

Chapter– XVIII

Appeals and Revision

Statutory Provisions

107. Appeals to Appellate Authority

- (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 by an adjudicating authority may appeal to such appellate authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
- (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union Territory Tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any Officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.
- (3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.
- (4) 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.
- (5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.
- (6) No appeal shall be filed under sub-section (1) unless the appellant has paid –
 - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
 - (b) a sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.
- (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
- (8) The Appellate Authority shall give an opportunity to the appellant of being heard.

- (9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:
 Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
- (10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.
- (11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order.
 Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:
 Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.
- (12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.
- (13) The Appellate Authority 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 a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.
- (14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- (15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State Tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
- (16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118, be final and binding on the parties.

107.1 Introduction

- (a) This section pertains to appeals to appellate authority by any person who is aggrieved against decision or order passed by adjudicating authority.

- (b) This section also provides for appeal by revenue against decision or order passed by adjudicating authority.

107.2 Analysis

- (i) The appeal is to be filed by the assessee within a period of 3 months from the date of communication of decision or order in Form GST APL 01 electronically or otherwise as notified by the Commissioner against a provisional acknowledgement. The grounds of appeal and form of verification must be duly signed and a hard copy of the appeal in triplicate together with a certified copy of the decision is to be filed before the Appellate Authority within 7 days of filing the appeal electronically. 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 hard copy is filed after a period of 7 days the date of filing of appeal shall be the date of issue of final acknowledgement.

- (ii) The Commissioner of Central / State or any Union territory with a view to satisfying himself about the legality or propriety of any order or decision 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 APL GST 03 electronically or otherwise as notified against issue of an acknowledgement. A hard copy of the appeal in triplicate together with a certified copy of the decision is to be filed before the Appellate Authority within 7 days of filing the appeal electronically and an appeal number shall be generated accordingly.
- (iii) The appellate authority in either of the above cases is empowered to condone the delay upto a period of 1 month.
- (iv) Appeal to be filed in prescribed form duly verified in prescribed manner along with
- Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and
 - pre-deposit of sum equal to 10% of remaining amount of tax in dispute.
- (v) On payment of above amount, the recovery proceedings for balance amount are stayed.
- (vi) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.
- (vii) Appellate authority may allow any additional grounds not specified in the grounds of appeal on being satisfied that the omission was not wilful or unreasonable.
- (viii) Appellate authority to pass the order confirming, modifying or annulling the decision or order appealed against but shall not remand the case back to the adjudicating authority.
- (ix) Opportunity of being heard to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after issuing show cause notice.
- (x) 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.

- (xi) Appellate authority to hear and decide the appeal, wherever possible, within a period of 1 year from the date of filing.
- (xii) Appellate authority to communicate the copy of order to the appellant, the respondent, the adjudicating authority, jurisdictional Commissioner of CGST, SGST and UTGST.
- (xiii) 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.

107.3 Comparative review

- (i) Similar provisions are contained in Section 84 & 85 of the Finance Act, 1994 & Section 35 of the Central Excise Act, 1944
- (ii) After examining the records of proceedings related to decision or order passed by adjudicating authority subordinate to him, Principal Commissioner of Central Excise or Commissioner of Central Excise may pass an order.
- (iii) Under Service Tax, presently the time limit for filing first appeal to CCE (Appeals) by adjudicating authority is 1 month from the date of order or decision of Principal Commissioner of Central Excise or Commissioner of Central Excise

107.4 Related provisions

- (i) Section 2(4) defines “adjudicating authority”
- (ii) Section 2(24) defines “commissioner”
- (iii) Section 2(8) defines “Appellate Authority”

Statutory Provisions

108. Powers of Revisional Authority

- (1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the commissioner of State Tax or the Commissioner of Union Territory Tax, call for and examine the record of any proceeding and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of said order or not or in consequence of an observation by the Comptroller & Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may

be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

- (2) The Revisional Authority shall not exercise any power under sub-section (1), if-
- (a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
 - (b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.
 - (c) the order has already been taken for revision under this section at any earlier stage.
 - (d) the order has been passed in exercise of the powers under sub-section (1).
 Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.
- (3) Every order passed in revision under sub-section (1) shall, subject to the provisions of sections 113 or section 117 or section 118, be final and binding on the parties.
- (4) If the said decision or order involves an issue on which appellate tribunal or the high court has given its decision in some other proceedings and an appeal to the high court or the supreme court against such decision of the appellate tribunal or the high court is pending, the period spent between the date of decision of appellate tribunal and the date of the decision of the high court or the date of decision of high court and the date of decision of supreme court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision has been initiated by way of issuance of notice under this section.
- (5) Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period referred to in clause (b) of sub-section (2).
- (6) For the purposes of this section, the term, -
- (i) 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.
 - (ii) 'decision' shall include intimation given by any officer lower in rank than the Revisional Authority.

108.1 Introduction

This section pertains to revisionary powers of Revisional Authority.

108.2 Analysis

- (i) After examining the record of any proceeding, the Revisional Authority may 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.
- (ii) After giving the concerned person an opportunity of being heard and after making further necessary inquiry, the Revisional Authority may pass such order within 3 years of passing of the said order sought to be revised including enhancing or modifying or annulling the said decision or order.
- (iii) The Revisional Authority shall not exercise such revisionary powers if
 - (a) appeal is filed against the order to –
 - appellate authority U/s.107
 - Appellate Tribunal U/s.112
 - High Court U/s.117
 - Supreme Court U/s.118
 - (b) period of 6 months as specified in section 107(2) has not expired or more than 3 years have expired after passing the decision or order
 - (c) the order has already been taken for revision at any earlier stage
 - (d) revisionary order has already been passed once.
- (iv) However, the Revisional Authority may pass an order on any point which has not been raised & decided in an appeal, referred to hereinabove, within 1 year from the date of order passed in such appeal or within 3 years from the date of such order sought to be revised, whichever is later.

108.3 Related provisions

- (i) Section 2(99) defines “Revisional Authority”

Statutory Provisions**109. Constitution of the Appellate Tribunal and Benches thereof**

- (1) The Government shall, on the recommendation of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the order passed by the Appellate Authority or Revisional Authority.
- (2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).
- (3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall

be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

- (4) The Government, shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).
- (5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.
- (6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:
 Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:
 Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.
- (7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).
- (8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.
- (9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.
- (10) 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:
 Provided that any appeal where the 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 any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

- (11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.
- (12) The Government, in consultation with the President may, for the administrative convenience, transfer—
- (a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or
 - (b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.
- (13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.
- (14) 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.

109.1 Introduction

- (a) This section pertains to constitution of GST Appellate Tribunal

109.2 Analysis

- (a) Upon recommendation of Council, Central Government to constitute Goods & Service Tax Appellate Tribunal.
- (b) The National Bench or Regional Benches to hear the appeals where one of the issues involved relates to the place of supply.
- (c) The State Bench or Area Benches to hear the appeals involving matters other than matters covering place of supply.
- (d) Any matter (other than matter involving question of law) involving tax, input tax credit, fine, fee or penalty not exceeding Rs.5 Lacs may be heard by single member bench.
- (e) All other provisions relate to administrative matters and are therefore not relevant at this stage for discussion purposes.

109.3 Related provisions

- (i) Section 2(9) defines "Appellate Tribunal"
- (ii) Section 2(36) defines "Council"

Statutory Provisions**110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.**

- (1) A person shall not be qualified for appointment as—
- (a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;
 - (b) a Judicial Member, unless he—
 - (i) has been a Judge of the High Court; or
 - (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or
 - (iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;
 - (c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
 - (d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.
- (2) 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 or his nominee:
- Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:
- Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.
- (3) 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 consisting of such persons and in such manner as may be prescribed.

- (4) 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 or his nominee.
- (5) 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 in such manner as may be prescribed.
- (6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.
- (7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.
- (8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:
Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.
- (9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.
- (10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.
- (11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.
- (12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:
Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- (13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench,

Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President, State President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

- (14) Without prejudice to the provisions of sub-section (13),—
- (a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;
 - (b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.
- (15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench. or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).
- (16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the

High Court under sub-section (14).

- (17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

110.1 Comments

This section deals with appointment of the President / Members of the Appellate Tribunal, their qualifications, methodology of appointment, service conditions etc., and hence are not commented upon in this background material.

Statutory Provisions

111. Procedure before Appellate Tribunal

- (1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.
- (2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, 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;
 - (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.
- (3) 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, and 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,—

- (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.
- (4) 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, and 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

111.1 Introduction

- (i) This section deals with the procedure to be followed by Appellate Tribunal while disposing of any proceedings before it.

111.2 Analysis

- (i) 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.
- (ii) All the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Section 193, 228 & 196 of IPC.

Statutory Provisions

112. Appeals to Appellate Tribunal

- (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.
- (2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the 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 by such order, does not exceed fifty thousand rupees.
- (3) The Commissioner may, on his own motion or upon request from the Commissioner of State Tax or Commissioner of Union Territory Tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or the propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for the determination of such points arising out of the said order as may be specified by the Commissioner in his order.

- (4) Where in pursuance of an order under sub-section (3) the authorized officer makes an application to the Appellate Tribunal, such 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).
- (5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, 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 in sub-section (1).
- (6) The Appellate Tribunal may admit an appeal within 3 months after the expiry of 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.
- (7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed:
- (8) No appeal shall be filed under sub-section (1) unless the appellant has paid
 - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
 - (b) a sum equal to twenty percent of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of the section 107, arising from the said order, in relation to which the appeal has been filed:
- (9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.
- (10) Every application made before the Appellate Tribunal, —
 - (a) in an appeal for rectification of error or for any other purpose; or
 - (b) for restoration of an appeal or an application,shall be accompanied by such fees as may be prescribed.

112.1 Introduction

- (a) This section pertains to appeals to Appellate Tribunal by any person who is aggrieved against decision or order passed by appellate authority.
- (b) This section also provides for appeal by revenue against decision or order passed by appellate authority.

112.2 Analysis

- (a) 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/-.
- (b) The Commissioner may issue directions to any subordinate officer to file appeal to Appellate Tribunal against the order passed by the Appellate Authority or Revisional Authority.
- (c) Every appeal by assessee to Appellate Tribunal to be filed within 3 months from the date of communication of order or decision appealed against.
- (d) The appeal to the Appellate Tribunal by Revenue can be filed within 6 months from the date of order or decision appealed against.
- (e) Memorandum of Cross objection to be filed within 45 days from the receipt of notice of filing of such appeal.
- (f) 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.
- (g) No powers to Appellate Tribunal to condone the delay in filing appeal by revenue.
- (h) Appeal to be filed in prescribed form duly verified in prescribed manner along with prescribed fees and
 - 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
- (i) On payment of above amount, the recovery proceedings for balance amount are stayed till the disposal of appeal.
- (j) No pre-deposit shall be payable in case of appeal filed by department.
- (k) Every miscellaneous application shall be filed along with prescribed fees.

112.3 Relevant Rules

- (1) An appeal to the Appellate Tribunal is to be filed electronically, in **FORM GST APL-05** and a provisional acknowledgement shall be issued immediately.
- (2) A memorandum of cross-objections to the Appellate Tribunal shall be filed in quintuplicate to the Registrar in **FORM GST APL-06**.
- (3) The appeal and the memorandum of cross objections shall be signed and verified.
- (4) A hard copy of the appeal in **FORM GST APL-05** shall be submitted to the Registrar in quintuplicate and with a certified copy of the decision or order appealed against within seven days of filing of the appeal and a final acknowledgement, indicating the appeal number shall be issued thereafter in **FORM GST APL-02**:

If the hard copy of the appeal and documents are submitted within seven days from the

date of filing the **FORM GST APL-05**, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the hard copy of the appeal and documents are submitted after seven days, the date of filing of the appeal shall be the date of submission of documents. An appeal shall be deemed to be filed only on generation of the final acknowledgement number.

- (5) 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.
- (6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors

112.4 Application to the Appellate Tribunal

- (a) A cross appeal or appeal by Revenue to the Appellate Tribunal shall be made electronically, in **FORM GST APL-07**.
- (b) A hard copy of the application in **FORM GST APL-07** shall be submitted to the Registrar in quintuplicate and shall be accompanied by a certified copy of the decision or order appealed against within seven days of filing the application under sub-rule (1) and an appeal number shall be generated.

112.5 Production of additional evidence before the Appellate Authority or the Appellate Tribunal

- (1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate 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 Appellate Authority except in the following circumstances, namely –
 - (a) where the adjudicating authority or, as the case may be, the Appellate Authority 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 Appellate Authority; or
 - (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
 - (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

- (3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) 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 evidence produced by the appellant under sub-rule (1).
- (4) Nothing contained in this rule shall affect the power of the Appellate Authority 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.

112.6 Comparative review

- (a) Similar provisions are contained in Section 86 of the Finance Act, 1994 & Section 35B of the Central Excise Act, 1944

Statutory Provisions

113 Orders of Appellate Tribunal

- (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority 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.
- (2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:
- Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
- (3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State Tax or the Commissioner of Union Territory Tax or the other party to the appeal within a period of three months from the date of the order:
- Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given opportunity of being heard.
- (4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

- (5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or Revisional Authority, or the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner or the Commissioner of State Tax or the Union Territory Tax.
- (6) Save as Provided in section 117 or section 118, orders passed the Appellate Tribunal on an appeal shall be final and binding on the parties.

113.1 Introduction

- (i) This section pertains to the orders by Appellate Tribunal

113.2 Analysis

- (i) Appellate Tribunal to pass the order confirming, modifying or annulling the decision or order appealed against.
- (ii) The Appellate Tribunal also has power to remand the case back to the appellate authority or the Revisional authority or the original adjudicating authority.
- (iii) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.
- (iv) The Appellate Tribunal is empowered to amend its order to rectify any mistake apparent from record, However tribunal may rectify it's order if the mistake is brought to it's 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.
- (v) The Appellate Tribunal to hear and decide the appeal, as far as possible, within a period of 1 year from the date of filing.
- (vi) 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.
- (vii) The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

113.3 Comparative review

- (a) As per existing provisions of Section 35C of the Central Excise Act, 1944, the time limit for rectification of mistake apparent from records is 6 months of date of order.
- (b) As per Section 35C, the preferable time limit for deciding the appeal by CESTAT is 3 years from date of filing.

Statutory Provisions**114. Financial and administrative powers of President**

- (1) The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

114.1 Introduction

This section pertains to the financial & administrative powers of the President over the National Bench and Regional Benches of the Appellate Tribunal.

114.2 Analysis

The President is empowered to delegate his financial and administrative powers to any other Member or any officer of the National Bench and Regional Benches, on a condition that such Member or officer shall continue to act under the direction, control and supervision of the President while exercising such delegated powers.

Statutory Provisions

115. Interest on refund of amount paid for admission of appeal

Where an amount paid by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

115.1 Introduction

- (i) This section provides for interest on delayed refund of pre-deposit made while filing the appeal.

115.2 Analysis

- (i) Interest at the rates specified in Section 50 shall be payable on refund of pre-deposit.
(ii) Such interest to be calculated from the date of payment of such pre-deposit till the date of refund

115.3 Comparative review

Section 35FF of the Central Excise Act, 1944 read with Notification No. 24/2014-CE (NT) dated August 12, 2014 provides for interest on refund of pre-deposit at the rate of 6% per annum.

115.4 Related provisions

Section	Description
Section 56	Interest on delayed refunds
Section 107(6)	Appeal to Appellate Authority
Section 112(8)	Appeal to Appellate Tribunal

115.5 FAQ

Q1. When is interest on refund of pre-deposit calculated?

Ans. The interest will be calculated from the date of pre-deposit to the date of refund of the same.

Statutory Provisions**116. Appearance by authorised representative**

- (1) Any person who is entitled or required to appear before an Officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.
- (2) For the purposes of this section, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —
 - (a) his relative or regular employee; or
 - (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
 - (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
 - (d) a retired officer of the Commercial Tax Department of any State Government or Union Territory or of the Board, who, during his service under the Government, had worked in a post not below the rank than that of a Group-B gazetted officer for a period of not less than two years.
 Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or
 - (e) any person who has been authorized to act as a Goods and Services Tax Practitioner on behalf of the concerned registered person.
- (3) No person, —
 - (a) who has been dismissed or removed from government service; or
 - (b) who is convicted of an offence connected with any proceeding under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or under the existing law or under any of the Acts passed by a state legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both, or
 - (c) who is found guilty of misconduct by the prescribed authority;
 - (d) who has been adjudged as an insolvent, shall be qualified to represent any

- person under sub-section (1) --
- (i) for all times in the case of a person referred to in clause (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).
- (4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

116.1 Introduction

- (i) This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination or oath or affirmation.

116.2 Analysis

- (i) "Authorised representative" means –
 - relative or regular employee
 - Practising Advocate
 - Practising CA, CWA or CS
 - A retired government officer who had worked for not less than 2 years in a post not lower in rank than Group-B gazetted officer
 - Goods and Services Tax Practitioner
- (ii) Any person, who has retired or resigned after serving more than 2 years in the indirect tax departments of Government of India or any State Government as a gazetted officer, shall not be entitled to appear as authorised representative for a period of 1 year from the date of retirement or resignation.
- (iii) Any person,
 - who has been dismissed or removed from government service
 - who is convicted of an offence under CGST Act, SGST Act, IGST Act, UTGST Act or under existing laws
 - who is found guilty of misconduct by the prescribed authorityshall not be qualified as authorised representative.
- (iv) Any person, who has become insolvent, shall not be qualified as authorised representative during the period of insolvency.
- (v) Any disqualification under SGST Act or UTGST Act shall be construed as disqualification under CGST Act.

116.3 Comparative review

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

116.4 Related provisions

- (i) Section 2(23) defines "chartered accountant"
(ii) Section 2(28) defines "company secretary"
(iii) Section 2(35) defines "cost accountant"
(iv) Section 2(55) defines "goods and service tax practitioner"

116.5 MCQ

- Q1. Any person who has retired/resigned after serving 2 years as gazetted officer in the indirect tax departments of the Government of India or any State Government shall be entitled to appear as authorised representative after

A. 1 year from date of resignation / retirement	2 years from date of resignation / retirement
3 years from date of resignation / retirement	Not entitled to appear at all

Ans. 1 year from date of resignation / retirement

- Q2. Any person who has been dismissed or removed from government services shall be entitled to appear as authorised representative after

1 year from date of dismissal / removal	2 years from date of dismissal / removal
3 years from date of dismissal / removal	Not entitled to appear at all

Ans. Not entitled to appear at all

- Q3. Any insolvent person shall not be entitled to appear as authorised representative

Upto a period of 1 year of insolvency	Upto a period of 2 years of insolvency
During the period of insolvency	Not entitled to appear at all

Ans. During the period of insolvency

- Q4. Any person who is disqualified to represent, being found guilty of misconduct, has no further remedy at all

True	False
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Ans. True

Statutory Provisions**117. 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.
- (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).
- (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.

117.1 Introduction

- (i) This section provides for appeal to High Court by any person aggrieved by an order passed by State Bench or Area Benches.

117.2 Analysis

- (i) High Court may admit an appeal if it is satisfied that the case involves a substantial question of law.
- (ii) No appeal shall lie to High Court if such order is passed by National Bench or Regional Benches.
- (iii) Appeal to be filed in the form of appeal memorandum, precisely stating the substantial question of law involved, within 180 days from the date of receipt of order appealed against accompanied by prescribed fee.
- (iv) High Court is empowered to condone the delay in filing appeal.
- (v) On being satisfied, High Court shall formulate a substantial question of law.
- (vi) 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.
- (vii) 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.
- (viii) The High Court may determine any issue which has not been determined or has been wrongly determined by the Appellate Tribunal.
- (ix) 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.
- (x) 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.
- (xi) The effect of judgment of High Court shall be given on the basis of a certified copy of the judgment.
- (xii) The provisions of Code of Civil Procedure relating to appeals to High Court shall apply to appeals under this section.

117.3 Comparative review

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

117.4 FAQ

Q1. Any appeal filed before High Court shall be heard by a bench consisting how many judges of High Court?

Ans. An appeal filed before the Honourable High Court shall be heard by judges consisting of not less than two judges.

117.5 MCQ

Q1. The High Court may admit an appeal if the case involves a substantial question of fact

- (a) True
- (b) False

Ans. (b) False

Q2. An appeal involving a matter, where two or more States or a State and Centre have a difference of views regarding place of supply, shall lie to High Court

- (a) True
- (b) False

Ans. (a) True

Q3. An appeal before High Court shall be filed within

- (a) 6 months from date of order
- (b) 6 months from date of communication of order
- (c) 180 days from date of order
- (d) 180 days from date of communication of order

Ans. (d) 180 days from date of communication of order

Q4. The High Court can condone the delay in filing appeal for a period upto

- (a) 1 Month
- (b) Month
- (c) Without any time limit
- (d) No condonation powers

Ans. (c) Without any time limit

Statutory Provisions**118. Appeals to Supreme Court**

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

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

- (b) from any judgment or order passed by High Court in an appeal made under section 117, in any case which, on its own motion or on an oral 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.

118.1 Introduction

- (i) This section provides for appeal to Supreme Court.

118.2 Analysis

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) 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.

118.3 Comparative review

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

118.4 Related provisions

Section 117 of CGST Act – Appeal to High Court

Statutory Provisions**119. Sums due to be paid notwithstanding appeal etc.**

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 sub-section (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.

119.1 Introduction

- (i) This section provides for payment of sums due pending appeal.

119.2 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 that an appeal has been preferred to High Court or Supreme Court, as the case may be.

119.3 Comparative review

Section 35N of the Central Excise Act, 1944

Statutory Provisions**120. Appeal 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 officer the central tax under the provisions of this Chapter.
- (2) Where, in pursuance of the orders or instructions or directions, issued under subsection (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of central tax 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 Officer of central tax 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 officer of central tax 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 Officer of central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

120.1 Introduction

- (i) This section provides for non-filing of appeal by revenue in certain cases.

120.2 Analysis

- (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.

120.3 Comparative review

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

Statutory Provisions

121. Non Appealable decision and orders

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 the 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 proceeding from one officer to another officer;
- (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.

121.1 Introduction

- (i) This section prescribes decisions or orders which are non-appealable.

121.2 Analysis

- (i) 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.

121.3 Related provisions

1. Section 80– Payment of tax and other amount in instalments
2. Section 2(41) defines “document”
3. Section 67– Power of inspection, search & seizure
4. Section 132– Prosecution