



The Institute of Cost Accountants of India
(Statutory body under an Act of Parliament)
Tax Research Department

ADVANCED CERTIFICATE COURSE ON GST – 9th BATCH

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Introduction to Appeal

- By CMA Kedarnath

✚ Tax Laws impose various obligation on the Tax payer

✚ Such obligations are broadly divided into two kinds

1. Levy related:

- ✓ Scope of Levy
- ✓ Time of supply
- ✓ Place of supply
- ✓ Taxable value
- ✓ Tax rate etc.,

2. Procedure related:

- ✓ Obtaining Registration
- ✓ Filing of returns
- ✓ Manner of depositing tax etc.,

✚ The tax payer's compliance with these obligations is verified by tax authorities by exercising various powers such as

- ✓ Undertaking scrutiny
- ✓ Issuing notices
- ✓ Conducting Audit
- ✓ Anti-evasion proceedings etc.,

- ✚ Under tax laws, on any given set of facts and legal provisions there can be **different opinions and view points**
- ✚ Hence it is likely that the **tax payer** may not agree with the “adjudication order” passed by the tax authorities.
- ✚ It is equally possible that the **tax department** may itself not agree with the adjudication order
- ✚ It is for this reason that the tax statutes provide for an appellate mechanism to both sides

Meaning of Appeal:

- ✚ A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the **Appellate Authority**
- ✚ Appellate Authority can be called as “Commissioner (Appeals)” also in short called as AA
- ✚ It is important to note that it is only the **aggrieved person** who can file the appeal
- ✚ Also, the appeal must be **against a decision or order** passed under the Act.
- ✚ In legal parlance, appeal is a timely resort for review by a higher authority, where **parties request a formal change** to an **official decision**
- ✚ Right to appeal is a **statutory right**
- ✚ India is adopted **dual GST**, i.e., GST levied by the both Center and State Govts concurrently on a transaction

✚ **Person aggrieved should approach both the authorities of Central and State for exercising the right of appeal?**

The answer to the question is “NO”

✚ GST law makes a provision for **cross empowerment** between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST act is also treated as the proper officer under the SGST/UTGST act and vice versa.

✚ Thus, proper officer can issue orders **both** under CGST and SGST/UTGST act

✚ However, where a proper officer passed an order under one act, any appeal/review/revision/rectification against the said order will lie only with **proper officers of that act.**

✚ **Section 121: Non-appealable decisions and orders:** It is to be noted that **no appeals** can be filed against the following orders:

- (a) Based on the monetary limits fixed by the Board: Below the limits **no departmental appeal** would be filed with respective authorities.
- (b) An order of the Commissioner or other authority empowered to direct **transfer of proceedings** from one officer to another officer;
- (c) An order pertaining to the **seizure** or retention of books of account, register and other documents; or
- (d) An order sanctioning **prosecution** under the Act; or
- (e) An order passed under section 80 (payment of **tax in instalments**).

IMP Note:

- ❖ Relevant chapter: Chapter XVIII - **Appeals and Revision**
- ❖ Relevant Sections: S.107 to 121
- ❖ Relevant Rules: Rule 108 to Rule 116
- ❖ Relevant Forms: Form GST APL-01 to Form GST APL-08

Relevant Sections:

- ✚ Section 107: Appeals to Appellate Authority
- ✚ Section 108: Powers of Revisional Authority
- ✚ Section 112: Appeals to Appellate Tribunal
- ✚ Section 115: Interest on refund of amount paid for admission of appeal
- ✚ Section 117: Appeal to High Court
- ✚ Section 118: Appeal to Supreme Court
- ✚ Section 121: Non-appealable decisions and orders.

Relevant Forms for Appeals:

- + GST APL-01: Appeal to Appellate Authority (by Aggrieved Party)
- + GST APL-02: Acknowledgment for submission of appeal
- + GST APL-03: Application to the Appellate Authority under sub-section (2) of Section 107 (by Departmental)
- + GST RVN -01: Powers of Revisionary Authority & Notice issued u/s 108
- + GST APL-04: Summary of the demand after issue of order by the Appellate Authority, Revisional Authority, Tribunal or Court
- + GST APL-05: Appeal to the Appellate Tribunal
- + GST APL-06: Cross-objections before the Appellate Tribunal
- + GST APL-07: Application to the Appellate Tribunal under sub section (3) of Section 112 (by Departmental)
- + GST APL-08: Appeal to the High Court under section 117

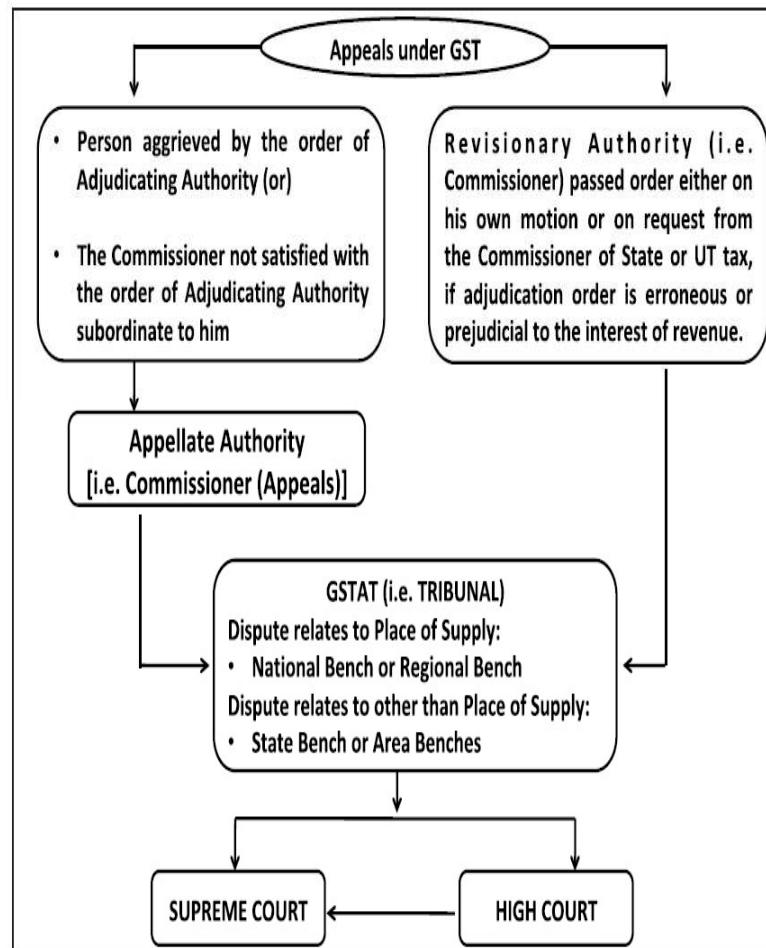
Order of Appeals:



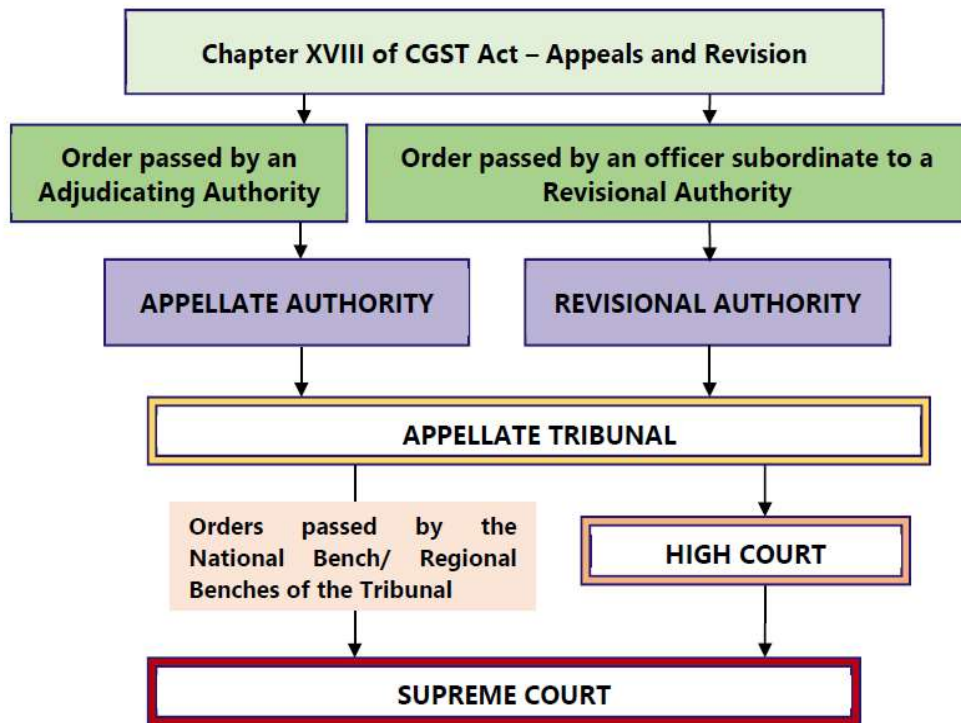
Hierarchy of Appeals and Revision:

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

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



HIERARCHY OF APPEALS AND REVISION



Relevant Definitions:

- ❖ **Adjudicating authority** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the 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 authorised 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)].
- ❖ **Authorised representative** means the representative as referred to in section 116 [Section 2(15)].
- ❖ **Board** means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 [Section 2(16)].
- ❖ **Commissioner** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- ❖ **Revisional Authority** means an authority appointed or authorised for revision of decision or orders as referred to in section 108 [Section 2(99)].

Section 107: Appeals to Appellate Authority (AA)

Appeal to Appellate Authority by Aggrieved person S.107(1):

- ❖ Appeal to AA can be made Any order / decision passed by **any** Adjudicating Authority under the Act
- ❖ Appeal must be the against the order or decision
- ❖ Time Limit to apply: within **3 Months** from the date of communication of such order or decision
- ❖ **Example:**



(1) The adjudicating authority issued the adjudication order on 23rd September and the same is communicated to the taxpayer on 28th September. The relevant date for computing the period of 3 months (for filing the appeal to AA) is 28th September (date of communication of order) and not 23rd September.

- ❖ Condonation of delay: AA can condone the delay of filing is **1 Month**
- ❖ **Form: GST APL-01**
- ❖ Mode: Electronically
- ❖ **Date of filing Appeal:**
 - ✓ A certified copy of order / decision appealed against shall be submitted **within 7 days** of filing of the appeal
 - ✓ Then provisional acknowledgement copy will be issued
 - ✓ Date of filing appeal will be **date of issue** of **provisional** acknowledgement copy

Example:



(2) The appeal is filed and provisional acknowledgement issued on 10th September. The taxpayer submits the certified copy of the order sought to be appealed against on 15th September (within 7 days). The date of filing appeal is 10th September.

- ✓ In case certified copy of decision/ order is submitted after 7 days of filing an appeal
- ✓ Then date of filing of Appeal is **date of submission of such copy**

Example:



(3) The appeal is filed and provisional acknowledgement issued on 10th September. The taxpayer submits the certified copy of the order sought to be appealed against on 25th September (after seven days). The date of filing appeal is 25th September.

❖ **Mandatory pre-deposit for filing an Appeal to AA:**

- ✓ No appeal shall be filed 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 **10%** of the remaining amount of tax in dispute arising from the said order, (w.e.f. 1-2-2019 subject to a maximum of Rs 25 crore in **each** of CGST & SGST Act accordingly) in relation to which the appeal has been filed.

Example:

Example 2:

X Ltd. received a protective demand notice from the department Assistant Commissioner of Central Tax on 1.9.2019 under Section 73 of the CGST Act, 2017 where

	Amount ₹
CGST & SGST due	= 5,00,000
Interest	= @15% p.a. for no. of days delay.
Penalty	= 10% of tax due or ₹ 10,000 whichever is higher

The assessee went for appeal and filed the case in the Appellate Authority on 25.9.2019. This appeal has been taken up for hearing on 06-10-2019.

Case 1: How much has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Appellate Authority (i.e. Commissioner (Appeals)).

Case 2: Whether your answer is different if the assessee appeals only part of the amount say ₹ 3,00,000 is in dispute arising from the said order.

Answer:

Case 1: Pre-deposit is ₹ 50,000 ($5,00,000 \times 10\%$) is to deposit on or before 6th October 2019.

Case 2: Disputed amount ₹ 3,00,000:

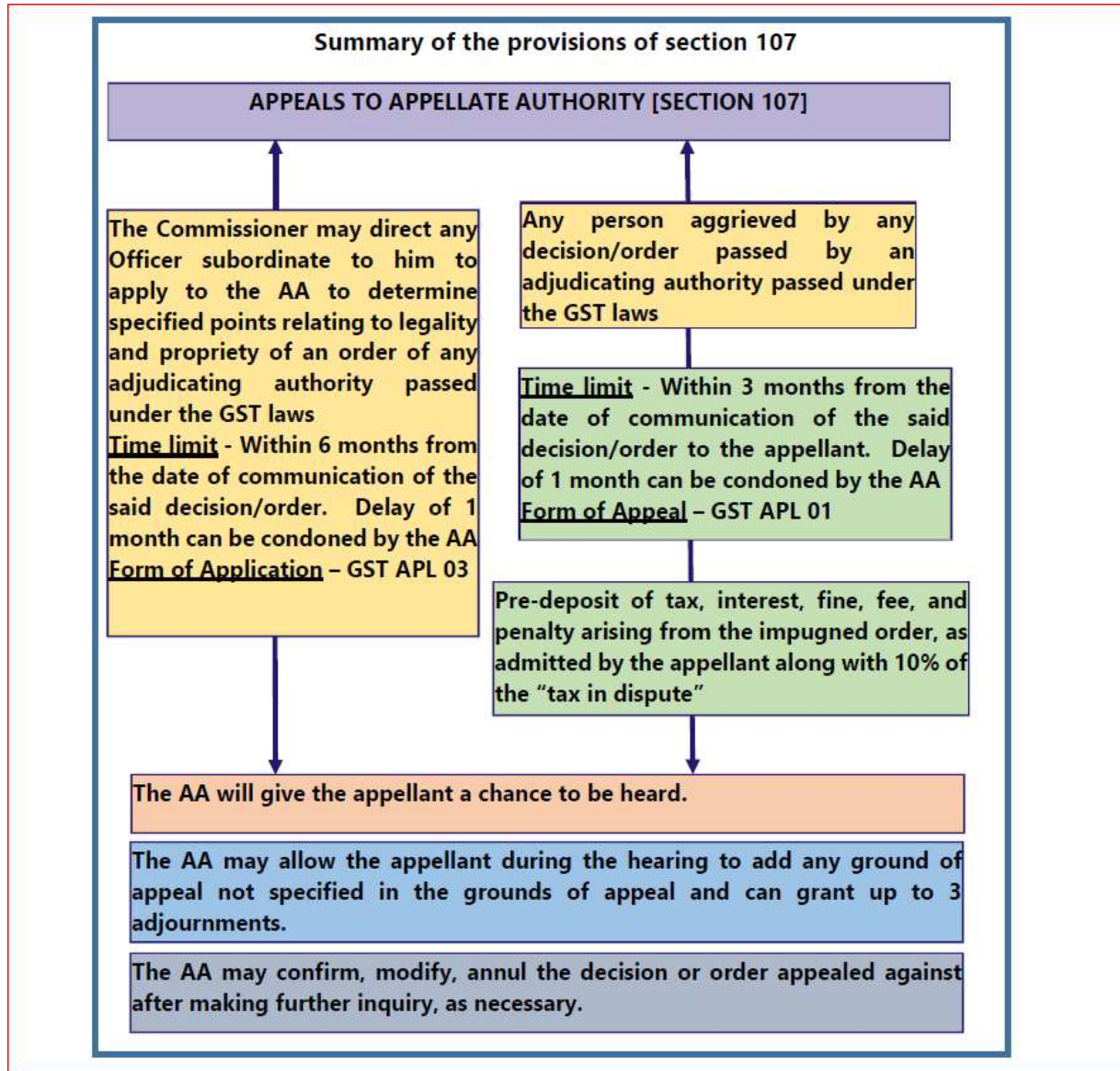
Pre-deposit is ₹ 2,00,000 plus ₹ 30,000 ($₹ 3,00,000 \times 10\%$) together is ₹ 2,30,000. It should be deposited on or before 6th October 2019.

Appeal to Appellate Authority by Department S.107(2):

- ❖ At times, department itself may **not agree** with the decision or order passed by the Adjudicating Authority
- ❖ S.107(2) provides that in such cases, the department can also file an appeal before AA called as “review application”
- ❖ The commissioner may on his own motion (or)
- ❖ The request received from the SGST / UTGST commissioner, to examine the order passed by an Adjudicating Authority, for the purpose of satisfying himself as to the legality or propriety of the said decision or order
- ❖ **Time Limit:** within 6 Months from the date of communication of order
- ❖ **Condonation of delay:** AA can condone the delay of filing is **1 Month**

- ❖ Form: GST APL-03
- ❖ Mode: Electronically
- ❖ Pre-deposit: Not require / Not applicable

Summary:



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