

## Filing of Appeal under GST Laws – Part – 2

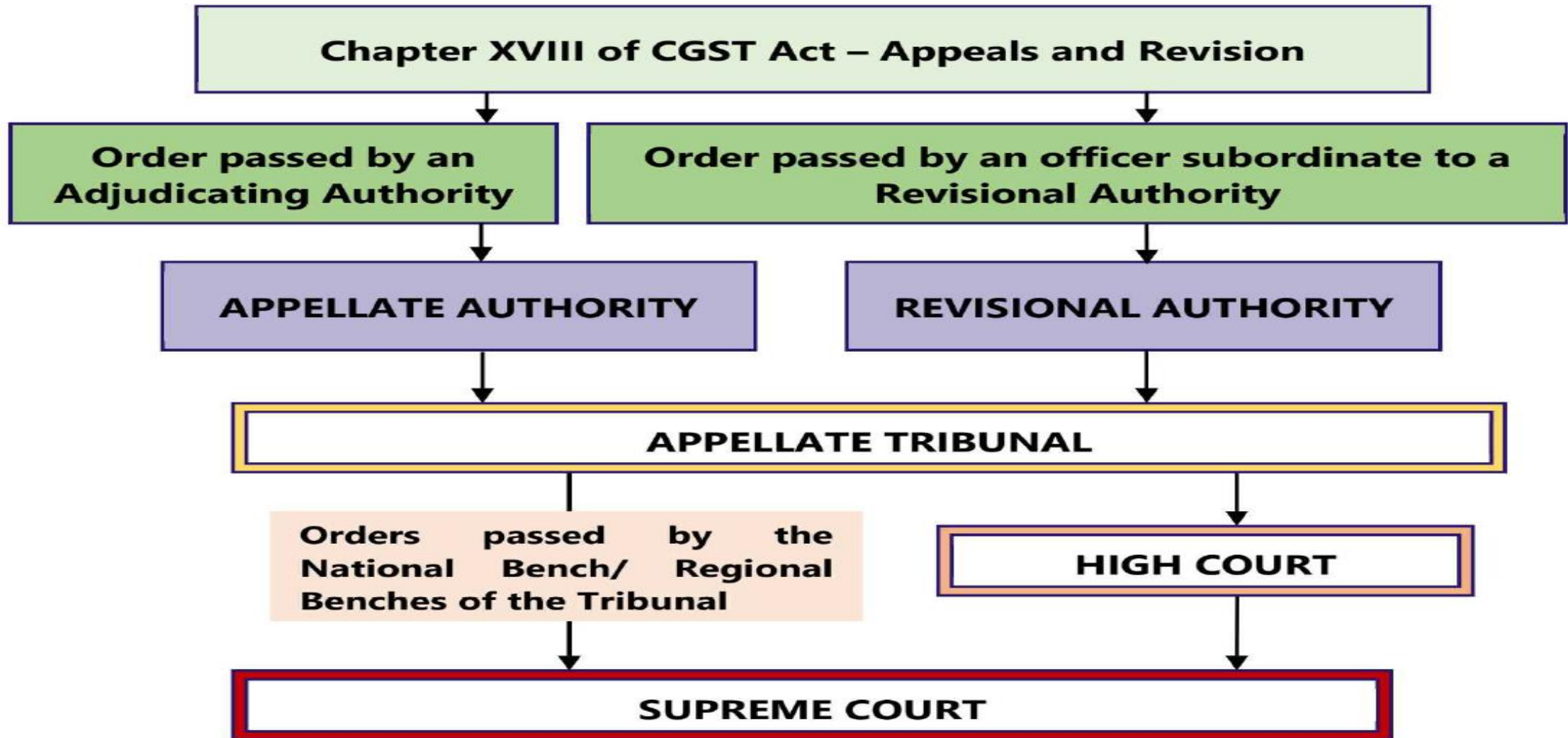


- ❖ **Adjudicating authority** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate 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:

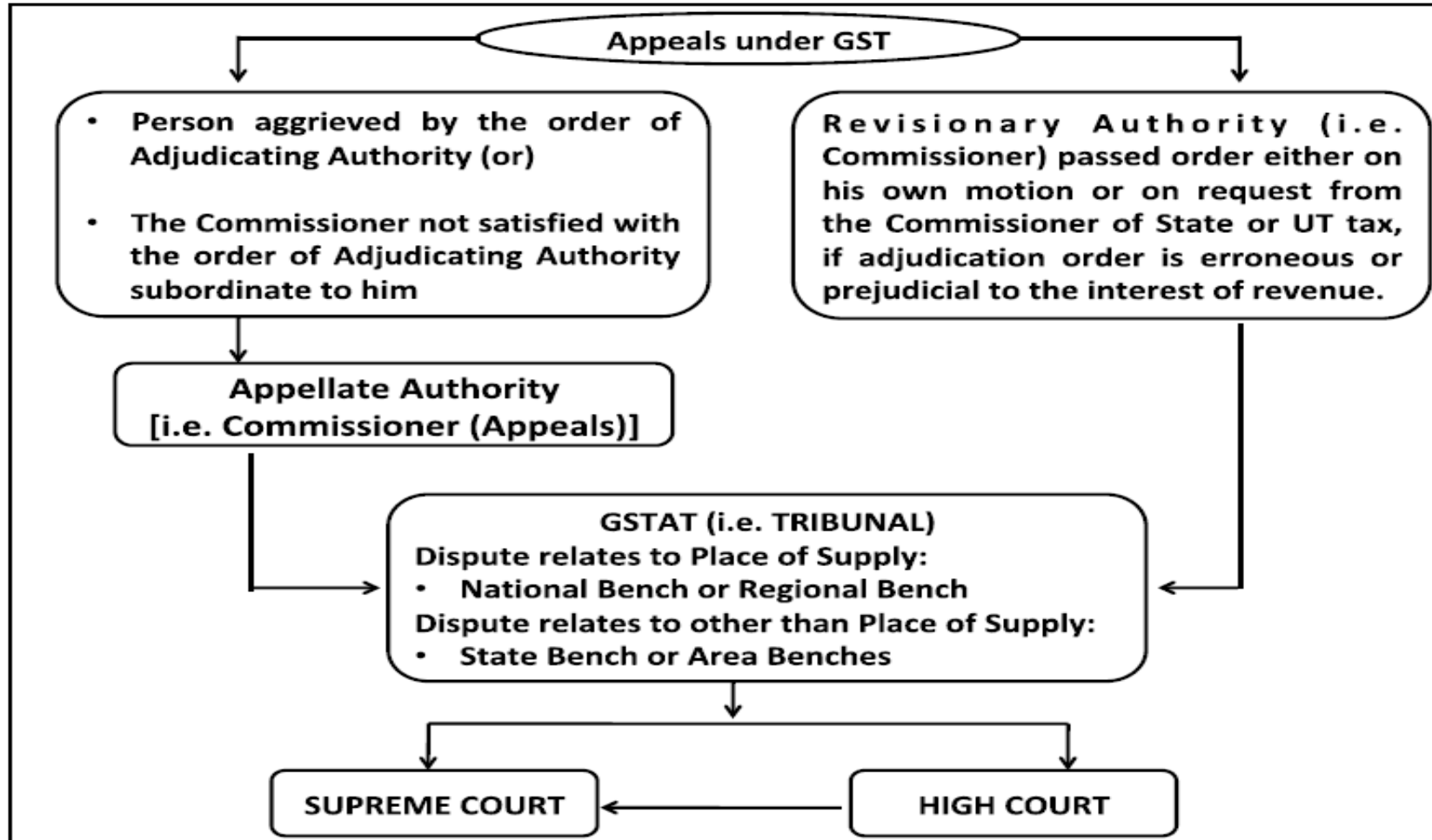
- ❑ “142. Notice and order for demand of amounts payable under the Act
- ❑ (5) A summary of the order issued under **section 52 (TCS)** or **section 62 (Assessment non filer of return)** **or** **section 63 (Assessment of unregistered person)** **or** **section 64 (summary assessment)** **or** **section 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.”

## 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:





### **List of Forms**

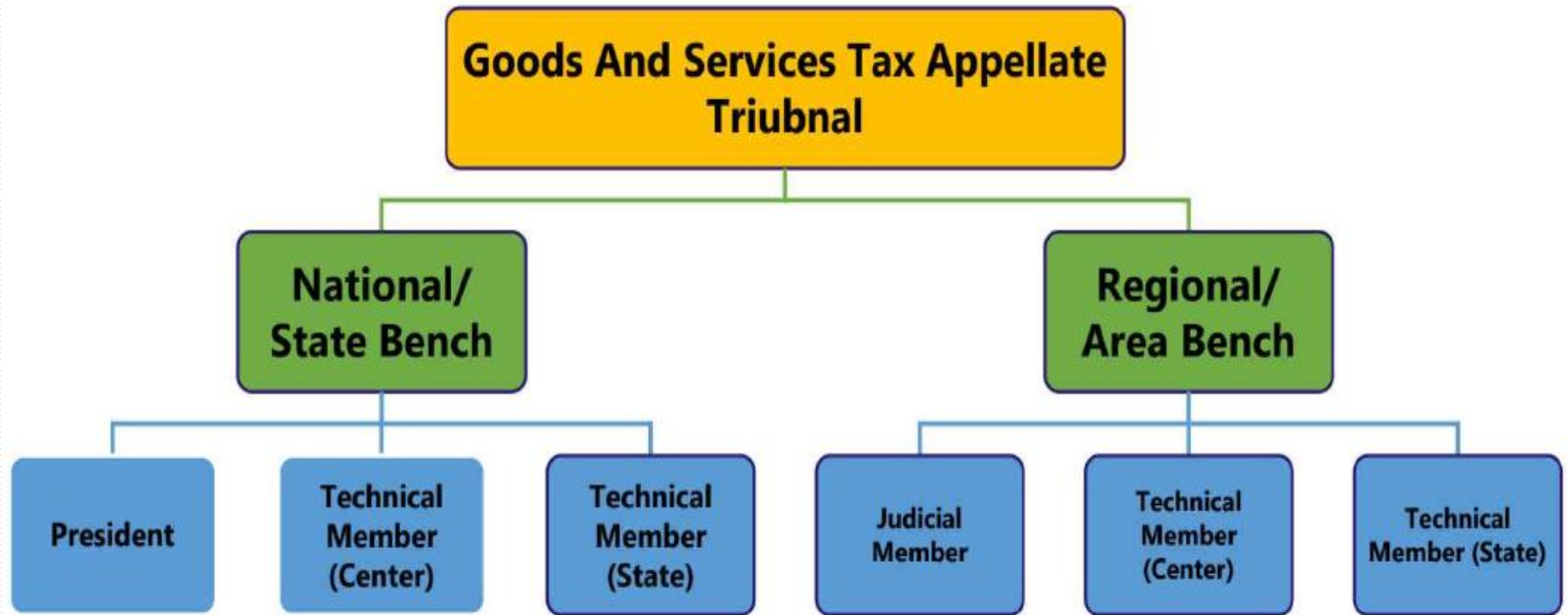
<b>Sr. No</b>	<b>Form No.</b>	<b>Content</b>
1.	GST APL-01	Appeal to Appellate Authority
2.	GST APL-02	Acknowledgement of submission of appeal
3.	GST APL-03	Application to the Appellate Authority under sub-section (2) of Section 107
4.	GST APL-04	Summary of the demand after issue of order by the Appellate 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

# Appellate Tribunal under GST Laws – Section 109-111

## **Constitution and structure of Appellate Tribunal [Section 109]**

- (i)** The law envisages constitution of a two different sets of Tribunal benches, both functioning at the parallel level, i.e. (a) National Bench and benches thereof (i.e., Regional Benches), and (b) the State Bench and benches thereof (i.e., Area Benches). Both these constituents are called “Goods and Services Tax Appellate Tribunal”.
- (ii)** Jurisdiction of the two constituents of the GST Tribunal is different, i.e.:
  - If place of supply is one of the issues in dispute, then the National Bench/ Regional benches of the Tribunal will have jurisdiction to hear the appeal.
  - If the dispute relates to issues other than the place of supply, then the State/Area Benches will have the jurisdiction to hear the appeal.
- (iii)** An appeal against the decision of the National Bench lies directly to the Supreme Court and an appeal from the decision of the State Bench will lie to the jurisdictional High Court, on substantial questions of law.

- (iv) A diagrammatic representation of the composition of the Appellate Tribunal is shown below.





# APPELLATE TRIBUNAL

- Constitution of Tribunal (*Section 109 (1)*)
- Power to be exercised by National Bench and Benches thereof (Regional Benches), State Bench and Benches thereof (Area Benches) (*Section 109(2)*)
- National Bench – President, Technical Member (Centre) & Technical Member (State)
- Regional Bench – Judicial Member, Technical Member (Centre) & Technical Member (State)
- State/Area Bench - Judicial Member, Technical Member (Centre) & Technical Member (State) – State Govt to designate senior most judicial member in a State as the State President.

# CESTAT



## Review of the Order – Filing Appeal under Pre GST - Regime





### **Present status of the GST Appellate Tribunal**

*The Division Bench of Madras High Court in the case of Revenue Bar Association v. Union of India (2019 SCC Online Mad 8910) has struck down the composition of the Appellate Tribunal as it comprises of more number of technical members than judicial members. Consequently, the Appellate Tribunal has not been constituted so far and therefore, an appeal cannot be filed before it within three months from the date on which the order sought to be appealed against is communicated.*

*To remove difficulty arising in giving effect to the above provision of the Act, the Government has issued the CGST (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided vide the said Order that the appeal to 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.*

*Hence, as of now, the prescribed time limit to make application to Appellate Tribunal will be counted from the date on which President or the State President enters office.*

*Since the Appellate Tribunal is not functioning currently, aggrieved parties need to file writ petition before the High Court if they want to seek any relief (stay of demand etc.)*

## Appellate Tribunal under GST Laws – Section 109-111

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- (v) The appointments to the Tribunal and functioning shall be in the manner prescribed under sections 110 and 111 of the CGST Act. On ceasing to hold office, the appointees to the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.
- (vi) 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.

However, any appeal where the tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed ₹ 5,00,000 and which does not involve any question of law may, with the approval of the President, be heard by a bench consisting of a single member.



## Procedure before Appellate Tribunal

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- (i) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice and shall have power to regulate its own procedure.
- (ii) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of documents;

## Procedure before Appellate Tribunal

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- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (h) any other matter which may be prescribed.

## Procedure before Appellate Tribunal

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- (iii)** Order of the Appellate Tribunal may be enforced in the same manner as if it were a decree made by a court in a suit pending therein. The Appellate Tribunal can send for execution of its orders to the court within the local limits of whose jurisdiction,—

  - (a) in the case of an order against a company, the registered office of the company is situated; or
  - (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
- (iv)** All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code. The Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.



# Appeal to Appellate Tribunal

## **Appeal by the aggrieved person (taxpayer)**

### **(i) Orders appealable to Appellate Tribunal**

Any person aggrieved by an order passed against him by an AA or RA under CGST Act/SGST Act/ UTGST Act may appeal to the Appellate Tribunal.

### **(ii) Time limit for filing appeal**

The appeal can be filed before the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.

# Appeal to Appellate Tribunal

## (iii) Form for filing appeal

The appeal shall be filed in Form GST APL-05 either electronically or otherwise as may be notified by the Registrar on the common portal and a provisional acknowledgement shall be issued to the appellant immediately. A certified copy of the decision/order appealed against shall be submitted to the Registrar within 7 days of filing the appeal and a final acknowledgement shall be issued thereafter.



## (iv) Date of filing appeal

If the certified copy of the decision/order is submitted within 7 days from the date of filing appeal in GST APL-05, the date of filing the appeal shall be the date of the issue of the provisional acknowledgement. However, if the said copy is submitted after 7 days, the date of filing the appeal shall be the date of the submission of such copy.

The appeal shall be treated as filed only when the final acknowledgement is issued.



**(v) Power of Tribunal to refuse to admit an appeal**

The Appellate Tribunal can refuse to admit an appeal if

- ☐ the tax or ITC involved or
- ☐ the difference in tax or ITC involved or
- ☐ the amount of fine, fee or penalty determined by such order does not exceed ₹ 50,000.

**(vi) Memorandum of cross objections**

The law also provides for filing of cross-objections by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal.

It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding, that he may not have appealed against such order or any part thereof, file within 45 days a memorandum of cross-objections in GST APL-06 against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified for filing the initial appeal.

The Tribunal can condone the delay of up to 45 days beyond the specified time period of 45 days, if it is satisfied that there was sufficient cause for the delay.


# Appeal to Appellate Tribunal

## **(vii) Fees for filing appeal**

The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed ₹ 25,000.

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

## **(viii) Mandatory pre-deposit for filing appeal**

No appeal can be filed before the Appellate Tribunal unless a specified amount of pre-deposit is made by the appellant. 

## **Departmental appeal**

- (i)** The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any order passed by the AA or RA under the CGST Act/SGST Act/ UTGST Act for the purpose of satisfying himself as to the legality or propriety of such order.
- (ii)** The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified him
- (iii)** The application shall be made in GST APL-07 either electronically or otherwise on the common portal.
- (iv)** Such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the AA or RA.

There is no requirement of making a pre-deposit in the case of departmental appeal.



## Orders of the Appellate Tribunal [Section 113]

- (i) The Tribunal, after hearing both sides may
  - ☐ pass such orders thereon as it thinks fit, **confirming, modifying or annulling** the decision or order appealed against or
  - ☐ refer the case back to the AA or to the RA, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.
- (ii) For reasons of natural justice (reasonable opportunity), it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to hearing of appeal to either side.
- (iii) The law provides an advisory time limit of 1 year from the date of filing of appeal for the Tribunal to decide the appeal.
- (iv) The Tribunal shall send a copy of its order to
  - AA/RA/Original adjudicating authority
  - Appellant
  - Jurisdictional Commissioner or the SGST/UTGST Commissioner
- (v) Every order passed by the Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

# Appeal to Appellate Tribunal

## Rectification of errors [Section 113(3)]

- ☐ The Tribunal can correct its own order for any apparent mistakes, but it has no power of review.
- ☐ The Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the Commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of 3 months from the date of the order.

No amendment which has the effect of enhancing an assessment or reducing a refund or ITC or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.



## Mandatory Pre deposits

The right to appeal is a statutory right which operates within the limitation placed on it by the law. One such limitation that is generally applied basis this principle in tax statutes is that an appellant must first deposit the adjudged dues before his appeal can be heard.

However, an appellant may succeed in his appeal, and hence it would (in retrospect) be unfair to saddle him with this financial burden. To balance these factors, tax laws generally mandate “pre-deposits” so as to discourage frivolous appeals and also safeguard the interest of revenue.

Section 107(6) provides that no appeal shall be filed before the AA, unless the appellant has paid—

- (a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him; **and**
- (b) a sum equal to 10% of the remaining amount of **tax in dispute** arising from the impugned order, subject to a maximum of ₹ 25 crore (₹ 50 crore in case of IGST\*).

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

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

## Mandatory Pre deposits

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits<sup>1</sup>

- (a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him, **and**
- (b) 20% of the remaining amount of **tax in dispute**, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 50 crore (₹ 100 crore in case of IGST), in relation to which appeal has been filed.

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

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount of demand in dispute shall be deemed to be stayed till the disposal of the appeal.

## **Interest on refund of pre-deposit [Section 115]**

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



# Production of Additional Documents

- (i) Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the AA or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.

- (ii) **Exceptions**

However, the rule provides the following exceptional circumstances where the production of additional evidence before the AA or the Tribunal could be allowed:

- (a) where the adjudicating authority or, as the case may be, the AA has refused to admit evidence which ought to have been admitted; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the AA; or
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or
- (d) where the adjudicating authority or, as the case may be, the AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

- (iii) No additional evidence shall be admitted unless the AA or the Appellate Tribunal records in writing the reasons for its admission.

## Production of Additional Documents

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- (iv) The AA or the Appellate Tribunal shall not take any additional evidence unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -
  - (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
  - (b) to produce any evidence or any witness in rebuttal of the additional evidence produced by the appellant.
- (v) The provisions of this rule shall not affect the power of the AA or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.



# Who can appear

## (i) Who can be authorized representative?

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

## (ii) Disqualifications for authorized representative

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

- (a) who has been dismissed or removed from Government service; or
- (b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods and/or services; or

## Disqualification for Authorised Representative

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(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent,

shall be qualified to represent any person—

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

**(iii)** Any person who has been disqualified under the provisions of the SGST Act/ UTGST Act shall be deemed to be disqualified under the CGST Act also.

# Appeal to High Court

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## **Appeals to High Court**

- (1) *Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.*
- (2) *An appeal under sub-section (1) shall be filed within one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form verified in such manner as may be prescribed;*

*Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.*



## Appeal to High Court

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- (3) *Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:*
- Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.*
- (4) *The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.*
- (5) *The High Court may determine any issue which -*
- (a) *has not been determined by the State Bench or Area Benches; or*
  - (b) *has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).*



## Appeal to High Court

- (6) *When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.*
- (7) *Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.*
- (8) *Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.*
- (9) *Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.*

# Appeal to High Court

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## Extract of the CGST Rules, 2017

### Appeal to the High Court

(1) An appeal to the High Court under sub-section (1) of section 117 shall be filed in FORM GST APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule 26.

### Demand confirmed by the Court

The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

# Appeal to Supreme Court

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An appeal can lie with the Supreme Court in case of:

- (i) Any judgement or order passed by National Bench, Regional Benches of Appellate Tribunal or High Court.
- (ii) The High Court must certify the Judgement/order to be fit one for appeal to the Supreme Court. When an appeal is reversed, or varied, the effect shall be given to the order of the Supreme Court on the question of law so formulated and delivered.
- (iii) The said judgement shall clearly indicate the grounds on which the decision is founded.
- (iv) Apart from this, the Supreme Court is empowered to frame any substantial question of law not formulated by any lower authority if it is satisfied that the case before it involves such question of law.

## Comparative review

- (i) Section 35L of the Central Excise Act, 1944



## Any sum payable to Govt. to be paid before filing Appeal.

### Analysis

- (i) The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding the fact that an appeal has been preferred before the High Court or Supreme Court, as the case may be.

### Comparative review

Section 35N of the Central Excise Act, 1944

## Appeal Not to be filed in certain cases

- (i) On recommendation of Council, the Board may issue order or instructions or directions fixing monetary limits for the purpose of regulating the filing of appeal or application by Officer of central tax.
- (ii) In case the Officer has not filed an appeal / application against any decision / order in view of such order / instruction / directions, it shall not preclude him from filing appeal / application in any other cases involving same / similar issue or question of law.
- (iii) No party in appeal / application shall contend that the Officer has acquiesced (agreed / consented) in the decision on the disputed issue by not filing an appeal / application.
- (iv) The Appellate Tribunal or court hearing such appeal / application shall have regard to the circumstances under which appeal / application was not filed by the Officer in pursuance of such order / instructions / directions.

### Comparative review

- (i) Section 35R of the Central Excise Act, 1944

## **Non Appealable Decisions and Orders – Section 121**

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No appeal shall lie against any decision / order taken / passed by Officer of central tax if such decision / order relates to any one or more of following matters –

- Transfer of proceeding from one officer to another officer;
- Seizure or retention of books of account, register and other documents;
- Order sanctioning prosecution under the Act
- Order passed U/s.80 related to payment of tax & other amount in instalments.



# Q&A

