

# **APPEALS, REVISIONS AND REVIEW UNDER GST**

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# OUTLOOK

- What is Appeal?
- What is Revision?
- What is Review?
- Leading Case Law.
- Appeal/Review / Revision before FAA under GST Act.
- Appeal/Review before Appellate Tribunal under GST Act.
- Appeal before High Court.
- Appeal before Supreme Court.

# What is Appeal?

- Appeal:

An appeal is a continuation of proceedings/orders wherein the entire proceedings/orders are again left open for consideration by the Appellate Authorities.

# What is Revision & Review?

- Revision:

The act of Examining again in order to remove any defect or grant relief against the irregular or improper exercise or non-exercise of jurisdiction.

- Review:

- Re-examination or re-consideration

- An act of looking after something again with a view of correction or improvement.

# APPEALS UNDER GST Act

## CGST

- Appeal by Aggrieved person
- Pre-Deposit (old / new)
- Review Appeal by Revenue (Common)
- Order of FAA
- Appeal to Tribunal
  - By Aggrieved Person
  - By Revenue
  - Procedure in Appeal
  - Pre-Deposit
  - Order of Appellate Tribunal
- Appeal to High Court
- Appeal to Supreme Court

## SGST

- Appeal by Aggrieved person
- Pre Deposit
- Revision by Commissioner (Common)
- Order of FAA
- Appeal to Tribunal
  - By Aggrieved person
  - Procedure in Appeal
  - Pre-Deposit
  - Order of Appellate Tribunal
  - RECAP
- Appeal to High Court
- Appeal to Supreme Court

# Appeal by aggrieved person

- Any person aggrieved by any decision or order, may appeal to the prescribed First Appellate Authority within (3) months from the date on which the said decision or order is communicated to such person.

– Source:- Section 107(1) of GST Act

- The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months as the case may be, allow it to be presented within a further period of one month.

– Source:- Section 107(4) of GST Act

# Non appealable orders

- An order of the Commissioner or other authority empowered to direct transfer of proceeding from one officer to another officer.
- An order pertaining to the seizure or retention of books of account, register and other documents or
- An order sanctioning prosecution under the Act.
- An order passed under [Section 80](#) (Payment of tax in installments).

*Section 121 of GST Act*

# Payment of Tax and other amounts in Instalments

- The Commissioner may extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under Section 50.
- Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.



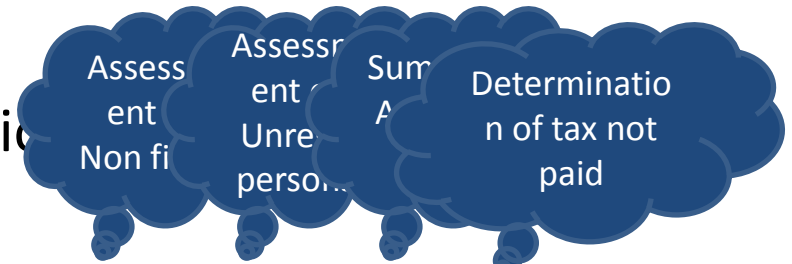
# Section (6) Powers of Officers

- (1) The proper officers appointed under the SGST/UTGST Act are authorised to be the proper officers for the purposes of CGST Act and vice versa.
- (2)
  - (a) where any proper officer issues an order under CGST Act, he shall also issue an order under the SGST/UTGST Act as authorised by the SGST/UTGST Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;
  - (b) where a proper officer under the SGST/UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under CGST Act on the same subject matter.

- **6. Powers of SGST/CGST officers under the Act ...contd..**
- (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the SGST/UTGST Act.

# Pre-Deposit under CGST

- No appeal shall be filed under sub-section (1) unless the appellant has deposited a sum equal to 10% of the amount in dispute arising from the said order, in relation to which the appeal has been filed
- For the purposes of this sub-section "amount in dispute" shall include –
  - Amount determined under Section 62 or 63 or 64 or 73
  - Amount payable under rule ---- of GST Credit Rules 2017 and
  - Amount of fee levied or penalty imposed



*Source- Section 107(6) for FAA and 112(8) for Tribunal*

# Pre-Deposit before Appellate Authority under GST Act

- Full amount of tax, interest, fine and penalty arising from the impugned order as is admitted by him and
- Sum equal to 10% of the remaining amount of **TAX** in dispute arising from the order in relation to which the appeal has been filed.

*Source:- Section 107(6) of GST Act*

# Pre-Deposit before Tribunal under GST Act

- Full amount of tax, interest, fine and penalty arising from the impugned order as is admitted by him and
- Sum equal to 20% of the remaining amount of **TAX** in dispute **in addition to the amount deposited u/s 107(6)** arising from the order subject to a maximum of Rs.50 Cr in relation to which the appeal has been filed.

*Source:- Section 112(8) of GST*

# Review Appeals by Revenue before Appellate Authority under GST Act

- The Department may file an appeal before Appellate Authority against the order of Assessing Authority.
- Appeal to be filed within (6) months.

*(Section 107 (2) of GST)*

- The Appeal filed by the Department shall be dealt with by the Appellate Authority as if it were the appeal made by the decision or order of the Adjudicating Authority.
- All provision of this Act shall apply to such application.

*[Section 107(3) of GST Act]*

# Revision under GST Act

- Revisional Authority may call for and examine the record of any proceedings and;
- If it is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account material facts, whether available at the time of issuance of the said order or not or in consequence of any observation made by CAG, he may, if necessary.
- Stay the operation of the decision or order for such period as he deems fit and;
- After following principles of natural justice pass such order, as he thinks is just and proper, including enhancing or modifying or annulling the said decision or order.

*Section 108(1) of GST Act*

# Revision under SGST/CGST

- Exceptions to the power of Revision (*Section 108(2)*)
- Power not to be exercised if the order has been subject to an appeal under section 107, 112, 117 or 118 of the Act OR
- The period specified under sub-section (2) of Section 107 has not yet expired or more than 3 years have expired after the passing of the decision or order sought to be revised.
- The order has already been taken for revision under this Section at any earlier stage.
- The order has been passed in exercise of powers under sub-section (1).



- Revision powers can be exercised on any point **not raised and decided** in appeal. Such powers can be exercised before expiry of one year from the date of order in such appeal or before 3 years from the passing of the order sought to be revised whichever is later (**proviso to section 108(2)**)
- If decision based on orders of Appellate Tribunal/High Court prejudicial to revenue in some other case and if such other case is appealed before High Court/Supreme Court, the period spent between the date of decision of Tribunal & High Court or High Court & SC shall be excluded to computing period of 3 years (Section 108(4))
- Where issuance of revision order is stayed by higher court, the period of such stay shall be excluded in computing period of 3 years (Section 108(5))
- For the purposes of this section decision shall include intimation given by any officer lower in rank than the Revisional Authority.

# Orders of Appellate Authority

- The order of Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.
- The FAA shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed.
- Provided that where the issuance of order is stayed by an order of the Court or Tribunal, the period of such stay shall be excluded in computing the period of one year

*Section 107(12) & (13) of GST Act*

# Orders of First Appellate Authority

- The Appellate Authority shall pass such order as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against **BUT SHALL NOT REFER THE CASE BACK TO THE AUTHORITY THAT PASSED THE SAID DECISION OR ORDER.** (Section 107(11))
- The Appellate Authority is empowered to pass an order enhancing the fees or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit provided the appellant has been given reasonable opportunity of showing cause against the proposed order.
  - **First Proviso to Section 107(11)**
- The FAA can also enhance the **TAX** or decide wrong availment of ITC (in variance with the proposal in first SCN). However it can be done only after giving specific SCN to the appellant against the proposed order and the order itself should be passed within the time limit specified under Section 73 or 74.
  - **Second Proviso to Section 107(11)**

# 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.

# APPELLATE TRIBUNAL

- **Jurisdiction**
- **National Bench and Regional Benches**
  - If one of the issue relates to place of supply
- **State Bench and Area Benches**
  - If the issue relates to other than Place of Supply

# Appeal by aggrieved person

- Any person aggrieved by an order passed against him under Section 107 or 108 of this Act or the [SGST/UTGST] Act may appeal to the appellate Tribunal against such order within 3 months from date of communication.

— *Source:- Section 112(1) of GST Act*

- Tribunal may in its discretion refuse to admit any such appeal where tax or ITC involved or difference in Tax or ITC involved or the amount of fine or penalty determined by such order does not exceed fifty thousand rupees.

— *Section 112(2) of GST Act*

# Procedure in Appeal before Tribunal

- Appeal to be filed within 3/6 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.
  - Source:- Section 112(1) of GST Act
- On receipt of notice of filing of appeal, the party against whom the appeal has been preferred may file memorandum of cross-objections within 45 days of receipt of notice against any part of the order appealed against and such cross objections shall be disposed of by the Tribunal as appeal presented within the specified time.
  - Section 112(5) of GST Act

# Procedure in Appeal before Tribunal

- The Appellate Tribunal may admit an appeal **within three months after the expiry of the period referred to in sub-section (1)**, or permit the filing of a memorandum of cross-objections **within forty-five days after the expiry of the period referred to in sub-section (5)** if it is satisfied that there was sufficient cause for not presenting it within that period.

*Source:- Section 112(6) of GST*



# Review Appeals by Revenue before Tribunal under GST Act

- The Department may file an appeal before the Tribunal against the order of the Appellate Authority or the Revisional Authority within (6) months from the date on which the said orders has been passed.

***(Sec 112(3) of GST Act)***

- An application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

***(Sec 112(4) of GST Act)***

# Orders of Appellate Tribunal

- The Appellate Tribunal may conform, modify or annul the decision or order appealed against or may refer the case back to the AA or to the adjudicating authority or **revisional authority**, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence if necessary. *(Section 113(1))*
- The Appellate Tribunal may grant time to parties on sufficient cause being shown, however **no more than three such adjournments** can be given. *(Section 113(2))*
- Tribunal may amend its order to rectify any mistake apparent on record, suo-motu or if such mistake is brought to its notice by any of the parties within a period of three months from the **date of order**. *(Section 113(3))*

# Orders of Appellate Tribunal

- To enhance the demand the Tribunal has to provide a reasonable opportunity of being heard.

*(proviso to Sec 113(3))*

- The Appellate Tribunal shall wherever it is possible to do so hear and decide every appeal **within one year from date of filing.**

*(Section 113(4))*

- Copy of order shall be served on the concerned parties.

*(Section 113(5))*

# Appeal before High Court

- Section 117 provides that 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
- Appeal to be filed within 180 days, but High Court has the power to condone delay on sufficient cause being shown.

*Section 117(2) of both CGST and SGST*

# Appeal before Supreme Court

- 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.
- Centre-State or inter-state differences relating to treatment of supply as inter-state or intra-state or differences relating to place of supply.

# Pre-Deposit When Appeals made to High Court or Supreme Court

- Whether applicable?
- Maybe yes. But not as a pre-condition for preferring an appeal before the High Court or Supreme Court
- Section 119 relevant in such cases
  - **Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under subsection (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under subsection (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed..**

# Appeals not to be filed in certain cases

- (1) The Board may, on the recommendation of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the GST officer under the provisions of this Chapter.
- (2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

- (3) Notwithstanding the fact that no appeal or application has been filed by the GST Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.
- (4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions issued under sub-section (1).



# Quick Evaluation

1. Filing an Appeal before Tribunal against the Orders of Revisional Authority is called Re-Assessment. (True/False)
2. Aggrieved person may appeal to the First Appellate Authority with (6) months from the date of communication of such order. (True/False)
3. SGST Officer has no power to levy tax under CGST Act. (True/False)
4. While filing an appeal before First Appellate Authority the aggrieved person has to pay 90% of the disputed tax. (True/False)
5. An appeal against the Assessment of Adjudicating Authority cannot be filed before Hon'ble High Court. (True/False)

6. The Department can file an appeal before the Tribunal against the orders of First Appellate Authority. (True/False).
7. Which of the following is non-appealable order.
  - a) Transfer of Proceedings from one officer to another.
  - b) An order pertaining to Seizure or retention of books of accounts.
  - c) An order sanctioning prosecution.
  - d) All of the above
8. An Officer sub-ordinate to Adjudicating Authority can revise the Adjudicating Order. (True/False)
9. An Appeal shall lie to Hon'ble Supreme Court
  - a) From any order passed by National Tribunal.
  - b) From any order passed by Hon'ble High Court.
  - c) Intra-State or Inter-State Supply disputes between Centre & State.
  - d) All of the Above.
10. The Appellate Tribunal shall wherever it is possible to do so hear and decide every appeal within (1) year from date of filing. (True/False)

**Thank You**