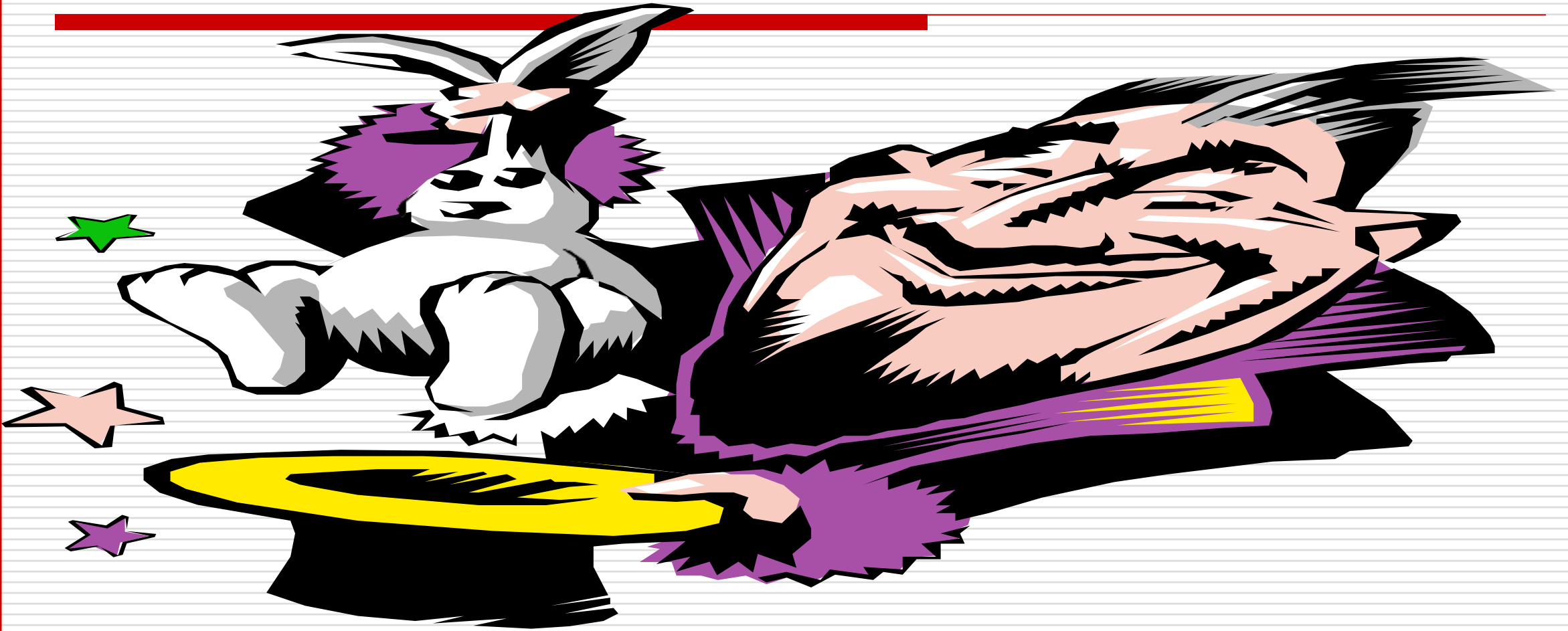


# Filing of Appeal under GST GST Laws

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



- ❖ **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)].

## Rule 142(5) of the CGST Rules:

- “142. Notice and order for demand of amounts payable under the Act
- (5) A summary of the order issued under **section 52 (TCS)** or **section 62 (Assessment non filer of return)** **or** **section 63 (Assessment of unregistered person)** **or** **section 64 (summary assessment)** **or** **section 73** **or** **section 74 (short paid / not paid / erroneously refunded)** **or** **section 75 9determination of tax)** **or** **section 76 (tax collected but not paid)** **or** **section 122 (penalty for offence)** **or** **section 123 (penalty for failure to furnish information)** **or** **section 124 (Finance for failure)** **or** **section 125 (general penalty)** **or** **section 127 (impose penalty)** **or** **section 129 ( detention seizure etc)** **or** **section 130 (confiscation of goods)** shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

## Authorized Representative

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- ❑ A person can appear by an authorized representative in any proceedings under the GST law before the following authorities—
  - ❖ (a) GST officer,
  - ❖ (b) Appellate authority,
  - ❖ (c) Appellate Tribunal.

### Authorized Representative – who can be appointed

- ❑ As per section 116(2) of the GST Act, 2017, following persons can be appointed as an authorized representative i.e., a person authorized by the person to appear on his behalf:
  - ❑ a) his relative or regular employee; or
  - ❑ b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

## Authorised Representative

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### Authorized Representative – who can be appointed

- ☐ **b) an advocate who is entitled to practice in any court in India**, and who has not been debarred from practicing before any court in India; or
- ☐ **c) any chartered accountant, a cost accountant or a company secretary**, who holds a valid certificate of practice and who has not been debarred from practice; or
- ☐ **d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board** who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years: However, such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

# Authorised Representative

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## Authorized Representative – who can be appointed

- ☐ e) any person who has been authorized to act as a goods and services tax practitioner on behalf of the concerned registered person.

## Government officers as an authorized representative

- ☐ Government officers can be appointed as an authorized representative but subject to clause (d) of section 116(2) of the GST Act, 2017 i.e. a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years can be appointed as authorized representative.
- ☐ (Appear only after one year after retirement)



# Authorised Representative

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## Persons not qualified to act as an authorized representative

- ☐ As per section 116(3) of the GST Act, 2017 following person shall not be qualified to act as an authorized representative:
- ☐ (a) who has been dismissed or removed from government service; or
- ☐ (b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing 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 or services or both; or
- ☐ (c) who is found guilty of misconduct by the prescribed authority;
- ☐ (d) who has been adjudged as an insolvent,

# Authorised Representative

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## Persons not qualified to act as an authorized representative

- ❑ Such disqualification to act as an authorized representative shall operate for the following period:
  - ❖ Persons dismissed or removed from government – for all times
  - ❖ Persons convicted of specified offences – for all times
  - ❖ Insolvent persons – for the period during which the insolvency continues.
  
- ❑ As per section 116(4) of GST act, 2017, any person who has been disqualified under the provisions of the State Goods and Services Tax Act (SGST) or the Union Territory Goods and Services Tax Act (UTGST) shall be deemed to be disqualified under GST Act.



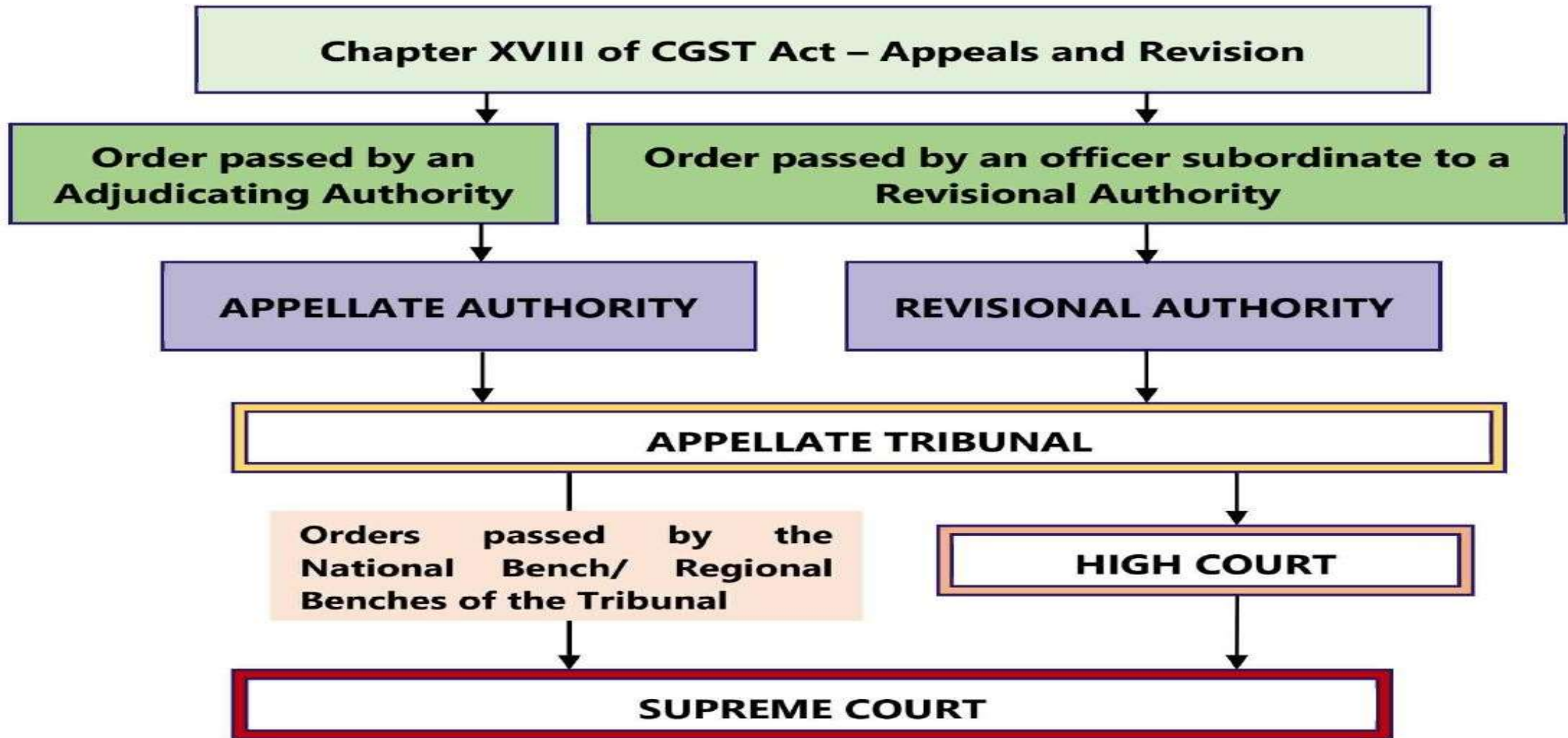
# Authorised Representative

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## Persons not qualified to act as an authorized representative

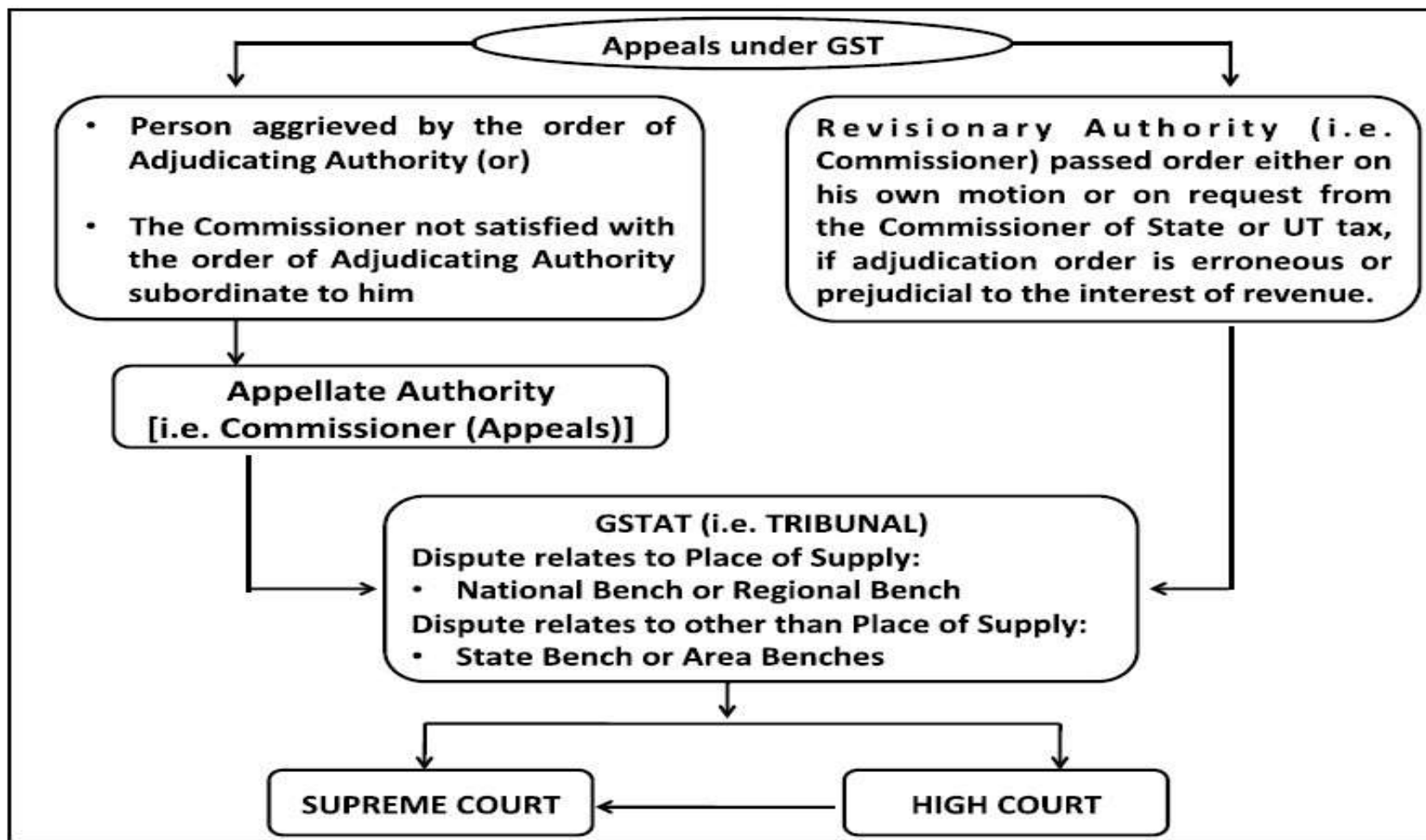
- ☐ Consequences of being found guilty of any misconduct
- ☐ As per Rule 116 of GST Rules, 2017 where an authorized representative (other than Advocate/CA/CS/CMA) is found, upon an inquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorized representative.
- ☐ GST practitioner as an authorized representative
- ☐ As per section 116(2) (e), any person who has been authorized to act as a GST practitioner on behalf of the registered person can also act as an authorized representative.

## 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:



It is to be noted that no appeals whatsoever can be filed against the following orders:-

- (a) Board can fix monetary limits below which 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).



### **Mandatory pre-deposit for entertaining appeal:**

As per section 107(6) of the CGST Act, 2017 No appeal shall be filed under sub-section (1) of Section Appeals to Appellate Authority ('AA'), unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the tax assessed as admitted by him; and
- (b) a sum equal to **10%** of the remaining amount of tax in dispute arising from the tax assessed (subject to a maximum of ₹ 25 crore) in relation to which the appeal is filed.

### **Amendment:**

#### **Section 107(6) of CGST Act has been amended vide**

No appeal shall be filed under sub-section (1) of Section 107 of the CGST Act, 2017 unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the tax assessed as admitted by him; and
- (b) a sum equal to **10%** of the remaining amount of tax in dispute arising from the tax assessed (subject to a maximum of ₹ 25 crore) in relation to which the appeal is filed.

**As per Section 112(8) of the CGST Act, 2017 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 20% of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, **subject to a maximum of fifty crore rupees** in relation to which the appeal has been filed.

With effect from 01.02.2019, section 20 of the IGST Act has also been amended vide the IGST (Amendment) Act, 2018 to provide that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be ₹ 50 crore and ₹ 100 crore rupees respectively. Section 20 of the IGST Act specifies the provisions of the CGST Act which are applicable in case of IGST Act as well.

### **Step by step approach:**

1. Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to Appellate Authority (AA).
2. Time limit for filing appeal is 3 months from the date on which the decision or order is communicated. However, the Commissioner (Appeals) namely Appellate Authority is empowered to condone delay of 30 days if sufficient cause is shown.
3. Appeal has to be filed in Form GST APL-01. A provisional acknowledgement shall be issued to the appellant immediately on filing appeal.
4. A hard copy of the appeal then shall be submitted in triplicate and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within 7 days of filing electronic appeal. Acknowledgment shall be issued by the Department in Form GST APL-02.
5. The date of filing will be issuance of provisional acknowledgement if the hard copy is submitted after 7 days, then relevant date would be this date of submission.



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6. As per section 107(2) of the CGST Act, 2017 the Commissioner of Central Tax or State Tax or UT Tax may call for and examine the records of any proceedings in which the authority subordinate to him has passed any decision or order under this Act, or SGST or UTGST Act. In case he is not satisfied about the legality or propriety of the said decision or order, then he shall direct any GST Officer subordinate to him to apply to the Appellate Authority (AA) for determination of points arising out of the said decision or order as may be specified by the Commissioner.
  7. In case of Department appeal has to be filed within 6 months from the date of communication of the said decision or order by the Commissioner. The authorised officer can file an appeal in Form GST APL-03 electronically and also submit hard copies thereof accompanied by a certified copy of the decision or order appealed against along with the supporting documents within 7 days.
  8. The Appellate Authority will grant an opportunity of hearing to appellant. The hearing can be adjourned for maximum 3 occasions by recording reasons in writing.

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9. The Appellate Authority can also allow to add/include grounds of appeal if satisfied that their omission was not willful or unreasonable.
  10. The Appellate Authority as far as possible within ONE year of appeal, shall pass such order in writing, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed.
  11. The Appellate Authority shall not remanded the matter back to the adjudicating authority. Accordingly AA shall also issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed.

## Summary of the provisions of section 107

### APPEALS TO APPELLATE AUTHORITY [SECTION 107]

The Commissioner may direct any Officer subordinate to him to apply to the AA to determine specified points relating to legality and propriety of an order of any adjudicating authority passed under the GST laws

Time limit - Within 6 months from the date of communication of the said decision/order. Delay of 1 month can be condoned by the AA  
Form of Application – GST APL 03

Any person aggrieved by any decision/order passed by an adjudicating authority passed under the GST laws

Time limit - Within 3 months from the date of communication of the said decision/order to the appellant. Delay of 1 month can be condoned by the AA  
Form of Appeal – GST APL 01

Pre-deposit of tax, interest, fine, fee, and penalty arising from the impugned order, as admitted by the appellant along with 10% of the “tax in dispute”

The AA will give the appellant a chance to be heard.

The AA may allow the appellant during the hearing to add any ground of appeal not specified in the grounds of appeal and can grant up to 3 adjournments.

The AA may confirm, modify, annul the decision or order appealed against after making further inquiry, as necessary.



## Appointment of Appellate Authority

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If the decision/order against which the appeal is to be filed, is passed by the Additional or Joint Commissioner

**Appellate Authority**



Commissioner (Appeals)

If the decision/order against which the appeal is to be filed, is passed by the Deputy or Assistant Commissioner or Superintendent

**Appellate Authority**



Any officer not below the rank of Joint Commissioner (Appeals)

## Revision under GST Laws – Section 108

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### **Orders which can be revised**

- (i) The GST laws also provide a mechanism of revision by the Revisional Authority (RA) of the orders passed by its subordinate officers.
- (ii) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings. Here, 'record' includes all records relating to any proceedings under the CGST Act available at the time of examination by the RA.

## Revision under GST Laws – Section 108

### Order which can be revised

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- (iii) On examination of the case records, if RA is of the view that the decision or order passed under the CGST Act/ SGST Act/ UTGST Act by any officer subordinate to him
- is erroneous, in so far as it is prejudicial to the interest of the revenue and is illegal or improper;
  - has not taken into account material facts, whether available at the time of issuance of the said order or not;
  - 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.



## Revision under GST Laws – Section 108

### Order which can be revised

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- (iv)** Thereafter, the RA 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. Here, 'decision' includes intimation given by any officer lower in rank than the RA.

Along with the order, the RA shall also issue a summary of the order clearly indicating the final amount of demand confirmed.

- (v)** If the RA decides to pass an order which is likely to affect the person adversely, he shall serve a notice on such person and give him a reasonable opportunity of being heard.
- (vi)** Every revision order, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.



## Revision under GST Laws – Section 108

### Order which can be revised

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The RA shall not exercise the power of revision if:

- (a) the order sought to be revised has been subject to an appeal before AA or Tribunal or High Court or Supreme Court\*; or
- (b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or
- (c) the order has already been taken for revision at an earlier stage; or
- (d) the order sought to be revised is itself a revisional order.

## **Revision under GST Laws – Section 108**

### **Order which can be revised**

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\*The RA may still pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

## Period to be excluded in computing limitation period of 3 years

(i) If the decision/order sought to be revised 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 of 3 years where proceedings for revision have been initiated by way of issue of a notice under section 108 [Section 108(4)].





## Period to be excluded for computing limitation of 3 years

- (ii) When the issuance of a revision order is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of limitation of 3 years [Section 108(5)].


 The adjudicating authority passed the order on 23<sup>rd</sup> January 2020 and it was communicated to the taxpayer on the same day. The RA calls for the records of the proceedings on 1<sup>st</sup> August 2020 (after expiry of 6 months) and started examining the same. The revision order to be passed by the RA is stayed by an order of the High Court for the period between 1<sup>st</sup> September 2020 and 31<sup>st</sup> October 2020. The period of 61 days during which the stay was in operation will be excluded for computing the period of 3 years within which the RA should pass the revision order. Thus, the RA can pass the order by 25<sup>th</sup> March 2023.

## **Officers authorized as Revisional Authority**

The CBIC has authorized the following officers as Revisional Authority:

***For decisions/orders passed  
by the Additional/Joint  
Commissioner***

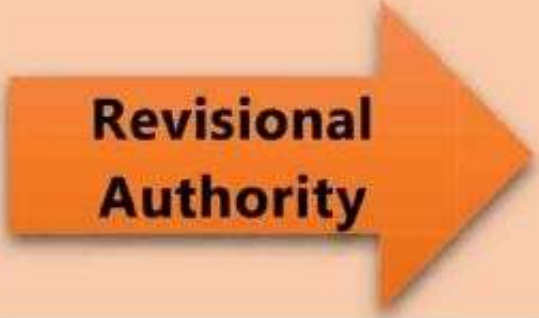
**Revisional  
Authority**



***Principal  
Commissioner/  
Commissioner***

***For decisions/orders passed  
by the Deputy Commissioner  
/Assistant Commissioner/  
Superintendent***

**Revisional  
Authority**



***Additional/Joint  
Commissioner***

Time period to file an appeal starts only  
when order is uploaded on GST portal

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- The Hon'ble Gujarat High Court in ***Gujarat State Petronet Ltd. v. Union of India [R/Special Civil Application No. 15607 of 2019, decided on March 5, 2020]*** quashed and set aside the order passed by the Appellate Authority rejecting the appeal on the ground of limitation. Held that, there was no failure in filing the appeal within the prescribed period of limitation as the period of limitation did not start till time order passed by the Adjudicating Authority was electronically uploaded on the GST portal.



### List of Forms

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



## **Rule 108 of CGST Rules:**

### **“Appeal to the Appellate Authority**

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- ❑ *(1) An appeal to the Appellate Authority under subsection (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 authorised by him in this behalf:*

## **Rule 108 of CGST Rules: “Appeal to the Appellate Authority**

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- ☐ *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.”*

## Rule 142(5) of the CGST Rules:

- “142. Notice and order for demand of amounts payable under the Act
- (5) A summary of the order issued under **section 52 (TCS) or section 62 (Assessment non filer of return) or section 63 (Assessment of unregistered person) or section 64 (summary assessment) or section 73 or section 74 (short paid / not paid / erroneously refunded) or section 75 9determination of tax) or section 76 (tax collected but not paid) or section 122 (penalty for offence) or section 123 (penalty for failure to furnish information) or section 124 (Finance for failure) or section 125 (general penalty) or section 127 (impose penalty) or section 129 ( detention seizure etc) or section 130 (confiscation of goods)** shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

# Q&A

