

Chapter 20 – Appeals and Revision

1.

Appeals - Basics

- Tax payer / Dept. may not agree with the adjudication order passed by the GST officer. Hence, Act provides for channels of appeal with restrictions.
- The Officers of the Central & State Govt are cross empowered, facilitating assessee to approach any one officer.
- Where a PO has passed an order under one Act, any appeal / review / revision / rectification against the said order will lie only with the PO of that Act only.

3. Non-Appealable Decisions & Orders [S.121]:

- An order of the Commissioner/Other Authority empowered to direct transfer of proceedings from one officer to other.
- Order for Seizure/Retention of A/Cs, Register & other docs.
- Order Sanctioning Prosecution under the Act.
- Order Passed U/S 80(Pmt of Tax in Instalments)

5. Other Important Points relating to Appeals:

Production of Additional Evidence

- Generally not allowed to produce.
- **Exception:** Adjudicating/Appellate Authority has: (a) refused to admit/made order without giving reasonable opportunity to produce evidence. (b) Appellant prevented by sufficient cause from producing any evidence upon call by Authority/ relevant for ground of appeal.
- Adjudicating/Appellant Authority shall take evidence/witness only after examination.

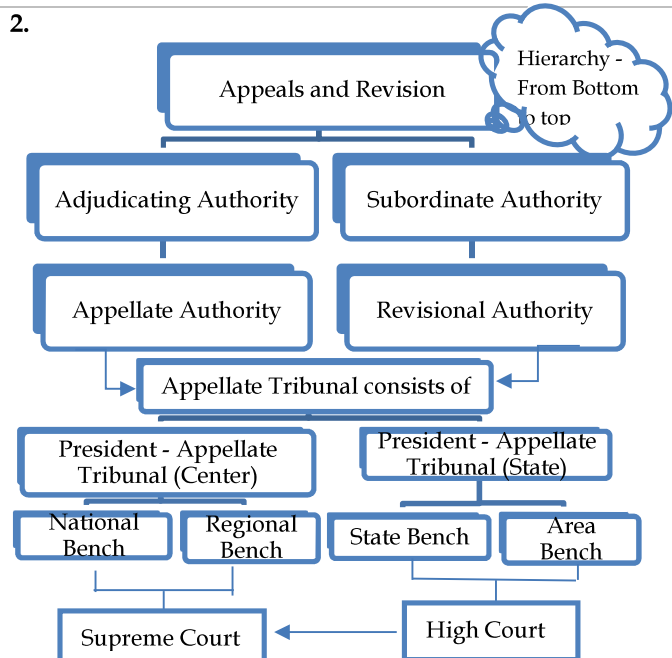
Monetary limit

- The Board, may issue orders/instructions fixing monetary limits for regulating filing of appeal / application by CGST Officer

Rectification of Errors

- Rectify any errors on orders / decisions made - either by suo moto / brought to notice by applicant/authority.
- **Time limit:** Affected person - within 3 months from the date of order.
- No rectification allowed after 6 months but not applicable to Clerical/arithmetical error (Principle of Natural Justice to be followed)

2.



4. Appearance by Authorised Representative [S.116]: Any person required to appeal before Adjudicating/ Appellate Auth./Trib., may appear through Authorised Representative.

Qualification

- His relative/regular employee
- An advocate (Entitled to practice in any court in India & not debarred)
- Any CA/CMA/CS (holding valid Certificate of practice & not debarred)
- Retired Officer (being Gazetted Officer for not less than 2 yrs before retirement) of the Commercial Tax dept of any State dept/UT/of the board.

Disqualification

- Been dismissed/removed from Govt. service.
- Undischarged Insolvent.
- Person found guilty of misconduct by the prescribed authority.
- Convicted of an offence under any act dealing with the imposition of taxes on sale/supply of G/S/both.

6. First Appellate Authorities:

An appeal against the decision/order passed by an Adjudicating Authority lies before Appellate Authority.

Adjudicating Authority	Appellate Authority
AC/JC	Commissioner (Appeals)
AC/DC/Superintendent	Any officer not below rank of JC.

7. Appeal to First Appellate Authority [S.107]:

Departmental Appeal: Commissioner can direct his subordinate officer to file an appeal with Appellate authority within 6 months of such order in **Form GST APL 03**. No pre deposit required.

Assessee Appeal - Pre-Deposit before Appeal:
Liability Admitted: Tax/Int/Fine/Fee/Penalty arising from the order to be paid in full.

Disputed: 10% of such tax amt disputed (Max. Rs.25 crore (10% under SGST act also)

Appeal Proceedings

- **Time Limit:** 3 months from the date of communication of such decision/order.
- **Extension** -1 month.
- **Application:** Form GST APL-01 inturn Provisional Acknowledgment issued.
- **Date of Filing of Appeal:** Certified Copy of Decision/Order appealed against - (a)Submitted within 7 days - Date of provisional acknowledgment issued.(b)After 7 days - Date of submission of such certified copy of decision/order.
- After submission of cert copy - **Final Acknowledgment no.(Appeal No.)** issued in Form GST APL-02.
- **No.** of adjournments granted : 3
- **After making further inquiry** Confirm/ Modify/ Annul the decision & pass order but it cannot refer the case back to Adjudicating Authority.

Orders passed

- If he is in a view of enhancing any amt in lieu of confiscation/reducing ITC/refund can be made only after giving appellant reasonable opportunity of Showing Cause against the proposed order.
- If he is of view that, Tax not paid/Short Paid/Erroneously refunded/ITC has been wrongly availed /utilized, an SCN shall be issued & order to be passed within the Time limit u/s73/74.
- **Time Limit to pass order** : 1 year from the date of filing of appeal.(Period of stay by any court/tribunal shall be excluded)
- Order shall be 'Speaking Order' & issue a summary in Form GST APL-04 indicating the final amt of demand confirmed.
- Communicate the order passed to appellant, respondent, adjudicating authority & Jurisdictional Commissioner.

8. Revision by Revisional Authority (RA) [S.108]:

"Revisional Authority" means an authority appointed or authorised for revision of decision/orders.

Decisions / Orders passed by	Revisional Authority
AC/JC of CT	Principal Commissioner / Commissioner of CT
AC/DC/Superintendent	AC / JC of CT

Orders which can be revised

- Decision include intimation given by any officer lower in rank than the RA.
- **RA** may call for & examine the record of any proceedings either suo moto/upon info rcvd/on request from CGST/SGST Commissioner.
- On examination, if RA is of the view that the decision passed by his subordinate is (a) Erroneous (i.e., prejudicial to the int of revenue) & is illegal/improper. (b) Not taken into a/c any material facts(available at the time/not)/in consequence of an observation by CAG.
- If necessary, Stay the operation of such decision/order & after giving person concerned reasonable opportunity of being heard.
- **After making further inquiry** Enhance/ Modify/ Annul the decision as he thinks Just/Proper.
- Along with the order issue a summary indicating the final amt of demand confirmed.

Orders which cannot be revised

- Non appealable orders/Decisions u/s 121.
- Order has already taken for revision at an earlier stage.
- Order sought to be revised is a revisional order.
- **RA shall not exercise the power of revision if:**
- Order has been subject to appeal before AA/Tribunal/HC/SC or
- 6 Months has not expired or
- More than 3 years expired from the date of communication of order.
- **In computing the period of 3 years** - (a) If decision is already pronounced in a proceeding & a further appeal to that is pending before Appellate Tribunal/HC, the period spent b/w the date of decision of earlier Appellate Authority & the subsequent authority shall be excluded.
- (b) Issuance of Revision Order is stayed by Tribunal/court - Period of such stay is excluded

9. Appellate Tribunal [S.109] Appeal against the order of (a) First Appellate Authority (b) RA lies before Tribunal. AT is a Quasi-Judicial body.**10. Appellate Tribunal – Procedure [S.111]:**

Has power to regulate its own procedure & powers of Civil court, w.r.t (a) Discovery (b)Inspection (c)enforcing attendance of any person & examining him on oath (d) Issuing commissions & ordering production of BOA (e) All proceedings deemed to be Judicial. Order of the AT may be enforced as a Court decree.

National Bench	<ul style="list-style-type: none"> • Technical Members - 1 center + 1 State
Regional Bench	<ul style="list-style-type: none"> • Technical Members - 1 center + 1 State • 1 Judicial Member
State Bench	<ul style="list-style-type: none"> • Technical Members - 1 center + 1 State • 1 Judicial Member
Area Bench	<ul style="list-style-type: none"> • Technical Members - 1 center + 1 State • 1 Judicial Member

11. Appeal to the Appellate Tribunal [S.112/113]:

Departmental Appeal: Comm. can direct his subordinate officer after examining orders passed by AA/RA to file an appeal with AT within 6 mon of such order in **GST API.07** No pre deposit required

Pre-Deposit before Appeal – Assessee appeal:
Liability Admitted: Tax/Int/Fine/Fee/Penalty arising from the order to be paid in full.
Disputed: 20% of tax amt disputed (in addition to 10% in 1st Appeal) (Max. Rs.25 crore (20% under SGST act also)
For IGST- Max Rs.100 Cr.

Appeal Proceedings
<ul style="list-style-type: none"> • Time Lt.: 3 mon. from date of order communication. Ext. -3 mon. • Application: APL-05 - Prov. Ack. issued. • Non appealable Orders: Tribunal may in its discretion, refuse to admit any appeal if an amt <= Rs.50,000 /- • Memorandum of cross objections to be filed against any part of the order appealed against within 45 days (Extension: 45 d). • Appeal Fee: Rs.1,000/- for every Rs.1 Lakh of amt involved. (Max of Rs.25,000/-) • Recovery proceedings for the Bal. amt (excess of Pre -deposit) shall be deemed to be stayed till the disposal of appeal. • If appeal results in refund int as provided u/s 56, for the same shall be paid from the date of pre-deposit till the date of payment

Orders passed
<ul style="list-style-type: none"> • After making further inquiry Confirm/ Modify/ Annul the decision/order appealed against & pass order. • Refer the case back to AA/RA/to the original Adjudicating Authority, with directions. • Amendment which has the effect of enhancing assessment /reducing ITC/refund made only after giving parties reasonable opportunity • Time Limit to pass order : 1 year from the date of filing of appeal. • Send a copy of its order passed to AA/ RA/Original Adj. Auth. & Appellant & the Juris. Comm. or SGST/CGST Comm. • Tribunal may amend an order passed to rectify any error apparent on the face of record either suo moto/upon info rcvd/on request frm CGST/SGST Comm. w/i 3 mon from order date.

12. Appeals to the High Court [S.117]:

1. If Dept/Assessee, aggrieved by any order passed by State Bench/Area Bench of the Tribunal, may file an appeal to HC to determine any issue which has not been determined / wrongly determined by the Tribunal, by reason of a decision on such **Question of Law** (only)
2. CPC, 1908 relating to HC shall apply.
3. Appeal shall be heard by bench of 2 members in case of diff of opinion, then upon that point 1 or more judges can hear & Final decision shall be pronounced based on majority of all Judges who heard the case.
4. Pre-deposit of all tax dues need to made. However, HC may stay pending disposal of the appeal.
5. Certified Copy of Judgment shall be given to either side.

13. Appeals to the Supreme Court [S.118]:

1. An appeal shall lie to the Supreme Court
 - (a) From any order of the National / Regional Benches of the Appellate Tribunal, or
 - (b) From any judgment or order passed by the High Court in an appeal made u/s117, 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.Pre-deposit of all tax dues will be required unless stay is obtained from the Supreme Court pending the disposal of the appeal.
- 3.The provisions of the CPC, 1908 shall apply.
- 4.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 u/s 117 (on the basis of a certified copy of the judgment)