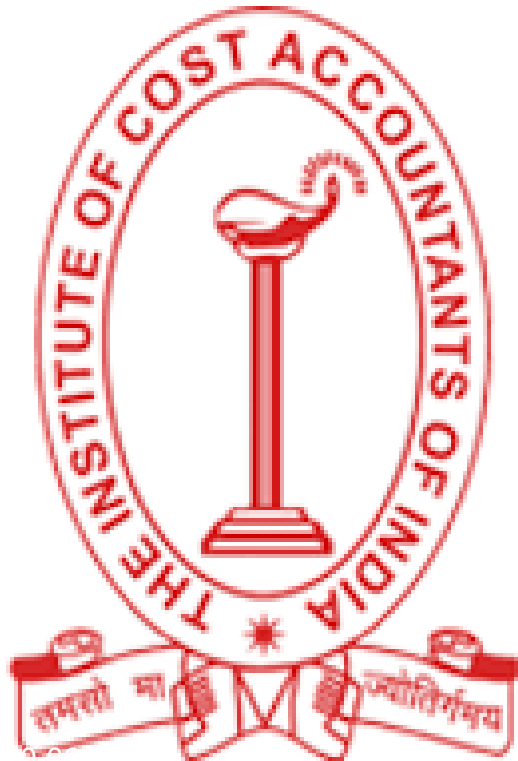


APPEALS UNDER GST

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Theory of Appeals in GST in Detail



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Coverage

Filing	Filing of Appeal against Demand Order (FORM GST APL-01) (Theory and Practical).
Filing	Filing of Appeal against Registration Order (FORM GST APL-01) (Theory and Practical).
Filing	Filing an Appeal against Refund Order (Theory and Practical).
Filing	Filing an Appeal against Other Orders (Theory and Practical).
Filing	Filing Reply and Rectification Request during Revision Order Proceedings (Theory and Practical).
Filing	Filing Reply and Rectification Request during Proceedings and Order of First Appeal (Theory and Practical).



Overview of Appeals under GST

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10-06-2023

Statutory Provisions relating to Appeals and Revisions – Chapter XVIII of CGST Act 2017

Section	Section Heading
107	Appeals to Appellate Authority
108	Powers of Revisional Authority
109	Constitution of Appellate Tribunal and Benches thereof
110	President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc
111	Procedure before Appellate Tribunal
112	Appeals to Appellate Tribunal
113	Orders of Appellate Tribunal
114	Financial and administrative powers of President
115	Interest on refund of amount paid for admission of appeal

Statutory Provisions relating to Appeals and Revisions – **Chapter XVIII of CGST Act 2017**

Section	Section Heading
116	Appearance by authorised representative
117	Appeal to High Court
118	Appeal to Supreme Court
119	Sums due to be paid notwithstanding appeal, etc
120	Appeal not to be filed in certain cases
121	Non-appealable decisions and orders

Statutory Provisions relating to Appeals and Revisions – Chapter XIII of CGST Rules 2017

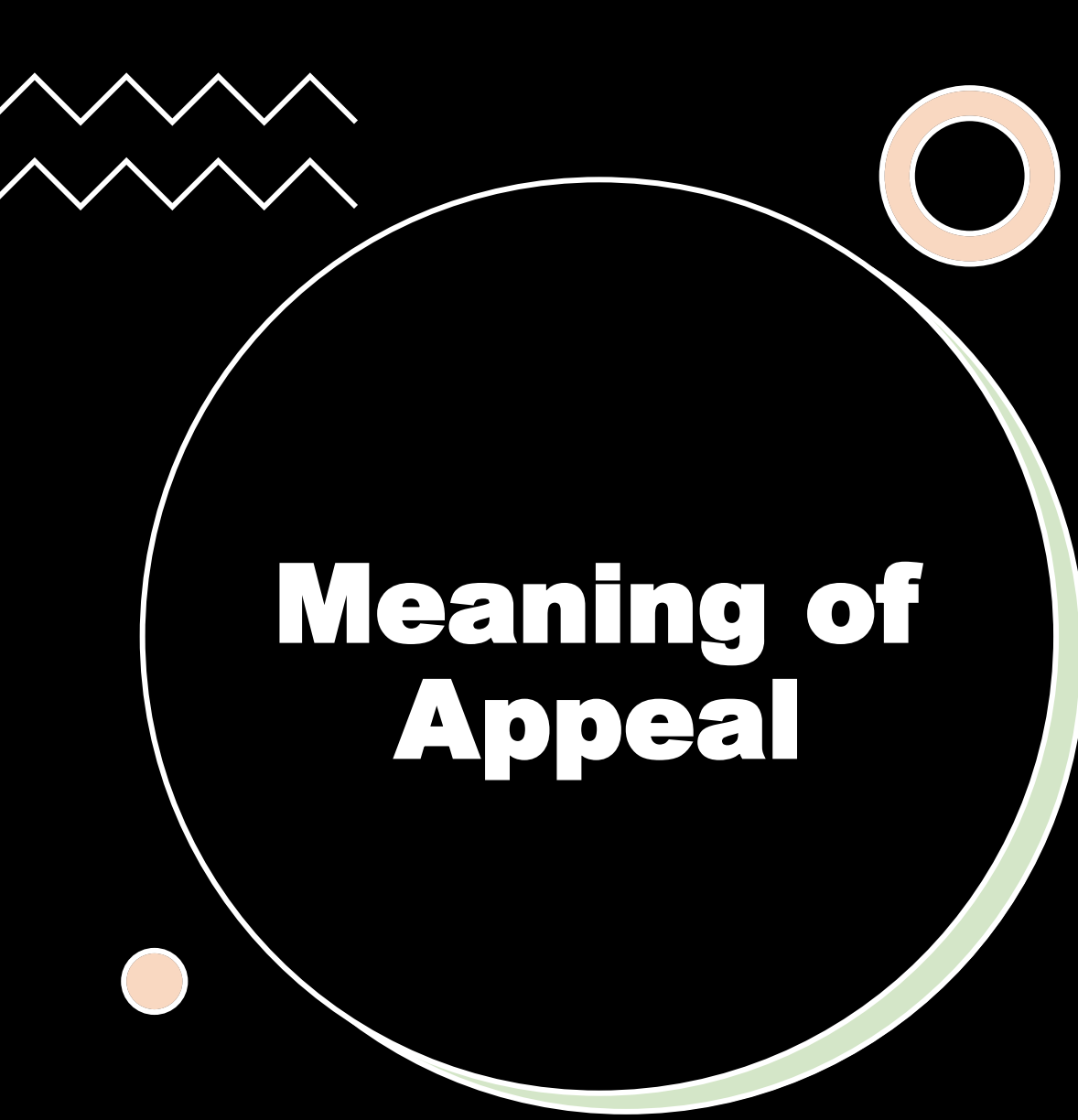
Rule	Rule Heading
108	Appeal to Appellate Authority.
109	Application to the Appellate Authority.
109A	Appointment of Appellate Authority.
109B	Notice to person and order of revisional authority in case of revision.
110	Appeal to the Appellate Tribunal.
111	Application to the Appellate Tribunal.
112	Production of additional evidence before the Appellate Authority or the Appellate Tribunal.
113	Order of Appellate Authority or Appellate Tribunal.
114	Appeal to the High Court.

Statutory Provisions relating to Appeals and Revisions – **Chapter XIII of CGST Rules 2017**

Rule	Rule Heading
115	Demand confirmed by the Court.
116	Disqualification for misconduct of an authorised representative.

Forms related to Appeals

Form No.	Rule	Description
GST APL-01	108(1)	Appeal to Appellate Authority;
GST APL-02	108(3)	Acknowledgement for submission of Appeal;
GST APL-03	109(1)	Application to the Appellate Authority U/S 107(2);
GST APL-04	109B, 113 and 115	Summary of the demand after issue of order by the Appellate Authority, Revisional Authority, Tribunal or Court;
GST APL-05	110(1)	Appeal to the Appellate Authority;
GST APL-06	110(2)	Cross Objection before the Appellate Tribunal U/S 12(5);
GST APL-07	111(1)	Application to the Appellate Tribunal U/S 112(3)
GST APL-08	114(1)	Appeal to High Court U/S 117
GST APL-01/03 W	109(B)	Application for withdrawal of Appeal Application.



Meaning of Appeal

In simple words, an “Appeal” is a challenge to a previous legal determination;

The term ‘Appeal’, in legal context, is generally understood to mean “**proceeding**” or “**Application**” preferred by an “**aggrieved party**” before the higher judicial forum for review of a decision of the lower court;

The meaning of Appeal as per Black’s Law Dictionary (6th edition) is: “**Resort to a superior (that is appellate) court or administrative agency**”;

The Person pursuing an Appeal is called “**Appellant**”, while the Person defending an Appeal is the “**Respondent**”;

Important case law on the Meaning of Appeal

In **State of Gujarat vs. Salimbhai Abdulgaffar Shaikh – AIR 2003 SC 3224**, the Supreme Court observed:

- *“Though the word ‘Appeal’ is used both in **Code of Criminal Procedure** and **Code of Civil Procedure** and in many other Statutes but **it has not been defined anywhere**. Over a period-of-time, it has acquired a definite connotation and meaning which is as under:*
- *A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority, specially, the submission of a lower Court's decision to higher Court for review and possible reversal.*
- *An appeal strictly so called is one in which the question is, whether the order of the Court from which the appeal is brought was right on the material which the Court had before it.*
- *An appeal is removal of the cause from an inferior to one of superior jurisdiction for the purposes of obtaining a review or retrial.*

An appeal generally-speaking is a rehearing by a superior Court on both law and fact.”

Important Definitions

Section 2(4) - "Adjudicating Authority" means any authority, appointed or authorized 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 National 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(8) - "Appellate Authority" means an authority appointed or authorized to hear appeals as referred to in section 107;

Section 2(9) - "Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109;

Section 2(15) - "Authorized Representative" means the representative as referred to in section 116;

Section 2(99) - "Revisional Authority" means an authority appointed or authorized for revision of decision or orders as referred to in section 108;

Appeals Mechanism under GST

Section 107	First Appeal before the Appellate Authority - read with Section 115 and 116;
Section 108	Provisions relating to Revisionary Authority;
Section 109 to 114	Second appeal before the Appellate Tribunal – read with Section 115 and 116;
Section 117	Appeal to High Court;
Section 118	Appeal to Supreme Court;
Section 119 to 121	Other miscellaneous provisions;

Impact on “Right to Appeal” due to Dual structure of GST

GST implemented in India is a **dual GST**;

Supply attracting levy will be leviable to **both central tax and state tax**;

Centre and States are vested with **concurrent jurisdiction** to levy tax on the same tax base;

In this circumstances, if a **taxpayer is aggrieved**, to whom shall an **Appeal against the Order passed by an Officer of CGST lie?**

The Appeal shall lie **only to an Officer appointed under the CGST Act**.

Section 6 (3) of the CGST Act specifically mandates that “any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST or UTGST Act”.

Similar provisions exist in SGST/UTGST Act also.

Monetary Limits for issue of SCN and Orders U/S 73 and 74 – Circular 31/2018 dated 09/02/2018

Officer of Central Tax	Monetary limit of the amount of CGST (including Cess) for issuance of SCN and Orders U/S 73 and 74 of CGST Act	Monetary limit of the amount of IGST (including Cess) for issuance of SCN and Orders U/S 73 and 74 of CGST Act made applicable to IGST U/S 20	Monetary limit of the amount of CGST and IGST (including Cess) for issuance of SCN and Orders U/S 73 and 74 of CGST Act made applicable to IGST U/S 20
Superintendent	Not exceeding Rs. 10 lakhs ;	Not exceeding Rs. 20 lakhs ;	Not exceeding Rs. 20 lakhs ;
Deputy or Asst Commissioner	Above Rs. 10 lakhs & not exceeding Rs. 1 crore ;	Above Rs. 20 lakhs & not exceeding Rs. 2 crore ;	Above Rs. 20 lakhs & not exceeding Rs. 2 crore ;
Addl or Joint Commissioner	Above Rs. 1 crore without any limit;	Above Rs. 2 crore without any limit;	Above Rs. 2 crore without any limit;

Steps of Appeal under GST

Appeal level	Orders passed by	Appeal to	Relevant Sections
1 st	Adjudicating Authority;	First Appellate Authority;	107
2 nd	First Appellate Authority;	Appellate Tribunal	109, 110
3 rd	Appellate Tribunal	High Court	111 – 116
4 th	High Court	Supreme Court	117 - 118

Writ jurisdiction of the Supreme Court vis-à-vis High Courts

Article 32 of the Indian Constitution empowers the Supreme Court to issue writs;

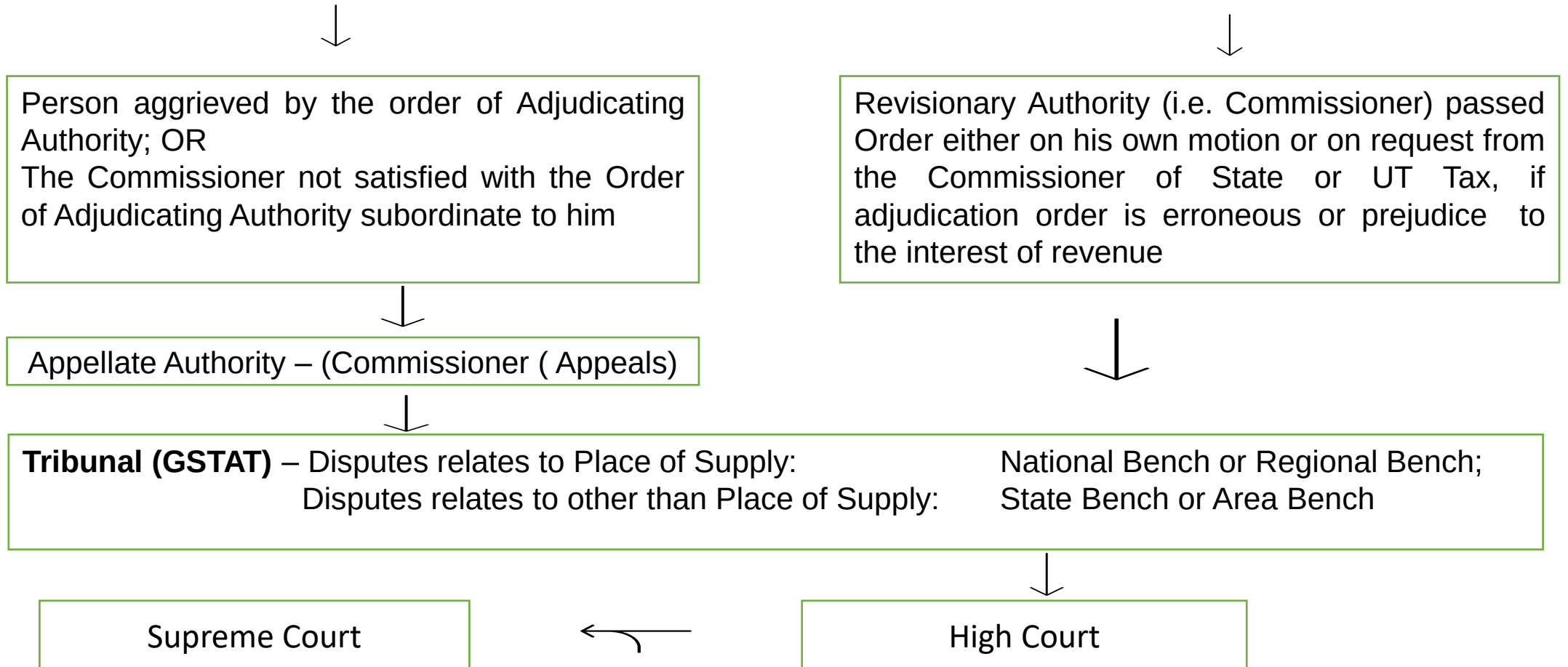
Article 226 empowers the High Courts to issue writs;

The Differences between the writ jurisdiction of both the courts:

Difference	Supreme Court	High Court
Purpose	To enforce Fundamental Rights only;	To enforce Fundamental Rights as well as for other purposes (e.g. legal rights);
Territorial Jurisdiction	Against a person or Government throughout India;	Against a person, Government or Authority located within its territorial jurisdiction (outside jurisdiction where cause of action arises within its jurisdiction);
Power	Supreme Court may not refuse to exercise its powers to issue writs;	Discretionary – May refuse to exercise its powers o writs;

Appeals under GST

Appeals under GST



Appeal in regard to Non-Constitution of Appellate Tribunal (GSTAT)

Section 109(1) of the CGST Act empowers the Central Government to constitute, on the recommendation of the GST Council, from such date as may be specified therein, an Appellate Tribunal to hear Appeals against orders made by the first level Appellate Authority or the Revisional Authority;

The power of the Appellate Tribunal shall be exercised by the National Bench, the Regional Benches and the State and Area Benches;

The Appellate Tribunal **has not been constituted yet**;

In order to remove difficulty arising in giving effect to Section 122, the Government, on the recommendations of the GST Council, has issued the **CGST (Ninth Removal of Difficulties) Order, 2019, dated December 03, 2019**, in terms of which Appeal to Appellate 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**;

The CBIC, vide **Circular No. 132/2/2020–GST dated 18/03/2020**, clarified that the prescribed time limit to make Application to the Appellate Tribunal will be counted **from the date on which the President or the State President enters office, whichever is later**;

Non-appealable decisions and orders – Section 121

*“Notwithstanding anything to the contrary in any provisions of this Act, **no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:-***

*(a) an order of the Commissioner or other authority empowered to **direct transfer of proceedings from one officer to another officer**; or*

*(b) an order pertaining to the **seizure or retention of books of account, register and other documents**; or*

*(c) an order **sanctioning prosecution** under this Act; or*

*(d) an order **passed under section 80.**”*

Section 80 relates to **Payment of tax and other amount in instalments**;

Filing an Appeal against Refund Order

Any taxpayer or an unregistered person aggrieved by any decision or order passed against him/her by an adjudicating authority, may appeal to the Appellate Authority, **within three months** from the date on which the said decision or order is communicated to such person.

The **pre-conditions for the taxpayer or an unregistered person** to file an appeal against the refund order to the Appellate Authority:

Order must have been passed by the **Refund Processing Officer**. He / She should have valid **Form GST RFD-06 order number**.

There **shouldn't be any other appeal initiated against the same order**.

The Appellate Authority may condone delay for a period of **maximum of 1 month**, if he/she is satisfied that the taxpayer was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months and allow it to be presented within a period of one month after the date of expiry of filing appeal.

All types of Taxpayers - Regular, Casual, Nonresident, TDS/TCS, OIDAR, UN bodies, un-registered persons and even Tax **department are eligible to file appeal against the refund order** to the Appellate Authority.

Filing an Appeal against Refund Order

A taxpayer can file appeal against the final refund order either sanctioning or rejecting the refund amount (partially or fully), issued in **Form GST RFD 06**.

The Appealable amount / Disputed amount entered cannot exceed the amount of refund claimed in respective major/minor head.

Once an appeal against a refund order is filed, an email and SMS are sent to the taxpayer and to the Appellate Authority.

The disputed amount entered cannot exceed the amount of refund claimed in respective major/minor heads.

The appellant is required to submit physical copy of supporting documents along with appeal application, duly signed and verified to the office of the appellate authority within 7 days of filing appeal on the GST Portal. Upon receipt of complete documents, the final acknowledgement will be issued to him/her.

Filing Reply and Rectification Request during Revision Order Proceedings

Revision Order Proceedings are related to proceedings conducted by a Revisional Authority (RA) to revise an impugned Order, originally issued to the taxpayer by an Adjudicating Authority (A/A).

Revision proceedings are initiated, if the difference in the date of communication of Order and the date of revising it, **is between 7 months and 3 years** (the period of first appeal has expired) or else, Revision Proceedings won't be initiated.

In other words, **following is the time limit for revision of an Order:**

Revision of Order cannot be done within **6+1 (Six+ one) months** from the **Date of Communication of the decision or order sought to be revised.**

Revision of Order cannot be done **after 3 (Three) years** from the **Date of order** sought to be revised or after the expiry of one year from the date of the order in such appeal, whichever is later.

Filing Reply and Rectification Request during Revision Order Proceedings

Commissioner/STO issues the required directions on the impugned adjudication Orders to the RA.

Commissioner/STO (himself/herself as RA) or RA initiates the proceedings by issuing a Revision Notice to the concerned parties.

With the issue of the Revision Notice, following actions take place on the GST Portal:

An Internal Reference Number (IRN) is generated with the Status as "Revision Notice Issued".

Intimation of the issue of Notice is sent to the concerned taxpayer and the A/A on their registered email id.

Taxpayers would receive an SMS notification also on their registered mobile.

Dashboard of the A/A and Taxpayer is updated with the record of the issued Notice.

Date of hearing, as specified in the Notice, is updated in the GST Portal's Cause list.

The demand Id issued on the impugned Order by adjudication authority shall continue and status will be "stayed" until an Order is issued on the Revision Proceedings.

The recipients of the Revision Notice can file their replies on the Portal.



Appeals to Appellate Authority –

Overview and Analysis of related Sections under CGST Act and Rules under CGST Rules

Section 107 of CGST Act – Appeals to Appellate Authority – Important takeaways

Section 107 of CGST Act deals with **Appeals to the Appellate Authority** by any person who is aggrieved against any decision or Order **passed by the Adjudicating Authority**.

Appellate Authority means an **Authority appointed or authorised to hear Appeals** as referred to in Section 107.

This Section also provides for **Appeal by the Tax Authorities** against a **decision or Order** passed by **Adjudicating Authority**.

Any person, **aggrieved by any decision or Order** passed by **Adjudicating Authority** may prefer an Appeal **within a period of three months from the date of communication of decision or Order** in **Form GST APL-01**, along with **relevant documents** either **electronically or otherwise** as notified by the **Commissioner** against which a **provisional Acknowledgement** will be issued immediately.

The **Grounds of Appeal and Form of Verification** must be **duly signed** as specified in Rule 26.

The certified copy of the **decision or Order** is to be **filed** before the **Appellate Authority** within **seven days** of filing the Appeal.



Section 107 of CGST Act – Appeals to Appellate Authority - Important takeaways

A **final Acknowledgement** indicating the **Appeal Number** shall be issued in Form **GST APL-02** by the said Authority.

In such a situation, **the Appeal shall be deemed to be filed on the Date of issue of Provisional Acknowledgement.**

In case the certified copy is submitted **after a period of seven days**, the date of filing of Appeal shall be the Date of submission of such copy.

The Appeal shall be considered as filed only when the final Acknowledgement, indicating the Appeal Number is issued.

Where the certified copy is not submitted **within seven days**, the date of submission of the certified copy shall be the Date of filing of Appeal.



Section 107 of CGST Act – Appeals to Appellate Authority – Important takeaways

On the other side, the **Commissioner of Central Tax or State Tax or any Union Territory Tax** can, with a view to satisfy himself about the **legality or propriety of any Order** or decision passed by an **Adjudicating Authority**, direct a subordinate Officer to file an Application before the **Appellate Authority within six months** from the date of communication of decision or Order in Form **GST APL-03**, along with **relevant documents** either **electronically** or otherwise as notified against issue of an **Acknowledgement**.

A certified copy of the decision or Order of the Appeal is to be filed before the **Appellate Authority within seven days** of filing the Application and an **Appeal Number** shall be generated accordingly.

The Appellate Authority shall treat the Application filed by authorized Officer as if such authorized Officer is the Appellant and the provisions of the Act relating to Appeal will be applicable to such Application.

The **Appellate Authority** in either of the above cases is empowered to condone the delay up to a **period of one month**.

Appeals to Appellate Authority

Pre-Deposit:

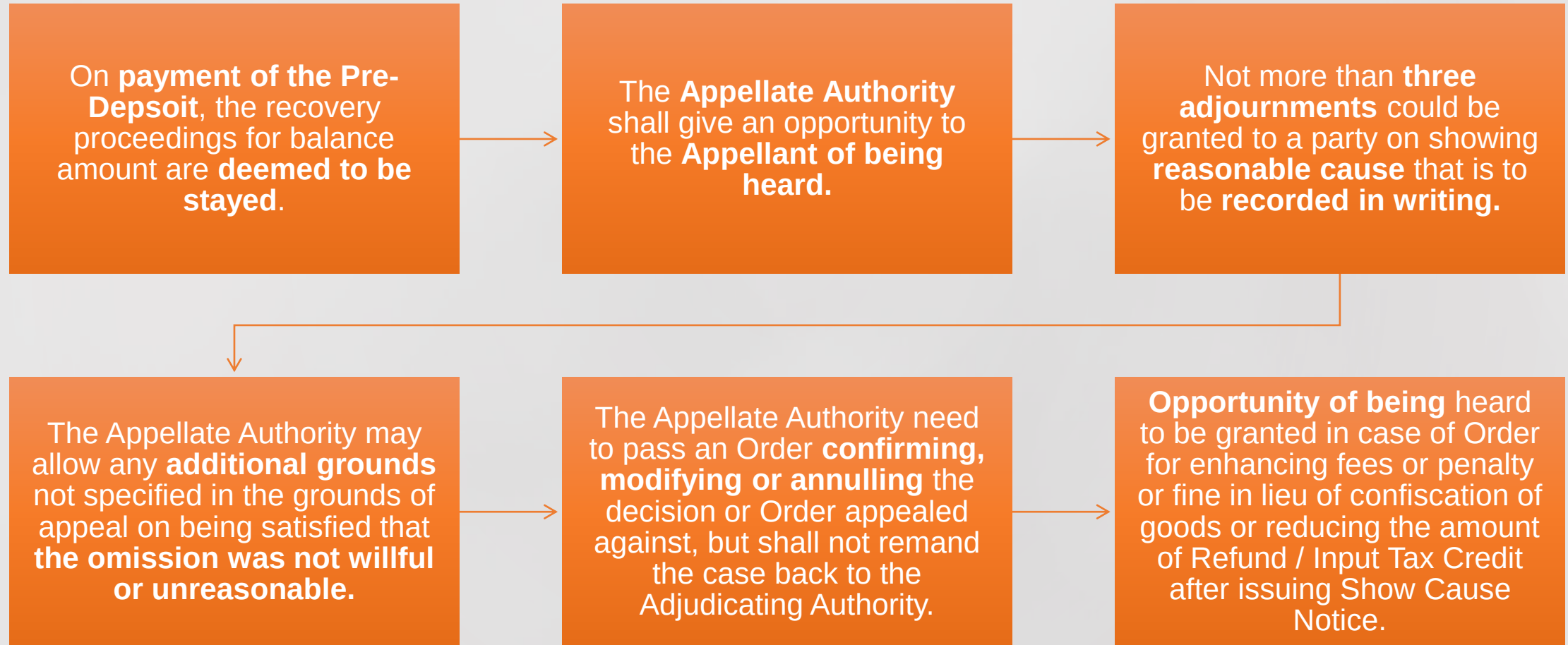
- (a) Amount of tax, interest, fine, fee and penalty, as admitted in full; and
- (b) Ten per cent of remaining amount of tax in dispute, subject to maximum of Rs. Twenty-five crores.

Appeal needs to be filed before the

Any Officer not below rank of Joint Commissioner (Appeals) where such decision or Order is passed by the Deputy or Assistant Commissioner or the Superintendent.

Commissioner (Appeal) where such decision or Order is passed by the Additional or Joint Commissioner.

Section 107 of CGST Act – Appeals to Appellate Authority - Important takeaways



Section 107 of CGST Act – Appeals to Appellate Authority - Important takeaways

The Appellate Authority has power to issue Show Cause Notice in case it is of the opinion that any tax has not been paid or short paid or erroneously refunded or Input Tax Credit is wrongly availed or utilised.



The Appellate Authority need to **hear and decide the Appeal**, wherever possible, **within a period of one year from the date of filing the Appeal.**



Where the issuance of **Order is stayed** by an Order of a Court or Tribunal, **the period of such stay shall be excluded in computing the period of one year.**



The Appellate Authority is required to communicate the copy of Order to the Appellant, the respondent, the Adjudicating Authority, Jurisdictional Commissioner of CGST, SGST and UTGST or an Authority designated in their behalf.

Section 107 of CGST Act – Appeals to Appellate Authority - Important takeaways

The Order passed under this Section shall be final and binding on the parties subject to provisions of Section 108 (powers of Revisional Authority) OR Section 113 (Orders of Appellate Tribunal) OR Section 117 (Appeal to High Court) OR Section 118 (Appeal to Supreme Court).

The Appellate Authority shall, along with its Order under sub-section (11) of section 107 of the Act, issue a summary of the Order in Form **GST APL-04** clearly indicating the final amount of demand confirmed.

The jurisdictional Officer shall issue a statement in Form APL-04 clearly indicating the final amount of demand confirmed by the Appellate Authority.

Section 108 of CGST Act – Powers of Revisional Authority - Important takeaways

“Revisional Authority” means an authority appointed or authorised for revision of decision or orders as referred to in this section.

The Revisional Authority is empowered to examine any proceedings and stay the operation of any decision or Order, if he considers that such decision or Order passed by any Officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the Revenue or illegal or improper or has not considered certain material facts.

After giving the concerned person an opportunity of being heard and making further necessary inquiry, the Revisional Authority may pass an Order within three years of passing of the said Order sought to be revised including enhancing or modifying or annulling the said decision or Order.

Section 108 of CGST Act – Powers of Revisional Authority - Important takeaways

The Revisional Authority shall not exercise such revisionary powers if:

(a) an Appeal is filed against the Order to: (i) the Appellate Authority under Section 107; (ii) the Appellate Tribunal under Section 112; (iii) High Court under Section 117; (iv) Supreme Court under Section 118.

(b) the period of **six months** specified in Section 107(2) has not expired **or more than three years** have expired after passing the decision or Order.

(c) the Order has already been taken up under this Section for revision at any earlier stage.

(d) Revisionary Order has already been passed once.

The Revisional Authority may pass an Order on any point which has not been raised and decided in an Appeal either before the Appellate Authority, Appellate Tribunal, High Court or Supreme Court.

Section 108 of CGST Act – Powers of Revisional Authority - Important takeaways

The Revisional Authority must pass the Order within one year from the date of Order passed in such Appeal or within three years from the date of passing such decision or Order sought to be revised, whichever is later.

The time span between the date of decision of the Appellate Tribunal and the date of decision of the High Court or the date of decision of the High Court and the date of decision of Supreme Court should be excluded in computing the period of limitation of three years.

Even the period of stay is excluded in computing the period of limitation of three years.

Appeal to Appellate Authority – Rule 108

(1) An appeal to the Appellate Authority under **sub-section (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.

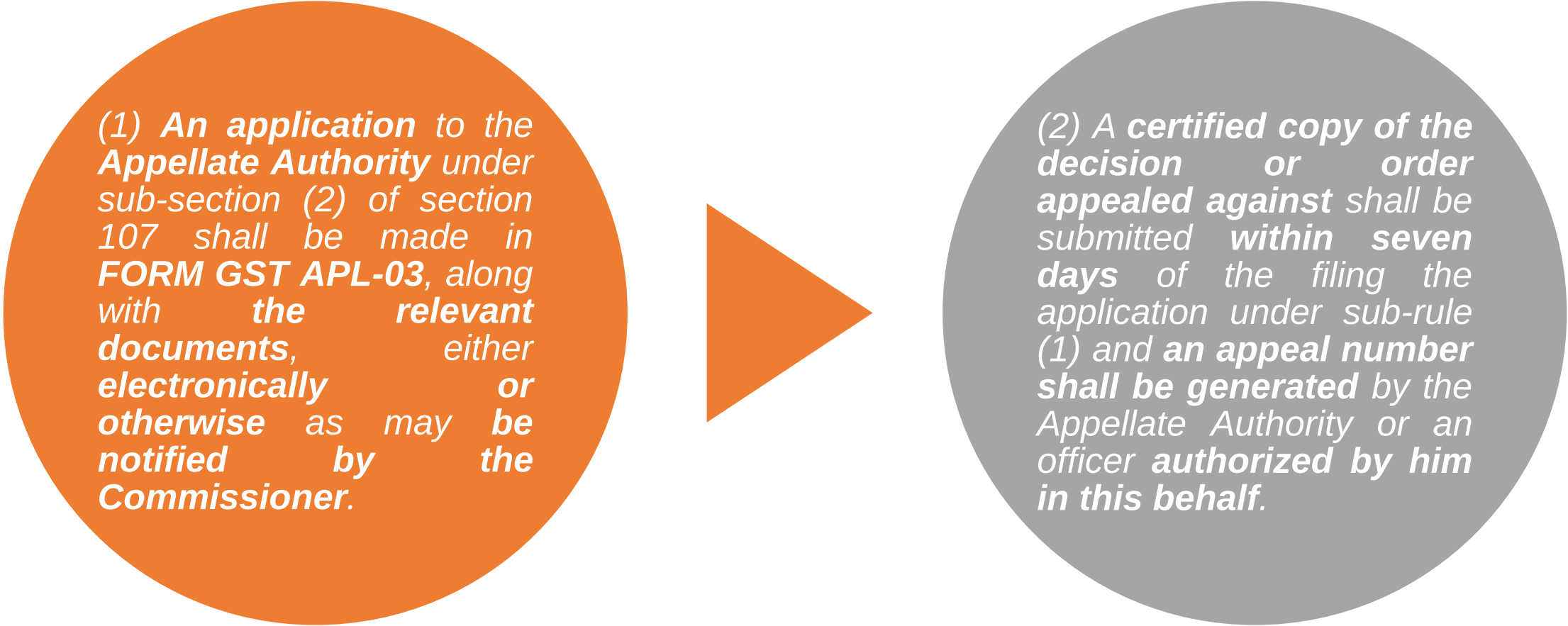
(2) The **grounds of appeal** and the **form of verification** as contained in **FORM GST APL-01** shall be signed in the manner **specified in rule 26**.

(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 authorized by him in this behalf:

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.**

Application to the Appellate Authority – Rule 109



*(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be made in **FORM GST APL-03**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.*

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of the filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorized by him in this behalf.

Appointment of Appellate Authority – Rule 109A

(1) Any person aggrieved **by any decision or order passed under this Act** or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act **may appeal to -**

(a) **the Commissioner (Appeals)** where such decision or order is passed **by the Additional or Joint Commissioner;**

(b) **any officer not below the rank of Joint Commissioner (Appeals)** where such decision or order is passed **by the Deputy or Assistant Commissioner or Superintendent, within three months** from the date on which the said decision or order is communicated to such person.

(2) An officer directed under **sub-section (2) of section 107** to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -

(a) **the Commissioner (Appeals)** where such decision or order is passed **by the Additional or Joint Commissioner;**

(b) **any officer not below the rank of Joint Commissioner (Appeals)** where such decision or order is passed **by the Deputy or Assistant Commissioner or the Superintendent, within six months** from the date of communication of the said decision or order.

Notice to person and order of revisional authority in case of revision – Rule 109B

(1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.

(2) The Revisional Authority shall, along with its order under sub-section (1) of section 108 , issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed;

First Appeal Flow Chart



Any Taxpayer or an Unregistered Person aggrieved by any decision or Order passed against him by an **Adjudicating Authority** – **Form GST APL-01** within three months;



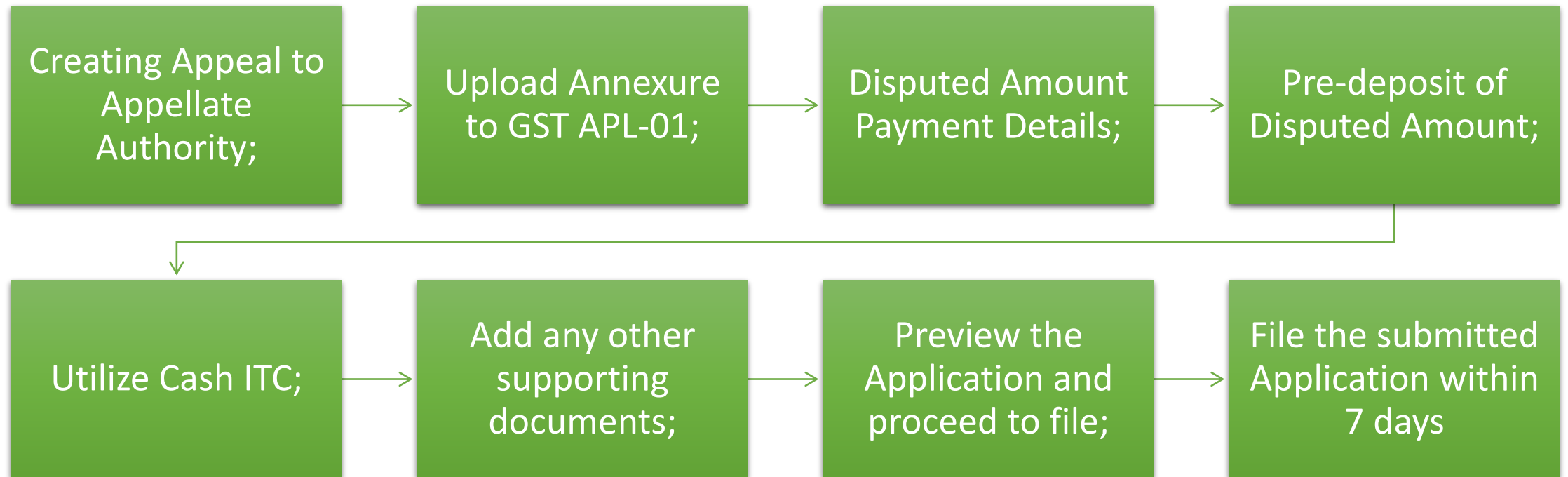
Amount of Deposit: 10% of Disputed Amount + Amount of tax dues Admitted (subject to maximum Rs. 25 crores);



Application Authority; submitted to Appellate



Procedure for filing of First Appeal



Appeal by Tax Department

Commissioner of Central / State with a view to satisfy himself about the legality or propriety of any Order or Decision, direct a subordinate Officer to file an Application – **Form GST APL-03**;

Application submitted to Appellate Authority;



Appeals to Appellate Tribunal –

Overview and Analysis of related Sections under CGST Act and Rules under CGST Rules

Salient Features – Section 109 - Constitution of Appellate Tribunal and Benches thereof

Based on the recommendation of the Council and by Notification, the Central Government shall constitute **Goods & Service Tax Appellate Tribunal (GSTAT)** for hearing appeals against the orders passed by the Appellate Authority or Revisional Authority;

The powers of the **Appellate Tribunal** shall be exercisable by the **National Bench or Regional Benches, State Bench and Area Benches**;

The **National Bench** shall be situated at **New Delhi** which shall be presided over by the President, one Technical Member (Centre) and one Technical Member (State);

The **Regional Benches** shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State);

The **National Bench or Regional Benches** shall hear the Appeals only where one of the issues involved relates to the Place of Supply;

The **State Bench or Area Benches** shall hear the Appeals involving matters **other than matters covering Place of Supply**;

The **President and the State President** shall by **General or Special order** distribute the business or transfer cases among **Regional Benches or Area Benches in a State**;

Salient Features – Section 109 - Constitution of Appellate Tribunal and Benches thereof

In the absence of a member of any Bench due to **vacancy or otherwise**, any Appeal with the approval of President or State President be heard by a Bench of two members.

Any matter (other than matter involving question of law) involving tax, input tax credit, fine, fee or penalty determined in any order appealed against, not exceeding **five lakh rupees may be heard by single member Bench**.

No **act or proceedings of the Appellate Tribunal** shall be questioned or shall be invalid merely only on the ground of the existence **of any vacancy or defect in the constitution** of Appellate Tribunal.

Summary of Sections 110 and 111

Section 110 deals with **Appointment of the President / Members of the Appellate Tribunal**, their qualifications, methodology of appointment, service conditions etc.;

Section 111 deals with the procedure to be followed by Appellate Tribunal while disposing of any proceedings before it;

The Appellate Tribunal is not bound by the procedure laid down under the **Code of Civil Procedure** except in respect of certain matters such as **summoning and enforcing attendance of person, receiving evidence on affidavits, requiring production of documents etc.**;

The Appellate Tribunal shall be guided by the Principles of Natural Justice;

All the proceedings **before the Appellate Tribunal** shall be deemed to be **judicial proceedings** within the meaning of **Section 193, 228 & 196 of IPC**;

The Appellate Tribunal shall be **deemed to be a Civil Court** for all the purposes of Section 195 and **chapter XXVI of the Code of Criminal Procedure 1973**;

Analysis of Section 112 and Relevant Rules - Appeals to Appellate Tribunal

Any person aggrieved by an order passed against **him U/S 107 or Section 108** of CGST Act or SGST Act or UGST Act may prefer an Appeal **within a period of 3 months** from the date of communication of decision or order in Form **GST APL-05**, along with relevant documents either electronically or otherwise as notified by the Registrar against which a provisional acknowledgement will be issued.

The Grounds of Appeal and form of verification must be duly signed and a certified copy of the decision or Order, along with the prescribed fees is to be filed before the Registrar **within 7 days of filing the appeal**.

Thereafter, a final acknowledgement indicating the appeal number shall be issued in **Form GST APL-02** by the said Authority.

In such a situation, the Appeal shall be deemed to be filed on the **date on which the provisional acknowledgement stands issued**.

In case the said certified copy is submitted **after a period of 7 days**, the **date of filing of Appeal shall be the date of submission of such copy**;

The Appeal shall be considered as filed only when the **final acknowledgement**, indicating the Appeal number is issued.

Analysis of Section 112 and Relevant Rules - Appeals to Appellate Tribunal

The Appellate Tribunal has **discretion to refuse to admit such Appeal** in case the tax amount or input tax credit or the difference in tax or input tax credit involved or amount of fine, fees or penalty ordered **against does not exceed Rs. 50,000/-**.

The Commissioner of CGST, SGST or UGST can, with a view to satisfy himself about the legality or propriety of any Order or decision passed by the Appellate Authority or Revisional Authority, direct a subordinate officer to file an Application before the Appellate Tribunal **within 6 months** from the date of communication of decision or order **in Form GST APL-07**, along **with relevant documents** either **electronically or otherwise** as notified against issue of an acknowledgement.

A certified copy of the **decision or Order of the Appeal**, along with the prescribed fees is to be filed before the Registrar **within 7 days** of filing the application and an appeal number shall be generated accordingly.

Memorandum of Cross objection to be filed in **FORM GST APL-06** within **45 days** from the receipt of notice of filing of such appeal.

Appellate Tribunal is empowered to condone the delay in filing appeal by assessee for a **further period of 3 months** or memorandum of cross objection for a **further period of 45 days** if there was sufficient cause for not presenting within specified period.

Analysis of Section 112 and Relevant Rules - Appeals to Appellate Tribunal

No powers have been granted to the Appellate Tribunal to **condone the delay in filing appeal by the tax authorities.**

Appeal has to be filed in prescribed form and manner along with payment of:

Amount of tax, interest, fine, fee & penalty, **as is admitted, in full**; and

Pre-deposit of sum **equal to 20% of remaining amount** of tax in dispute in addition to amount deposited during filling appeal before Appellate Authority **subject to maximum of fifty crores.**

On payment of above amount (interest, tax, fine, fee, etc) , the recovery proceedings **for balance amount are stayed** till the disposal of appeal.

No **pre-deposit** shall be payable in case of appeal filed by the tax authorities.

Every miscellaneous application shall be filed along with prescribed fees.

The fees for filing and restoration of appeal shall be **one thousand rupees** for every **one lakh rupees of tax** or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of **twenty-five thousand rupees.**

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

Analysis of Section 113 and Relevant Rules – Orders of Appellate Tribunal

The Appellate Tribunal to **pass the order confirming, modifying or annulling the decision or order appealed against.**

The Appellate Tribunal **also has power to remand the case back** to the appellate authority or the Revisional authority or the original adjudicating authority.

Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.

The Appellate Tribunal **is empowered to amend its order to rectify any mistake apparent from record.** However, Tribunal may rectify its order if the mistake is brought to its notice by Commissioner or other party to appeal **within period of 3 months** of date of such order. Opportunity of being heard to be granted in case **such rectification results into enhancing an assessment** or reducing a refund or input tax credit or otherwise increasing the liability.

The Appellate Tribunal to **hear and decide the appeal**, as far as possible, **within a period of 1 year** from the date of filing.

The Appellate Tribunal to communicate the copy of order to appellate authority / Revisional authority / original adjudicating authority, the appellant, the jurisdictional Commissioner, Commissioner of State Tax or Union Territory Tax.

The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.



Appeals High Court –

Overview and Analysis of related Sections under CGST Act and Rules under CGST Rules

Analysis of Section 117 and Relevant Rules – Appeal to High Court;

The High Court may **admit an appeal** if it is satisfied that the **case involves a substantial question of law**;

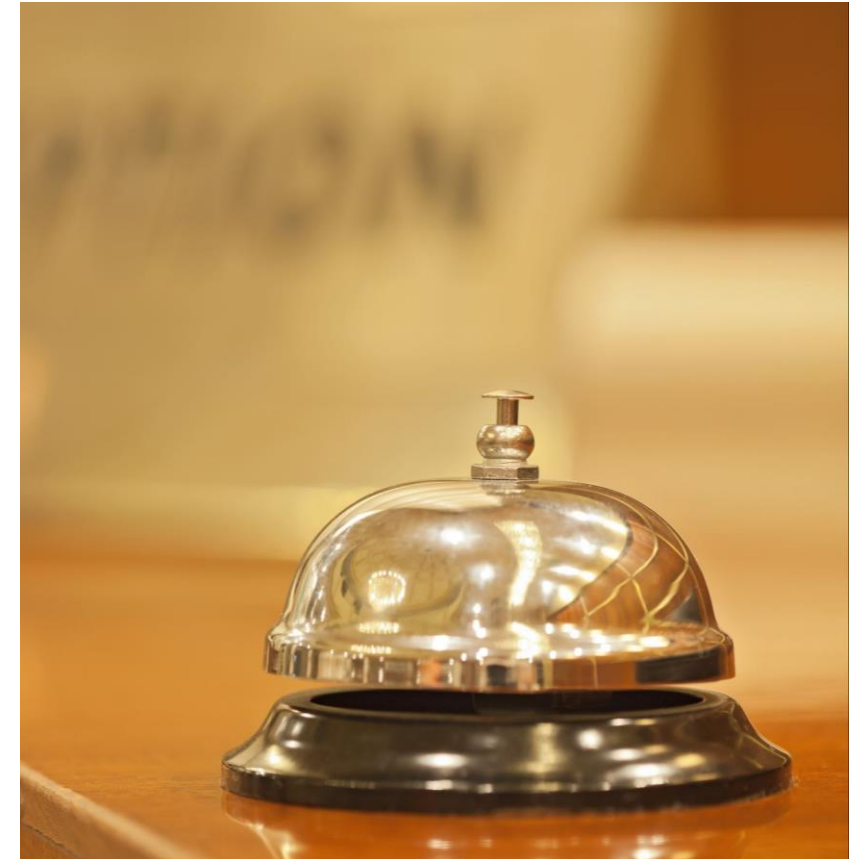
No appeal shall lie before a High Court if such order is **passed by National Bench or Regional Benches**. In other words, appeal shall be filed before High Court if such order is **passed by State bench or Area benches** of the Appellate Tribunal.

Appeal has to be filed in the **Form GST APL 08**, precisely stating the **substantial question of law involved**, within **180 days** from the date of receipt of order appealed against accompanied by **prescribed fee**.

The High Court is empowered to **condone the delay in filing appeal**.

On being satisfied, High Court **shall formulate a substantial question of law**.

Appeal to be heard only on **the question so formulated** and the respondent shall be **allowed to argue that the case does not involve such question**.



Analysis of Section 117 and Relevant Rules – Appeal to High Court;

The High Court may **hear the appeal on any other substantial question of law** not formulated by it after satisfying, **for reasons to be recorded**, of involvement of such question in the case.

The High Court may **determine any issue which has not been determined or has been wrongly determined** by the State Bench or Area Benches.

Appeal to be heard by a **Bench of not less than 2 Judges of High Court** and shall be decided in accordance **with the majority of opinion of such Judges**.

Difference of opinion on any point shall be referred **to one or more of the other Judges of High Court** and such point shall be decided according to the **opinion of majority of Judges** who have heard the case including **those who first heard it**.

The **effect of judgment of High Court** shall be given on the basis of a **certified copy of the judgment**.

The provisions of **Code of Civil Procedure relating to appeals to High Court shall apply** to appeals under this section..





Appeals to Supreme Court –

Overview and Analysis of related Sections under CGST Act and Rules under CGST Rules

Appeal to Supreme Court – Section 118

(1) An appeal shall lie to the Supreme Court-

*(a) from any order passed by the **National Bench or Regional Benches of the Appellate Tribunal**; or*

*(b) from **any judgment or order passed by the High Court** in an appeal made under **section 117** 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) **The provisions of the Code of Civil Procedure, 1908**, relating to appeals to the Supreme Court shall, so far as may be, **apply in the case of appeals under this section** as they apply in the case of appeals from decrees of a High Court.*

*(3) 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 section 117 in the case of a judgment of the High Court**.*

_____ is the time limit to file an Appeal by an aggrieved person before the Appellate Authority U/S 107 of the CGST Act?

- A. One month from the date of communication of Order or decision;
- B. Two months from the date of communication of Order or decision;
- C. Three months from the date of communication of Order or decision;
- D. Four months from the date of communication of Order or decision;

Answer:- C

_____ is the time limit to file an Application by an Officer subordinate to the Commissioner of Central Tax before the Appellate Authority U/S 107 of the CGST Act?

- A. One month from the date of communication of Order or decision;
- B. Two months from the date of communication of Order or decision;
- C. Three months from the date of communication of Order or decision;
- D. Six months from the date of communication of Order or decision;

Answer:- D

_____ is the further period that the Appellate Authority may allow, if he is satisfied that the Appellant (aggrieved person or subordinate officer) was prevented by sufficient cause from presenting the Appeal / Application within the time limit prescribed U/S 107 of the CGST Act?

- A. One month from the prescribed period;
- B. Two months from the prescribed period;
- C. Three months from the prescribed period;
- D. Six months from the prescribed period;

Answer:- A

is the amount of mandatory Pre-deposit which should be made along with every Appeal before Appellate Authority U/S 107 of the CGST Act?

- A. Fifty percent of the amount admitted tax dues (tax, interest, fine, fee and penalty) 10% of remaining amount of tax in dispute arising from the Order against which Appeal has been filed;
- B. Full amount admitted tax dues (tax, interest, fine, fee and penalty) 10% of remaining amount of tax in dispute arising from the Order against which Appeal has been filed;
- C. Full amount admitted tax dues (tax, interest, fine, fee and penalty) 20% of remaining amount of tax in dispute arising from the Order against which Appeal has been filed;
- D. Full amount admitted tax dues (tax, interest, fine, fee and penalty) 25% of remaining amount of tax in dispute arising from the Order against which Appeal has been filed;

Answer:- B

As per provisions U/S 107 of the CGST Act, the Adjudicating Authority has powers to _____ relating to disposal of the Appeal?

- A. remand the case back to the Adjudicating Authority;
- B. pass such Order, as he thinks just and proper, confirming, modifying or annulling the decision or Order appealed against;
- C. Either A or B above;
- D. Both A and B above;

Answer:- B

is the further period that the Appellate Tribunal may allow, if it is satisfied that the Appellant (aggrieved person or subordinate officer) was prevented by sufficient cause from presenting the Appeal / Application within the time limit prescribed U/S 112 of the CGST Act?

- A. One month from the prescribed period;
- B. Two months from the prescribed period;
- C. Three months from the prescribed period;
- D. Six months from the prescribed period;

Answer:- C

is the amount of mandatory Pre-deposit which should be made along with every Appeal before Appellate Tribunal U/S 112 of the CGST Act?

- A. Fifty percent of the amount admitted tax dues (tax, interest, fine, fee and penalty) 10% of remaining amount of tax in dispute arising from the Order against which Appeal has been filed;
- B. Full amount admitted tax dues (tax, interest, fine, fee and penalty) 10% of remaining amount of tax in dispute arising from the Order against which Appeal has been filed;
- C. Full amount admitted tax dues (tax, interest, fine, fee and penalty) 20% of remaining amount of tax in dispute, in addition to amount paid U/S 107, arising from the Order against which Appeal has been filed;
- D. Full amount admitted tax dues (tax, interest, fine, fee and penalty) 25% of remaining amount of tax in dispute arising from the Order against which Appeal has been filed;

Answer:- C

An Appeal to the Appellate Tribunal U/S 112 shall be filed along with the relevant documents either electronically or otherwise in Form _____?

- A. Form GST APL-02;
- B. Form GST APL-03;
- C. Form GST APL-04;
- D. Form GST APL-05;

Answer:- D

As per provisions under GST Laws, the Appellate Authority or Appellate Authority, at any stage of Hearing an Appeal grant time to parties and adjourn the Hearing of the Appeal for not more than _____?

- A. one time;
- B. two times;
- C. three times;
- D. four times;

Answer:- C

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 for the case that involves a _____?

- A. substantial question of law;
- B. substantial question of facts;
- C. substantial question of merit;
- D. substantial question of law and facts;

Answer:- A

When an Appeal has been filed before the High Court, it shall be heard by a Bench of not less than _____?

- A. one judge of High Court;
- B. two judges of High Court;
- C. three judges of High Court;
- D. four judges of High Court;

Answer:- B

An Appeal to the High Court U/S 114 shall be filed along with the relevant documents in Form _____?

- A. Form GST APL-06;
- B. Form GST APL-07;
- C. Form GST APL-08;
- D. no Form prescribed under GST law for this purpose;

Answer:- C

An Appeal before the High Court U/S 114 shall be filed within _____?

- A. six months from the date of Order against which Appeal is filed;
- B. six months from the date of communication of Order against which Appeal is filed;
- C. four months from the date of communication of Order against which Appeal is filed;
- D. one hundred eighty days from the date of communication of Order against which Appeal is filed;

Answer:- D

The High Court may determine any issue which has not been determined or has been wrongly determined by the _____?

- A. National Bench;
- B. Regional Bench;
- C. State Bench or Area Bench;
- D. Appellate Authority;

Answer:- C

The National Bench of Goods and Service Tax Appellate Tribunal shall hear the cases where one of the issue involved is related to the _____?

- A. Time of Supply;
- B. Place of Supply;
- C. Value of Supply;
- D. Input Tax Credit;

Answer:- B

Thanks for your
Attention!!!
Any Questions???

*Life is like riding a bicycle. To keep your
balance, you must keep moving.*

ALBERT EINSTEIN