



**The Institute of
Cost Accountants
of India (ICAI)**

Goods & Services Tax (GST) Certification Course

Disclaimer

2

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The presentation has been prepared to provide an overview of the applicable law pertaining to the subject matter. For detailed insight and for better understanding, its is advised to refer to relevant provisions in the Act and the related rules & notifications.



Adjudication & Appeals

What is Adjudication?

4

- “The act of judging a case, a competition or argument, or to make a formal decision about something” – Cambridge Dictionary
- A legal process of resolving a *lis* or a dispute between taxpayer and the Department.
- The one who adjudicates is called the “Adjudicating Authority”.
- Issue of Adjudication Order is known as “Order-in-original”.

Adjudicating Authority

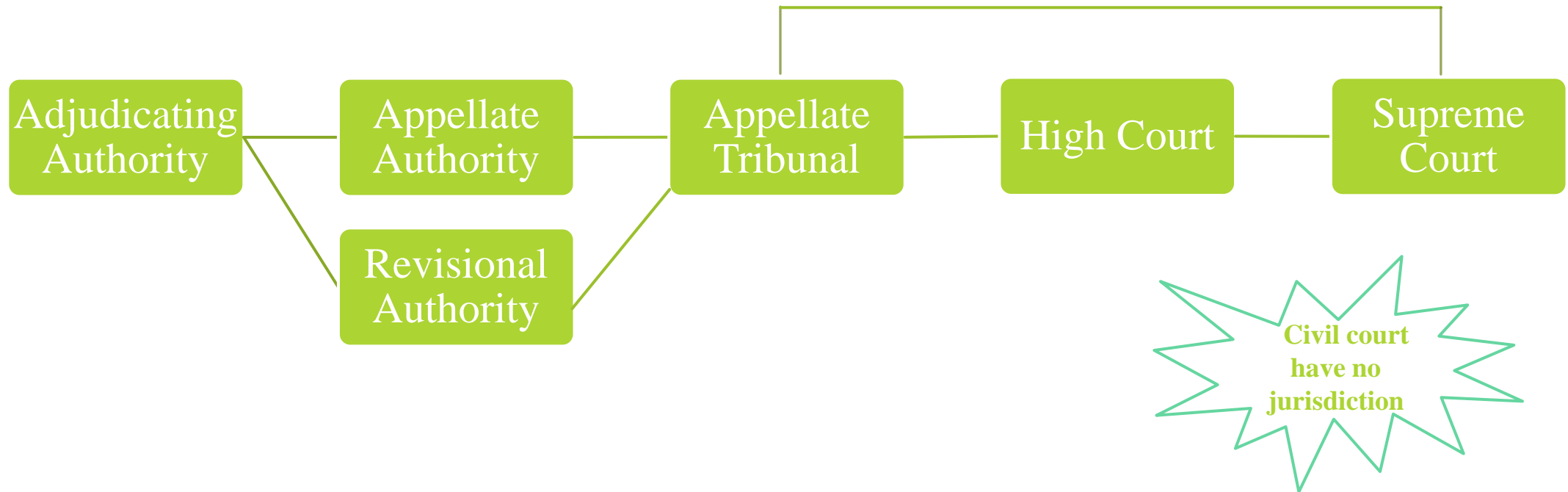
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- “Adjudicating Authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the CBIC, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the National Anti Profiteering Authority. *Sec 2(4) of CGST Act*
- Such Authority can be of the rank of Additional/ Joint Commissioner or Deputy/ Assistant Commissioner.

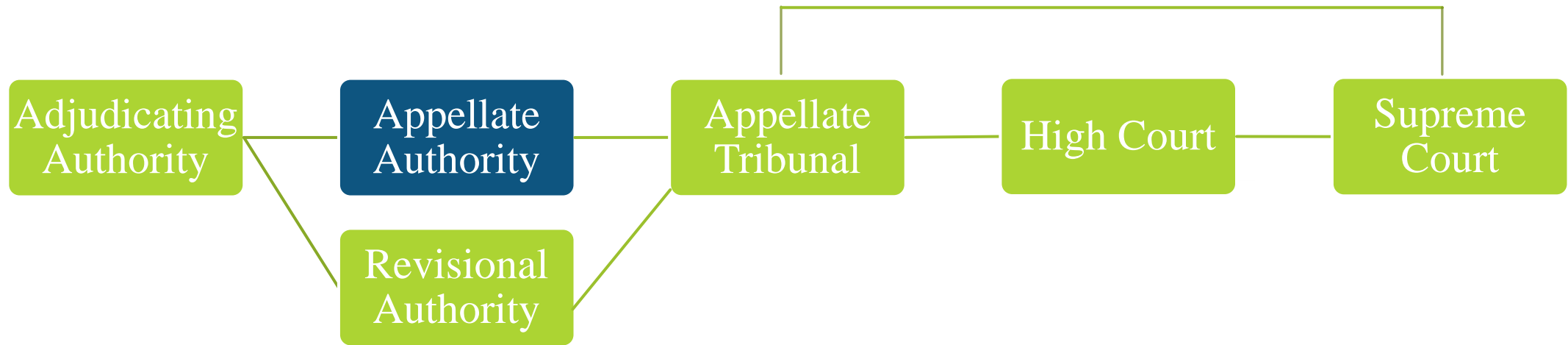
Normal Appeal Process



Appeal Process in GST



Appeal Process in GST



Appellate Authority

9

- First level of authority to appeal against the Order passed by an Adjudicating Authority.
- If the Adjudication Order has been passed by
 - Deputy/ Assistant Commissioner/ Superintendent, the appeal lies before any officer not below Joint Commissioner (Appeals).
 - Additional/ Joint Commissioner, the appeal lies before Commissioner (Appeals).

Appeal to Appellate Authority – Sec 107

10

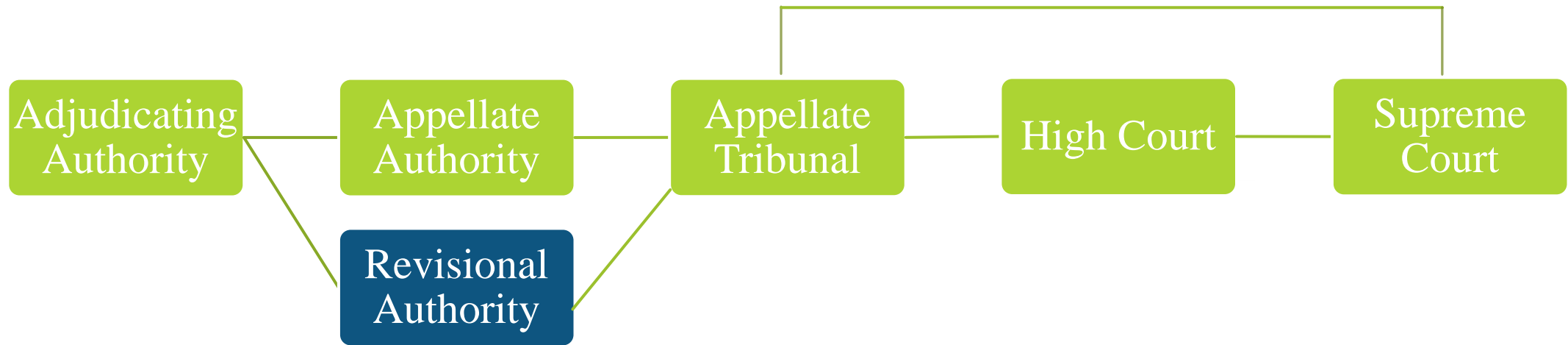
- ▶ To be filed within 3 months of the Adjudication Order (6 months in case Dept. wants to appeal). Condonation allowed by up to 1 month (if authority is satisfied).
- ▶ Appeal with supporting docs to be filed in form GST APL-01 or GST APL-03 (Dept). Provisional acknowledgement is issued.
- ▶ Certified copy of Order to be submitted within 7 days of filing the appeal. Final acknowledgment indicating appeal number is generated in form GST APL-02
- ▶ Pre-deposit 100% of undisputed amount + 10% of the disputed tax amount (subject to max Rs. 25 Cr.).
- ▶ Recovery proceedings deemed stayed once the appeal filed and amount paid.
- ▶ The appellant shall be given opportunity to be heard. Maximum 3 adjournments allowed.
- ▶ Additional ground(s) of appeal not specified earlier can be added, provided the Authority deems that such omission was not wilful or unreasonable.
- ▶ Appellate Authority to inquire, hear and pass the Order within 1 year in form GST APL-04
- ▶ If the issuance of Order is stayed by Court or Tribunal, the period of such stay shall be excluded in computing the period of 1 year.

Appeal to Appellate Authority – Sec 107

11

- ▶ Appellate Authority can't refer the case back to the Adjudicating Authority.
- ▶ Enhancement of fee/ penalty/ fine or confiscating goods of greater value or reducing refund/ Input credit not to be passed unless appellant given reasonable opportunity of showing cause.
- ▶ Order shall be in writing, stating the points for determination, the decision thereon and the reasons for such decision.
- ▶ Order passed shall be communicated to the appellant, respondent and to the adjudicating authority.
- ▶ Copy of the Order shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf.
- ▶ Subject to further appeal, the Order of the Appellate Authority shall be final and binding on the parties.

Appeal Process in GST



Revisional Authority – Sec 108

13

- Powers
 - Can work suo-moto or upon information received by him or on the request of the Commissioner.
 - Can call for or examine record of any proceedings. He may then proceed to stay the operations of the Order
 - if he considers that decision or Order passed by any officer subordinate to him is erroneous, prejudicial, illegal, improper or missed material facts.
 - in consequence of an observation by CAG
 - After giving an opportunity to be heard, can pass an Order enhancing, modifying or annulling the earlier Order.
- However, can't exercise powers if:
 - The matter has been subjected to appeal with one of the authorities in the appeal hierarchy
 - The window to appeal to the Appellate Authority is open or more than 3 years have elapsed of passing of the Order which is sought to be revised.
 - The Order has already been taken up for revision once
 - A revisional Order has already been passed (Revisional Order cannot be revised)

Revisional Authority – Sec 108

14

- To pass the Order on any point which has not been raised and decided in an appeal within 1 year of the Order in such appeal or 3 years from the date of passing of the original Order, whichever is later.
- Subject to the fact that it may be appealed further, Order of the Revisional Authority shall be final and binding on the parties.
- If the decision or Order involves an issue in which an appeal to higher authorities is pending for some other proceedings, the period spent between the date of the decision of the two authorities shall be excluded in computing the period of limitation.
- If issuance of an Order 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.
- In case the Order is likely to affect the person adversely, notice in form GST RVN-01 shall be issued to give the said person a reasonable opportunity to be heard.
- The Authority shall issue the Order providing summary and the final demand amount in form GST APL-04.

Appeal Process in GST



Appellate Tribunal – Sec 109

16

- To be constituted and notified with the recommendation of the GST Council
- To hear appeal against Order passed by Appellate Authority or Revisional Authority
- Power exercised through National Bench, Regional Benches, State Benches & Area Benches
- Constitution of the Bench
 - National bench - President, one Technical member (Centre) and one Technical member (State)
 - Regional/ State/ Area bench – Judicial member, one Technical member (Centre) and one Technical member (State) {Senior most judicial member in the state shall be designated as State President}
- National or Regional Bench to hear matters where one of the issue relates to place of supply and State or Area Bench will hear matters relating to other transactions.

Appellate Tribunal – Sec 109

17

- President/ State President shall, by general or special Order, distribute the business or transfer cases among Regional Benches and, as the case may be, to the Area Benches.
- In the absence of a member due to vacancy or otherwise, President of resp. Tribunal can entrust matter to 2 member bench
- In case the amount involved is up to Rs. 5 Lacs and the case doesn't involve any question of law, with the approval of the President of resp. Tribunal, matter can be heard by a single member Bench.
- Matter to be decided according to the opinion of the majority.
- In case of a deadlock in opinion, the resp. President may ask one or more members of the other Bench for their opinion and then the matter shall be decided on majority.
- 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.

Appellate Tribunal – Sec 110

18

- President - Judge of the Supreme Court or Chief Justice of a High Court or Judge of a High Court for a period not less than 5 years
- Judicial member – Judge of a high court or District Judge qualified to be appointed as a Judge of a High Court or Member of Indian Legal Service and has held a post not less than Additional Secretary for 3 years
- Technical member (Centre) - Member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 15 years of service in Group A
- Technical member (State) - Officer of the State Government not below the rank of Additional Commissioner of VAT or the State GST or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least 3 years of experience in the administration of an existing law or the State GST or in the field of finance and taxation.

Appellate Tribunal – Sec 110

19

- The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India.
- The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee.
- The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State.
- The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government.
- The term of President and the Judicial member shall be 3 years and that of the technical member, 5 years. They are eligible for reappointment unless attained superannuation.

Powers of Appellate Tribunal – Sec 111

20

- Appellate Tribunal shall have power to regulate its own procedure.
- For the purposes of discharging its functions under GST, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908.
- They may
 - summon and enforce the attendance of any person and examining him on oath.
 - Require the discovery and production of documents.
 - Receive evidence on affidavits
 - requisition any public record, document, copy of such record or document from any office (subject to Sec 123 & 124 of Indian Evidence Act, 1872)
 - issue commissions for the examination of witnesses or documents.
 - dismiss a representation for default or deciding it *ex parte*.
 - set aside any Order of dismissal of any representation for default or any Order passed by it *ex parte*.

Powers of Appellate Tribunal – Sec 111

21

- Any Order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein.
- It shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,
 - in the case a company, where the registered office of the company is situated.
 - in the case of any other person, where the person concerned voluntarily resides or carries on business or personally works for gain.
- All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings (within the meaning of Sec 193, 196 and 228 of the Indian Penal Code)
- The Appellate Tribunal shall be deemed to be Civil Court for the purposes of Sec 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Appeal to Appellate Tribunal – Sec 112

22

- ▶ To be filed within 3 months of the Order of Appellate Authority (6 months in case Dept. wants to appeal). Condonation allowed up to 3 months (if satisfied).
- ▶ Tribunal may refuse to admit petty appeals where the monetary value involved doesn't exceed Rs. 50,000
- ▶ To be filed in form GST APL-05 together with relevant docs. Fee Rs. 1,000 per lac of the disputed amount involved, subject to max Rs. 25,000
- ▶ Within 7 days of filing the appeal, certified copy to be submitted. Final acknowledgement and appeal number is then issued in form GST APL-02
- ▶ Dept. to file appeal in form APL-07 without fee
- ▶ Memorandum of Cross-objections to be filed within 45 days of the receipt of the notice in form GST APL-06.
- ▶ Pre-deposit 100% of undisputed amount + 20% of the disputed tax amount* (subject to max Rs. 50 Cr.).
 - * The 20% of the disputed amount is over and above the amount already deposited at the time of appeal to Appellate Authority.
- ▶ Recovery proceedings deemed stayed once the appeal filed and amount paid.

Orders of Appellate Tribunal – Sec 113

23

- ▶ The parties will be given an opportunity to be heard.
- ▶ Up to 3 adjournments allowed
- ▶ Tribunal to hear and decide the appeal within 1 year of filing (as far as possible)
- ▶ Tribunal may confirm, modify or annul the Order appealed against.
- ▶ Can remand the matter back to the lower authorities (AA, RA or Adjudicating Authority) with directions.
- ▶ Statement indicating final demand will be issued in form GST APL-04
- ▶ Copy of the Order is sent to the appellant, the Jurisdictional Commissioner, AA/ RA or Adjudicating Authority.
- ▶ If brought to notice within 3 months, may amend* any Order passed by it so as to rectify any error apparent on the face of the record.
 - * Amendment, if it increases liability of the other party not to be passed unless appellant given reasonable opportunity
- ▶ No fee for application made for rectification of errors in Order.
- ▶ Subject to further appeal, the Order is final and binding on the parties.

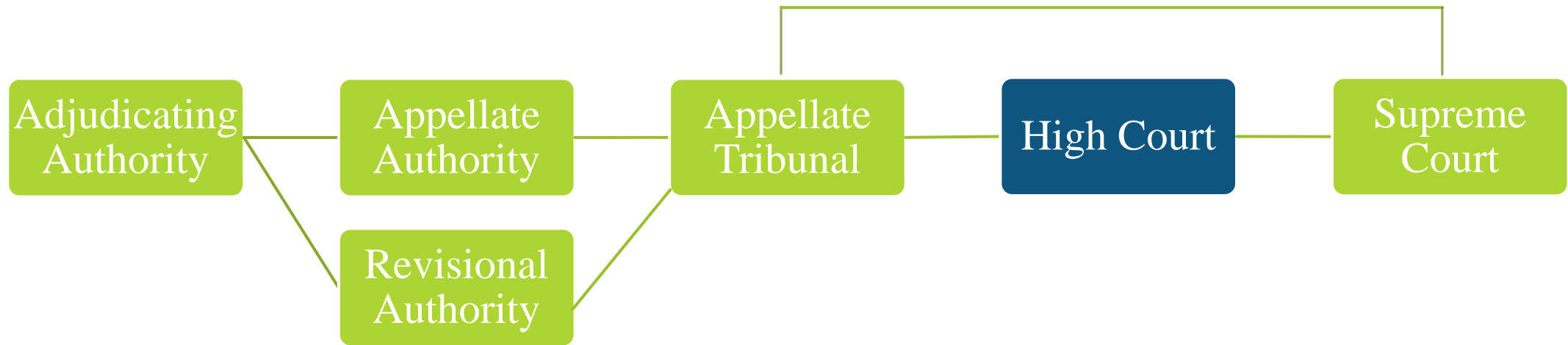
- Rule 112 – Except in certain circumstances, no evidences, other than the ones produced during the course of the proceedings before the adjudicating authority or the Appellate Authority shall be allowed to be produced before the Appellate Authority or the Appellate Tribunal.
- Sec 114 – The President may delegate its financial and administrative powers to any member of the National or Regional Bench. However, such person shall continue to act under the direction, control and supervision of the President.
- Sec 115 – If, consequent to any Order by Appellate Authority or Tribunal, any pre deposit paid by the appellant during the appeal process needs to be refunded, interest at the rate specified u/s 56 shall be payable on the said amount from the date of payment of the amount till the date of refund of such amount.
- Sec 116 - Otherwise than when required to appear personally for examination on oath or affirmation, the person may appoint an authorised representative to appear on his behalf for any proceedings under the Act.

Authorised Representative – Sec 116

25

- Such authorised representative shall be,
 - His relative or regular employee
 - An advocate entitled to practice in any Court in India and has not been debarred from practice.
 - Practising CA/ CMA/ CS, provided not debarred from practice
 - Retired officer of Commercial Tax Dept who has worked not below the rank than that of Group-B Gazetted officer rank for a period of not less than 2 years and more than 1 year has elapsed from his date of retirement/ resignation.
 - Authorised GST practitioner
- Disqualifications to act as authorised representative
 - Dismissed or removed from Government service
 - Convicted of an offence connected with the proceedings of the Acts dealing with imposition of tax on sale or supply of goods or services.
 - Found guilty of misconduct by the prescribed authority.
 - Adjudged insolvent, till such time the insolvency continues.

Appeal Process in GST

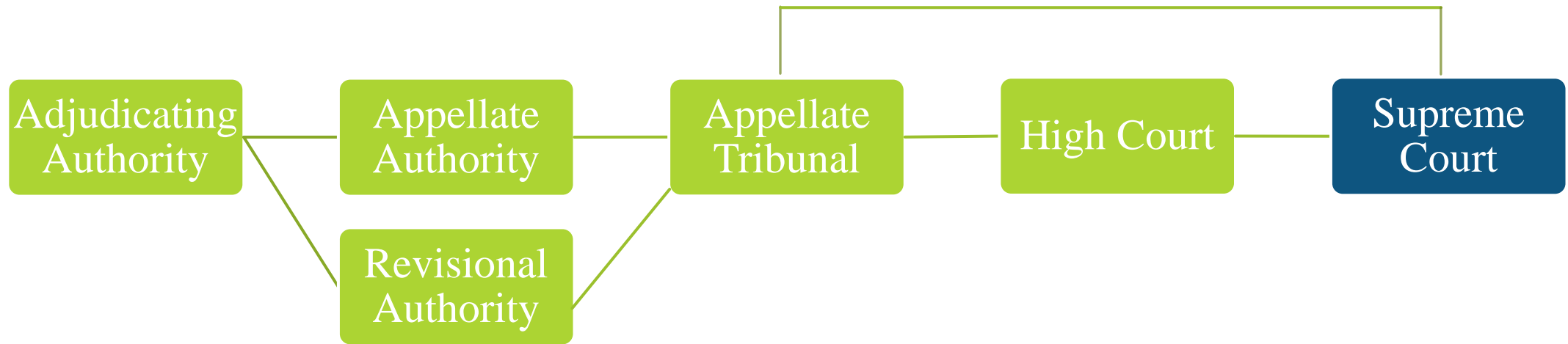


Appeal to the High Court – Sec 117

27

- ▶ To hear Order passed by State or Area Bench of Appellate Tribunal
- ▶ Appeal, in form GST APL-08, to be filed within 180 days of the Tribunal's Order. Condonation allowed on case to case basis.
- ▶ Admission of appeal, only if the case involves substantial question of law
- ▶ HC shall formulate the questions and the appeal shall be heard only on the questions so formulated. HC, however, has the right to take any additional question(s), if deem fit.
- ▶ Notwithstanding the appeal, sums due to the Government as a result of an Order passed by Tribunal shall be payable.
- ▶ Case to be heard by bench consisting of at least 2 judges.
- ▶ In case of no majority, additional judges may be called to hear the case only on the points where the original judges had a difference of opinion.
- ▶ Case shall be decided basis majority of the opinion and shall be effected based on certified copy of the judgement.
- ▶ Jurisdictional officer to issue statement in form GST APL-04 indicating the final amount of demand confirmed by the High Court.
- ▶ Provisions of Code of Civil Procedure relating to appeals to the High Court shall, as far as possible, apply in the case of appeals.

Appeal Process in GST



Appeal to the Supreme Court – Sec 118

29

- ▶ To be filed immediately after
 - ▶ Order of National/ Regional bench of the Appellate Tribunal
 - ▶ Order of the High Court, after HC certifies that the case is fit for an appeal to the Supreme Court.
- ▶ Provisions of Code of Civil Procedure, 1908 relating to appeals to the Supreme Court shall apply in the case of appeals.
- ▶ Notwithstanding the appeal, sums due to the Government as a result of an Order passed by the High Court shall be payable.
- ▶ Supreme Court may vary, upheld or reverse the Order.
- ▶ Jurisdictional officer to issue statement in form GST APL-04 indicating the final amount of demand confirmed by the Supreme Court.

Non-appealable decisions – Sec 121

30

- An Order to transfer of proceedings from one officer to another officer
- An Order pertaining to seizure of books of accounts, registers or other documents etc.
- An Order sanctioning prosecution under the Act
- An Order passed to grant/ not grant extension of time limit for payment of tax or payment of dues in instalments

Thank You

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**KEEP
CALM
&
FOLLOW
THE RULES**

Dept not to file appeal – Sec 120

32

- On the recommendations of the Council, the Board may, from time to time, issue Orders or instructions or directions in congruence with the National Litigation Policy.
- If the amount involved is not high. Fixing monetary limits is to be recommended by the GST council from time to time.
- In pursuance to the Order or instructions or directions, if the officer has not filed an appeal against any decision, that can't be restrictive for him not to file appeal in any other case involving the same or similar issues or questions of law.
- Non filing of appeal by Department in similar cases cannot be used as a precedent or as a ground to protest/ contest.



Admission of additional evidences – Rule 112

33

- When Adjudicating Authority or Appellate Authority has refused to admit evidences which should have been admitted.
- Where the appellant was prevented from producing the evidences which were called upon and were relevant to the case/ ground of appeal.
- Where the authorities have made Order without giving adequate opportunities to produce evidences relevant to the case/ ground of appeal.
- No evidence shall be admitted unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.
- Such admission shall be made only after examining the evidence/ document or cross-examining any witness produced or producing evidences in rebuttal to the claim by the appellant.

