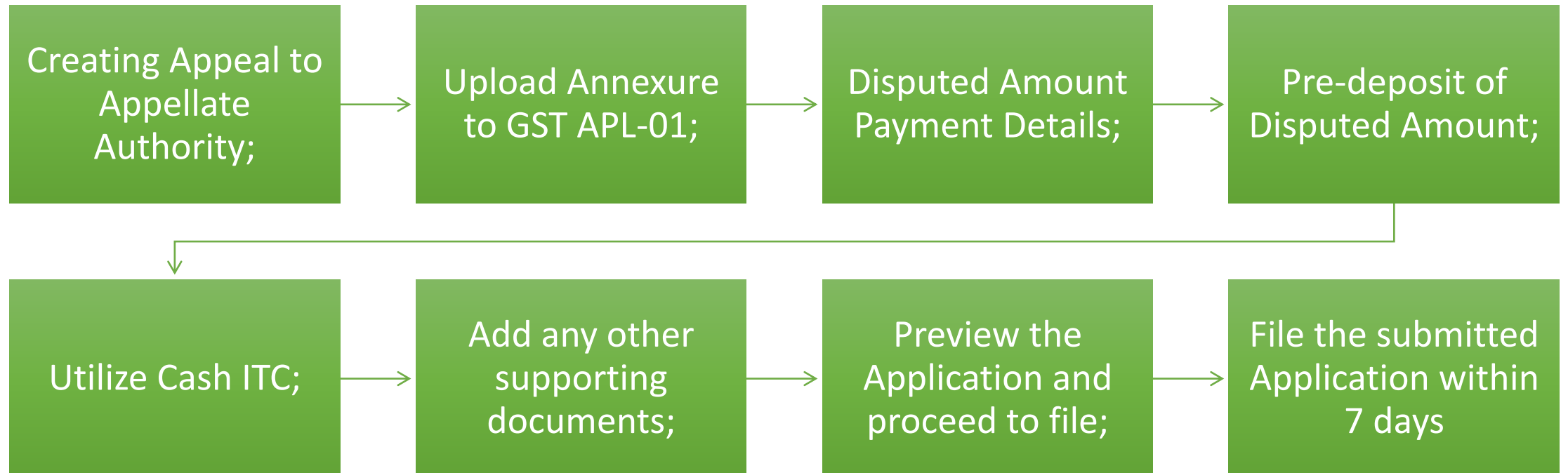
Amount of Deposit: 10% of Disputed Amount + Amount of tax dues Admitted (subject to maximum Rs. 25 crores);



Application submitted to Appellate Authority;



Procedure for filing of First Appeal



Appeal by Tax Department

Commissioner of Central / State with a view to satisfy himself about the legality or propriety of any Order or Decision, direct a subordinate Officer to file an Application – **Form GST APL-03**;

Application submitted to Appellate Authority;



Appeals to Appellate Tribunal –

Overview and Analysis of related Sections under CGST Act and Rules under CGST Rules

Constitution of Appellate Tribunal and Benches thereof – Section 109

(1) The Government shall, on the recommendations of the Council, by notification, constitute **with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal** for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the **National Bench and Benches thereof** (hereinafter in this Chapter referred to as "**Regional Benches**"), **State Bench and Benches thereof** (hereafter in this Chapter referred to as "**Area Benches**").

(3) The **National Bench** of the Appellate Tribunal shall be situated at **New Delhi** which shall be presided over by the **President** and shall consist of **one Technical Member (Centre) and one Technical Member (State)**.

(4) The Government shall, on the recommendations of the Council, by notification, constitute **such number of Regional Benches** as may be required and such Regional Benches shall consist of a **Judicial Member, one Technical Member (Centre) and one Technical Member (State)**.

(5) The **National Bench or Regional Benches** of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

Constitution of Appellate Tribunal and Benches thereof – Section 109

(6) The Government shall, by notification, specify for **each State or Union territory**, a Bench of the **Appellate Tribunal** (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided further that the Government shall, on receipt of a request from any State Government, constitute **such number of Area Benches** in that State, as may be recommended by the Council:

Provided also that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the **Appellate Tribunal in a State to act as the Appellate Tribunal** for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed

(7) **The State Bench or Area Benches** shall have **jurisdiction to hear appeals** against the orders passed by the **Appellate Authority or the Revisional Authority** in the cases involving matters other than those referred to in sub-section (5).

(8) **The President and the State President** shall, by general or special order, distribute the business or transfer cases among **Regional Benches** or, as the case may be, **Area Benches** in a State.

(9) **Each State Bench and Area Benches of the Appellate Tribunal** shall consist of a **Judicial Member, one Technical Member (Centre) and one Technical Member (State)** and the State Government may designate the **senior most Judicial Member in a State as the State President**.

Constitution of Appellate Tribunal and Benches thereof – Section 109

(10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, **be heard by a Bench of two Members:**

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, **does not exceed five lakh rupees** and which does not involve **any question of law** may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, **be heard by a bench consisting of a single member.**

(11) If the Members of the **National Bench, Regional Benches, State Bench or Area Benches** differ in opinion on any point or points, it shall be decided **according to the opinion of the majority**, if there is a majority, but if the Members **are equally divided**, they shall state **the point or points on which they differ**, and the case shall be referred by the **President** or as the case may be, **State President for hearing** on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion **of the majority of Members who have heard the case**, including those who first heard it.

Constitution of Appellate Tribunal and Benches thereof – Section 109

(12) The Government, **in consultation with the President** may, for the administrative convenience, **transfer-**

(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; Or

(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a **Judicial Member or a Member Technical (State)** from one Bench to another Bench within the State.

(14) No act or proceedings of the **Appellate Tribunal** shall be questioned or shall be invalid merely on the ground of the existence of **any vacancy or defect in the constitution** of the Appellate Tribunal.

Salient Features – Section 109

42

Based on the recommendation of the Council and by Notification, the Central Government shall constitute **Goods & Service Tax Appellate Tribunal (GSTAT)** for hearing appeals against the orders passed by the Appellate Authority or Revisional Authority;

The powers of **the Appellate Tribunal** shall be exercisable by the **National Bench or Regional Benches, State Bench and Area Benches**;

The **National Bench** shall be situated at **New Delhi** which shall be presided over by the President, one Technical Member (Centre) and one Technical Member (State);

The **Regional Benches** shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State);

The **National Bench or Regional Benches** shall hear the Appeals only where one of the issues involved relates to the Place of Supply;

The **State Bench or Area Benches** shall hear the Appeals involving matters **other than matters covering Place of Supply**;

The **President and the State President** shall by **General or Special order** distribute the business or transfer cases among **Regional Benches or Area Benches in a State**;

Salient Features – Section 109

43

In the absence of a member of any Bench due to **vacancy or otherwise**, any Appeal with the approval of President or State President be heard by a Bench of two members.

Any matter (other than matter involving question of law) involving tax, input tax credit, fine, fee or penalty determined in any order appealed against, not exceeding **`5 Lakhs may be heard by single member Bench**.

No **act or proceedings of the Appellate Tribunal** shall be questioned or shall be invalid merely only on the ground of the existence **of any vacancy or defect in the constitution** of Appellate Tribunal.

Summary of Sections 110 and 111

Section 110 deals with **Appointment of the President / Members of the Appellate Tribunal**, their qualifications, methodology of appointment, service conditions etc.;

Section 111 deals with the procedure to be followed by Appellate Tribunal while disposing of any proceedings before it;

The Appellate Tribunal is not bound by the procedure laid down under the **Code of Civil Procedure** except in respect of certain matters such as **summoning and enforcing attendance of person, receiving evidence on affidavits, requiring production of documents etc.**;

The Appellate Tribunal shall be guided by the Principles of Natural Justice;

All the proceedings **before the Appellate Tribunal** shall be deemed to be **judicial proceedings** within the meaning of **Section 193, 228 & 196 of IPC**;

The Appellate Tribunal shall be **deemed to be a Civil Court** for all the purposes of Section 195 and **chapter XXVI of the Code of Criminal Procedure 1973**;



Appeal to Appellate Tribunal – Rule 110

(1) An appeal to the Appellate Tribunal under subsection (1) of section 112 shall be filed along with the relevant documents **either electronically or otherwise** as may be notified by the Registrar, in **FORM GST APL-05**, on the common portal and a **provisional acknowledgement** shall be issued to the appellant immediately.

(2) A **memorandum of cross-objections** to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either **electronically or otherwise** as may be notified by the Registrar, in **FORM GST APL-06**.

(3) The appeal and the **memorandum of cross objections** shall be signed in the manner specified in rule 26.

(4) A **certified copy of the decision or order appealed against** along with fees as specified in sub-rule (5) shall be submitted to the Registrar **within seven days** of the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in **FORM GST APL-02** by the Registrar.

Provided that where the certified copy of the decision or order is **submitted within seven days** from the date of filing the **FORM GST APL-05**, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.



Appeal to Appellate Tribunal – Rule 110

Explanation. -For the purposes of this rule, the appeal **shall be treated as filed** only when the **final acknowledgement** indicating the **appeal number** is issued.

(5) The fees for filing of appeal or restoration of appeal shall be **one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty-five thousand rupees.**

(6) There shall be **no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112 .**



Application to the Appellate Tribunal – Rule 111

*(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be made electronically or otherwise, in **FORM GST APL-07** , along with **the relevant documents on the common portal**.*

*(2) A certified copy of the decision or order appealed against shall be submitted **within seven days of filing the application** under sub-rule (1) and an **appeal number shall be generated by the Registrar**.*



Production of additional evidence before the Appellate Authority or Appellate Tribunal – Rule 112

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate 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 Appellate Authority except in the following circumstances, namely:-

(a) where the adjudicating authority or, as the case may be, the Appellate Authority 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 Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.



Production of additional evidence before the Appellate Authority or Appellate Tribunal – Rule 112

*(2) **No evidence shall be admitted** under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal **records in writing the reasons for its admission.***

*(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) 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 evidence produced** by the appellant under sub-rule (1).*

*(4) Nothing contained in this rule shall affect **the power of the Appellate Authority 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.***



Order of Appellate Authority or Appellate Tribunal – Rule 113

*(1) The Appellate Authority shall, along with its order under sub-section (11) of section 107 , issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.*

*(2) The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.*

Analysis of Section 112 and Relevant Rules - Appeals to Appellate Tribunal

51

Any person aggrieved by an order passed against **him U/S 107 or Section 108** of CGST Act or SGST Act or UGST Act may prefer an Appeal **within a period of 3 months** from the date of communication of decision or order in Form **GST APL-05**, along with relevant documents either electronically or otherwise as notified by the Registrar against which a provisional acknowledgement will be issued.

The Grounds of Appeal and form of verification must be duly signed and a certified copy of the decision or Order, along with the prescribed fees is to be filed before the Registrar **within 7 days of filing the appeal**.

Thereafter, a final acknowledgement indicating the appeal number shall be issued in **Form GST APL-02** by the said Authority.

In such a situation, the Appeal shall be deemed to be filed on the **date on which the provisional acknowledgement stands issued**.

In case the said certified copy is submitted **after a period of 7 days**, the **date of filing of Appeal shall be the date of submission of such copy**;

The Appeal shall be considered as filed only when the **final acknowledgement**, indicating the Appeal number is issued.

Analysis of Section 112 and Relevant Rules - Appeals to Appellate Tribunal

52

The Appellate Tribunal has **discretion to refuse to admit such Appeal** in case the tax amount or input tax credit or the difference in tax or input tax credit involved or amount of fine, fees or penalty ordered **against does not exceed Rs. 50,000/-**.

The Commissioner of CGST, SGST or UGST can, with a view to satisfy himself about the legality or propriety of any Order or decision passed by the Appellate Authority or Revisional Authority, direct a subordinate officer to file an Application before the Appellate Tribunal **within 6 months** from the date of communication of decision or order in **Form GST APL-07**, along **with relevant documents** either **electronically or otherwise** as notified against issue of an acknowledgement.

A certified copy of the **decision or Order of the Appeal**, along with the prescribed fees is to be filed before the Registrar **within 7 days** of filing the application and an appeal number shall be generated accordingly.

Memorandum of Cross objection to be filed in **FORM GST APL-06** within **45 days from the receipt of notice of filing of such appeal**.

Appellate Tribunal is empowered to condone the delay in filing appeal by assessee for a **further period of 3 months** or memorandum of cross objection for a **further period of 45 days** if there was sufficient cause for not presenting within specified period.

Analysis of Section 112 and Relevant Rules - Appeals to Appellate Tribunal

53

No powers have been granted to the Appellate Tribunal to **condone the delay in filing appeal by the tax authorities.**

Appeal has to be filed in prescribed form and manner along with payment of:

Amount of tax, interest, fine, fee & penalty, **as is admitted, in full**; and

Pre-deposit of sum **equal to 20% of remaining amount** of tax in dispute in addition to amount deposited during filing appeal before Appellate Authority **subject to maximum of fifty crores.**

On payment of above amount (interest, tax, fine, fee, etc) , the recovery proceedings **for balance amount are stayed** till the disposal of appeal.

No **pre-deposit** shall be payable in case of appeal filed by the tax authorities.

(k) Every miscellaneous application shall be filed along with prescribed fees.

The fees for filing and restoration of appeal shall be **one thousand rupees** for every **one lakh rupees of tax** or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of **twenty-five thousand rupees.**

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

Analysis of Section 113 and Relevant Rules – Orders of Appellate Tribunal

54

The Appellate Tribunal to **pass the order confirming, modifying or annulling the decision or order appealed against.**

The Appellate Tribunal **also has power to remand the case back** to the appellate authority or the Revisional authority or the original adjudicating authority.

Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.

The Appellate Tribunal **is empowered to amend its order to rectify any mistake apparent from record.** However, Tribunal may rectify its order if the mistake is brought to its notice by Commissioner or other party to appeal **within period of 3 months** of date of such order. Opportunity of being heard to be granted in case **such rectification results into enhancing an assessment** or reducing a refund or input tax credit or otherwise increasing the liability.

The Appellate Tribunal to **hear and decide the appeal**, as far as possible, **within a period of 1 year** from the date of filing.

The Appellate Tribunal to communicate the copy of order to appellate authority / Revisional authority / original adjudicating authority, the appellant, the jurisdictional Commissioner, Commissioner of State Tax or Union Territory Tax.

The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.



Appeals High Court –

Overview and Analysis of related Sections under CGST Act and Rules under CGST Rules

Analysis of Section 117 and Relevant Rules – Appeal to High Court;

The High Court may **admit an appeal** if it is satisfied that the **case involves a substantial question of law**;

No appeal shall lie before a High **Court if such order is passed by National Bench or Regional Benches**. In other words, appeal shall be filed before High Court if such order is **passed by State bench or Area benches** of the Appellate Tribunal.

Appeal has to be filed in the **Form GST APL 08**, precisely stating the **substantial question of law involved**, **within 180 days** from the date of receipt of order appealed against accompanied by **prescribed fee**.

The High Court is empowered to **condone the delay in filing appeal**.

On being satisfied, High Court **shall formulate a substantial question of law**.

Appeal to be heard only on **the question so formulated** and the respondent shall be **allowed to argue that the case does not involve such question**.



Analysis of Section 117 and Relevant Rules – Appeal to High Court;

The High Court may **hear the appeal on any other substantial question of law** not formulated by it after satisfying, **for reasons to be recorded**, of involvement of such question in the case.

The High Court may **determine any issue which has not been determined or has been wrongly determined** by the State Bench or Area Benches.

Appeal to be heard by a **Bench of not less than 2 Judges of High Court** and shall be decided in accordance **with the majority of opinion of such Judges**.

Difference of opinion on any point shall be referred **to one or more of the other Judges of High Court** and such point shall be decided according to the **opinion of majority of Judges** who have heard the case including **those who first heard it**.

The **effect of judgment of High Court** shall be given on the basis of a **certified copy of the judgment**.

The provisions of **Code of Civil Procedure relating to appeals to High Court shall apply** to appeals under this section..





Appeals to Supreme Court –

Overview and Analysis of related Sections under CGST Act and Rules under CGST Rules

Appeal to Supreme Court – Section 118

(1) An appeal shall lie to the Supreme Court-

*(a) from any order passed by the **National Bench or Regional Benches of the Appellate Tribunal**; or*

*(b) from **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**.*

*(2) **The provisions of the Code of Civil Procedure, 1908**, relating to appeals to the Supreme Court shall, so far as may be, **apply in the case of appeals under this section** as they apply in the case of appeals from decrees of a High Court.*

*(3) 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**.*



Filing of an Appeal against Registration Order (APL-01);

Procedure, in brief



Filing of an Appeal against Registration Order (APL-01)

Any taxpayer or an unregistered person aggrieved by any decision or order passed against him (with respect to **Registration, amendment or cancellation etc.) by an **Adjudicating Authority**, may Appeal to the **Appellate Authority**, within three months from the date on which the said decision or order is communicated to such person;**

Orders/decision must be **passed by the Adjudicating Authority** in case of the **taxpayer or an unregistered person** to file an Appeal to the **Appellate Authority** under the following categories:

- ✓ Order of Rejection of Application for < Registration/ Amendment/ Cancellation > (**GST REG – 05**);
- ✓ Order for Cancellation of Registration (**GST REG – 19**);
- ✓ Order of Grant of Temporary Registration/ Suo Moto Registration (**GST REG – 12**);
- ✓ Order for cancellation of provisional registration (**GST REG – 28**);
- ✓ Order of rejection of enrolment as GST Practitioner (**GST PCT – 04**);
- ✓ Order of Cancellation of Registration as Tax Deductor at Source or Tax Collector at source (**GST REG – 08**);
- ✓ Order for acceptance / rejection of reply to show cause notice (**GST CMP-07**) issued in case of opting for /out of compositional scheme.

Steps required to be followed for filing an Appeal against Registration Order

Creating an Appeal to Appellate Authority;

Upload Annexure GST APL-01;

Add any other Supporting Document;

Preview the Application and proceed to File;

Open the Application's Case Details screen by searching for your filed Application in My Applications page or from View Additional Notices/Orders page.

Upload PDF & JPEG file format with maximum file size for upload as 5MB.

Maximum 4 supporting documents can be attached in the application.

The remaining documents can be handed over in hard copy.



Filing Reply and Rectification Request during Revision Order Proceedings;

Procedure, in brief

Filing Reply and Rectification Request during Revision Order Proceedings

With the issue of the Revision Notice, following actions take place on the GST Portal:

- ✓ An Internal Reference Number (IRN) is generated with the Status as "Revision Notice Issued";
- ✓ Intimation of the issue of Notice is sent to the concerned taxpayer and the A/A on their registered email id. Taxpayers would receive an SMS notification also on their registered mobile;
- ✓ Dashboard of the A/A and Taxpayer is updated with the record of the issued Notice. Taxpayer can view the issued Notice from the following navigation: **Services > User Services > View Additional Notices/Orders**;
- ✓ Date of hearing, as specified in the Notice, is updated in the GST Portal's Cause list;
- ✓ The demand Id issued on the impugned Order by adjudication authority shall continue and status will be "stayed" until an Order is issued on the Revision Proceedings;

The recipients of the Revision Notice can file their replies on the Portal.

Filing Reply and Rectification Request during Revision Order Proceedings

With the filing of Reply, following actions also take place on the GST Portal:

- ✓ IRN Status gets changed to "Reply Submitted";
- ✓ Dashboard of the RA and the concerned parties is updated with the record of the filed Reply.
- ✓ Taxpayer can view the filed Reply from: **Services > User Services > View Additional Notices/Orders**

In case of no reply from the concerned parties, Revisional Authority can issue a Reminder to them. On the day of the hearing, parties appear before the Revisional Authority to present their case. Revisional Authority can adjourn the hearing and issue an adjournment notice with the new date/time and venue of personal hearing, if required.

After hearing both the parties, Revisional Authority will issue "Drop Proceeding" Order or a "Revision Order" either confirming or modifying the demand of the original Order issued by the subordinate adjudicating officer.



Filing Reply and Rectification Request during Proceedings and Order of First Appeal;

Procedure, in brief

Filing Reply and Rectification Request during Proceedings and Order of First Appeal

Application for appeal has to be submitted by the Taxpayer or any other person, if aggrieved with the order/ decision of the adjudicating authority passed under the provisions of the Act.

The proper officer (as authorized by the Commissioner) of the tax department can also file appeal.

Appellants are either Taxpayers/other persons who are aggrieved with the order / decision of the adjudicating authority or a Tax Department Official authorised by the Commissioner to file an appeal to the Appellate Authority.

Reply to the Notice issued by the Appellate Authority to the taxpayer can be filed from the "NOTICES" tab.

To file a counter-reply against the reply filed by the Tax Officials, navigate to the "REPLIES" tab.

Once a Reply or a Counter-Reply is Filed, following actions take place on the GST Portal:

Acknowledgement message is displayed, with the generated Reply Reference Number and other Reply details.

Dashboard of the Taxpayer and the Tax Officials gets updated with the record of the filed Reply and the Status gets changed to "Reply Submitted".

Filing Reply and Rectification Request during Proceedings and Order of First Appeal

Taxpayer can view it from the following navigation: Services > User Services > View Additional Notices/Orders.

Intimation of the Filed Reply is sent to the taxpayer on his/her registered email ID and mobile.

Once a Rectification Request is submitted, following actions take place on the GST Portal:

Acknowledgement message is displayed, with the generated Rectification Reference Number and other details.

Dashboard of the Taxpayer and the Tax Officials gets updated with the record of the submitted Rectification Request and the Status gets changed to "Rectification Request Submitted".

Taxpayer can view it from the following navigation: Services > User Services > View Additional Notices/Orders.

Intimation of the submitted Rectification is sent to the taxpayer on his/her registered email ID and mobile

Thanks for your
Attention!!!
Any Questions???

*Life is like riding a bicycle. To keep your
balance, you must keep moving.*

ALBERT EINSTEIN