

## Chapter XVI

# Appeals and Revisions

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### FAQ'S

#### Appeals to First Appellate Authority (Section 107)

#### Section 107 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST

Q1. What is the appeal mechanism provided under GST Act against the order/ decision under this act?

Ans. Section 107 of the GST Act provides for preferring an appeal against the order of the Adjudicating authority

Q2. Who is an adjudicating authority?

Ans. Section 2(4) defines adjudicating authority to mean any authority appointed or authorized to pass any order or decision under this Act. However, following are not covered under the ambit of adjudicating authority:

- (a) Board (Central Board of Customs and Excise),
- (b) Revisional Authority,
- (c) Authority for Advance Ruling,
- (d) Appellate Authority for Advance Ruling,
- (e) First Appellate Authority
- (f) Appellate Tribunal

Therefore, an order passed by any officer other than the revisionary authority as well as other authorities mentioned above could be contested before the First Appellate Authority

Q3. Who could prefer an appeal before the First Appellate Authority(FAA)?

Ans. Following could prefer an appeal before the First Appellate Authority:

- (a) Any person aggrieved by the order or decision of the adjudicating authority;
- (b) Any GST officer on direction of the Commissioner (this is referred to as application).

Q4. Under what circumstances Commissioner could direct the GST officer to prefer an appeal against the order of the adjudicating authority?

Ans. The Commissioner either on of his own motion or upon request from the Commissioner of State tax Commissioner of Union Territory tax, call for and examine the records of any proceeding in which an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of the said decision or order. The Commissioner may by an order, direct any Officer subordinate to him to apply to the First Appellate Authority within six months from the date on which the said decision or order is communicated to such person for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Q5. Is there any time limit for filing appeal?

Ans. Yes. Time limit to file appeal before FAA, for an assessee (person aggrieved) is 3 months from the date of communication of the order. Whereas in case of an appeal filed by the department on the basis of the directions by the Commissioner shall have to be filed within 6 months from date of communication of the decision or order.

Q6. Whether FAA has power to condone the delay in filing of appeal filed beyond 3 months / 6 months?

Ans. Yes. FAA has powers to condone the delay beyond the period of 3 months or 6 months, upto a period of 1 month where sufficient cause for the delay is shown.

Q7. Whether entire amount of tax, interest, penalty, fine or fee has to be remitted before preferring appeal?

Ans. No. For filing appeal following amounts shall have to be remitted:

Demands which are not contested	Entire amount of such demands (tax, interest and penalty) shall have to be remitted
Demands which are contested	a sum equal to 10% of the remaining amount of tax in dispute arising from the said order shall have to be remitted

Q8. Whether payment of balance amounts demanded would be stayed?

Ans. Yes. In terms of Section 107(7) where the appellant has paid the required pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed.

Q9. Is it mandatory on the part of FAA to provide opportunity of hearing?

Ans. Yes. In terms of Section 107(8), FAA shall have to give opportunity of hearing to the appellant.

Q10. Whether parties to an appeal could seek adjournment of the hearing?

Ans. Yes. The FAA may, grant adjournment of personal hearing if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

However, no such adjournment shall be granted more than three times to a party during hearing of the appeal.

Q11. Whether a new ground could be taken up before FAA?

Ans. The FAA at the time of hearing of an appeal, may allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

Q12. What type of order could the FAA pass? Whether FAA could refer the case back to Adjudicating authority?

Ans. The FAA may pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. The order shall be in writing giving details as to determination. However, the FAA does not have power to refer the case back to the authority that passed the said decision or order:

Q13. Whether the FAA can enhance the penalty or fee? If so under what circumstances?

Ans. Yes, the FAA could enhance the penalty. However, 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

### **Revisional Powers of Chief Commissioner or Commissioner (Section 108)**

#### **Section 108 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q14. Whether review of the orders passed under this act is permissible? If so under what circumstances revisionary powers?

Ans. In terms of Section 2(99) "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108

The review authority either on his own motion or based on the information received by him or based on the request of the Commissioner of State Tax or Commissioner of Union Territory tax, could call for and examine the record of any proceeding, and if he considers that any decision or order passed under this CGST Act, or SGST Act or UTGST Act, by any officer subordinate to him is:

- (a) erroneous in so far as it is prejudicial to the interest of the revenue and
- (b) illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not; or
- (c) in consequence of an observation by the Comptroller and Auditor General of India,

he may 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.

For the purposes of this section, 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Chief Commissioner or Commissioner.

Q15. Whether order of FAA could also be reviewed by Revisional authority?

Ans. The order which has been subject to an appeal under before FAA (section 107) as well as orders of FAA which are appealed before Tribunal cannot be reviewed by Review authority.

However, review authority could pass an order under revisionary power on any point which has not been raised and decided in an appeal before FAA. Such revision order could be passed within 1 year from the date of the order of FAA or 3 years from the date of the original order whichever is later.

Q16. Which are the other orders or decision that a Revisional authority cannot review?

Ans. Following orders or decisions cannot be reviewed by a revision authority

- (a) order has been subject to an appeal under before Tribunal (under section 112) or High Court (under section 117) or Supreme Court (under section 118); or
- (b) the period of 6 months as specified under 107(2) for preferring an appeal by department before FAA has not yet expired or
- (c) where more than three years have expired after the passing of the decision or order sought to be revised.
- (d) where the order has already been taken for revision under this section at any earlier stage.
- (e) revisionary order passed under this section (i.e. section 108(1))

Q17. What are the powers conferred on the Revisional authority as regards passing of order?

Ans. 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. Review authority, may stay the operation of the order sought to be reviewed.

Q18. Whether the assessee shall be given personal hearing before making the orders by review authority?

Ans. Yes, the person concerned with the order that is the subject matter of the review shall be given an opportunity of being heard.

Q19. Whether the order of review authority is appealable?

Ans. Yes. In terms of Section 108(4) appeal against the revision orders could be preferred before the Tribunal.

Q20. How to compute the time limit of 3 years (from the date of the order of lower authority) / 1 year within which the order shall be reviewed

Ans. Where the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or as the case may be, the High Court is pending, the time period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be, the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of 3 years, where notice for revision has been issued.

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).

## **Constitution of Appellate Tribunal (Section 109)**

### **Section 109 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q21. What is the Constitution of National Appellate Tribunal and how the same is constituted?

Ans. The Central Government shall on the recommendation of the GST Council by Notification constitute Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal).

Q22. Where the National Bench and Regional Bench shall be located?

Ans. National bench shall be located at New Delhi and Central Government on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required.

Q23. What is the composition of National Bench and Regional Benches?

Ans. National Bench shall be headed by the National president along with one Technical member (Centre) and one Technical Member(State). Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

Q24. What is jurisdiction of National and Regional Benches?

Ans. National and Regional Benches 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.

Q25. What is State Bench or Area Bench?

Ans. The Government, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal, exercising the powers of the Appellate Tribunal within the concerned State or Union territory.

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:

Q26. What is jurisdiction of State Bench or Area Bench?

Ans. 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 involving dispute relating to place of supply.

Q27. What is the composition of State Bench and Area Benches?

Ans. Each State Bench and Area Benches 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.

Q28. Whether any matter could be heard by bench consisting of members less than 3 as set out above?

Ans. Yes, 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.

Further, 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 Rs. 5 Lakhs 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.

Q29. What would be consequence where there is a difference of opinion on any issue among the members of the bench?

Ans. If the Members of the Bench (National/Regional/State/Area) 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.

Q30. Whether members of the Tribunal could be transferred from one bench to other bench?

Ans. Central Government in consultation with the President, may transfer Judicial Member or a Member Technical (State) from National Bench or one Regional Bench to other Regional Bench or to National Bench. Further, Member Technical (Centre) could be Transferred from one Bench to another Bench, whether National, Regional, State or Area.

However, State Government could transfer member technical (state) from State Bench or one area bench to another area bench or to State Bench.

### **Qualification, appointment & condition of service of the President and the members of the Tribunal (Section 110)**

#### **Section 110 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q31. What is the qualification to be appointed as president?

Ans. A person shall not be qualified for appointment as President unless:

- (a) He has been a Judge of the Supreme Court or
- (b) He is or has been the Chief Justice of a High Court, or
- (c) He is or has been a Judge of a High Court for a period not less than five years;

Q32. What is the qualification to be appointed as member (judicial)?

Ans. A person shall not be qualified for appointment as a Judicial Member, unless:

- (i) He 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

Q33. What is the qualification to be appointed as member (technical)?

Ans. Member Technical (Centre): A person shall not be qualified for appointment as a Member Technical (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;

Member Technical (State) : A person shall not be qualified for appointment as 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.

Q34. Who would appoint the President and Members?

Ans. President: 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.

Technical Members: 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.

Judicial members: 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

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.

Q35. For what period president and members could hold the office?

Ans. National President 3 years from the date of appointment or attainment of age of 70 years, whichever is earlier State President, Judicial members and Technical members 5 years from the date of appointment or attainment of age of 65 years, whichever is earlier

All the above members are eligible for re-appointment

Q36. Whether a President or member could be removed from the office?

Ans. Yes.

A. National President, Members of National or Regional Tribunal

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, 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:



B. State president and members of the State or area Tribunal:

Similarly, 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 the member under the circumstances discussed above.

However, 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.

### Procedure before Appellate Tribunal (Section 111)

#### Section 111 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST

Q37. Whether the Appellate Tribunal is bound by the procedures of Code of Civil Procedure

Ans. No. 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.

Q38. Whether the Appellate Tribunal has the same powers as that of Civil Court?

Ans. Yes, to some extent the Tribunal is conferred with the powers of a Civil Court. 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.

Q39. Whether the orders of the Appellate Tribunal are enforceable and if yes how?

Ans. 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.

Q40. Whether the proceedings before the Appellate Tribunal shall be deemed to be judicial?

Ans. Yes. 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.

## Appeals to the Appellate Tribunal (Section 112)

### Section 112 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST

Q41. What are the orders against which an appeal could be preferred before the Tribunal?

Ans. Any person aggrieved by the order of the FAA or order of the review authority could prefer an appeal before the Appellate Tribunal (Tribunal).

Q42. Can the Tribunal reject to entertain an appeal based on the monetary limits?

Ans. Yes. The Tribunal has been conferred with discretion to refuse to admit an 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 Rs. 50,000/-

Q43. Whether the Department can also file an appeal before the Tribunal against the orders of FAA or review authority?

Ans. Yes. the department could also prefer an appeal before the Tribunal. The procedure is detailed below:

- 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 propriety of the said order and

- He 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 determination of such points arising out of the said order as may be specified by the Commissioner in his order.

Q44. Whether other party could file cross objections against the appeal preferred by the assessee or by the department ?

Ans. On receipt the appeal the other party could prefer an cross objection to the appeal even though he has not preferred an appeal. Cross objection shall have to be filed within 45 days from the date of receipt of the notice of appeal. The Tribunal shall dispose of the cross objections as if it is an appeal

Q45. What is the time limit for filing appeal / cross objections?

Ans. Appeal by Assessee 3 months from the date of receipt of the order against which the appeal is being preferred

Application by Department 6 months from the date of receipt of the order against which the application is being preferred

Cross objections 45 days from the date of receipt of notice of appeal

Q46. Whether appeal / application / cross objections filed beyond the time limit would be entertained?

Ans. Tribunal has been conferred with powers to condone the delay upto 3 months, beyond the period of 3 months or 6 months in case of filing of appeals, where sufficient cause for the delay is shown.

Similarly, delay upto 45 days could be condoned by the Tribunal in filing the memorandum of cross objections where sufficient cause for the delay is shown.

Q47. Whether entire amount of tax, interest, penalty, fine or fee has to be remitted before preferring appeal?

Ans. No. For filing appeal following amounts shall have to be remitted as pre-deposit.

- (a) Where any part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, entire such amount and
- (b) a sum equal to 25% of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed shall be paid. This amount (25%) is in addition to the pre-deposit paid while filing appeal before FAA.

Q48. Whether payment of balance amounts of demand would be stayed?

Ans. Yes. In terms of Section 112(9) where the appellant has paid the required pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed.

Q49. Whether any fee shall have to be paid for filing appeals or application before the Tribunal?

Ans. Yes. There is a requirement to pay fee for filing appeals and applications. However, the amount of fee is to be prescribed.

### **Orders of Appellate Tribunal (Section 113)**

#### **Section 113 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q50. Is it mandatory to give opportunity of hearing to the parties in appeal?

Ans. Yes, the Appellate Tribunal shall give opportunity of hearing to the parties before deciding the issue

Q51. Whether the parties to an appeal could seek adjournment of the hearing?

Ans. The Tribunal may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a party during hearing of the appeal.

Q52. What are the orders that could be passed by the Appellate Tribunal?

Ans. The Tribunal may 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.

Q53. Whether Tribunal has power to rectify / amend the orders passed by it?

Ans. Yes, Tribunal may amend any order passed by it under in terms of Section 113(1) so as to rectify any mistake apparent from the record. Tribunal could undertake rectification on its own or on application by either of the parties to the appeal. The application for rectification shall be made within a period of three months from the date of the order sought to be rectified.

However, 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 Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

Q54. Where an assessee gets a favourable decision either before FAA or the Tribunal, whether the pre-deposit would be refunded back? Whether any interest is paid?

Ans. Yes, where the assessee gets a favourable decision (fully or partially), the amount paid as pre-deposit would be refunded along with interest which is computed from the date of deposit till date of refund.

Further, Section 115 provides that 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.

Q55. Who could represent before GST officer of FAA or the Tribunal

Ans. Following persons could act a authorized representative and appeal before the officer or FAA or the Tribunal on behalf of an assessee

- (a) relative or regular employee of the assessee; 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.

However, 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 authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

Following shall not be entitled to appear:

- (a) who has been dismissed or removed from Government service; or
- (b) who is convicted of an offence connected with any proceedings 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, during the period in which he is insolvent.

### **Appeal to the High Court (Section 117)**

#### **Section 117 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q56. What is the time limit within which appeal could be preferred before High Court?

Ans. Appeal before High Court shall be filed within 180 days from the date on which the order appealed against is received by the Commissioner of GST or the other party

Q57. Whether High Court could admit the appeal filed beyond 180 days?

Ans. Yes. Where the High Court is satisfied that there was sufficient cause for not filing the appeal within that period, it may condone the delay.

Q58. Whether a question involving factual disputes could be taken up before High Court?

Ans. Appeal before High Court, against an order of the Appellate Tribunal, could be preferred only where the High court is satisfied that the case involves a substantial question of law.

Q59. Which are the matters on which the appeal against order of the Tribunal could be preferred before High Court?

Ans. Appeal shall lie to High Court against an order passed by the State Bench or Area Benches of Tribunal. In other words, the orders of the National or Regional Benches cannot not be challenged before the High Court

Q60. Whether High Court can determine a issue which has not been determined by the Tribunal?

Ans. Yes. The High Court may determine any issue which has not been determined by the Appellate Tribunal. Further, High Court may also determine any issue which has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law.

Q61. Whether the appeal could be decided by a judge sitting singly?

Ans. No. Appeal filed before the High Court, 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.

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.

### **Appeal to Supreme Court (Section 118)**

#### **Section 118 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q62. What are the orders against which appeal could be preferred before the Supreme Court?

Ans. Following orders could be challenged before the Supreme Court:

- (a) Order passed by the National Bench or Regional Benches of the Appellate Tribunal; or
- (b) 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.

### **Sums due to be paid notwithstanding appeal, etc. (Section 119)**

#### **Section 119 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q63. Whether amounts confirmed in terms of the order of Tribunal / High Court to be remitted even though appeal is preferred before High Court or Supreme Court?

Ans. Yes. 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 Tribunal or an order passed by the High Court, as the case may be, shall be payable in accordance with the order so passed.

### **Non appealable decision and orders (Section- 121)**

#### **Section 121 of CGST Act, made applicable to IGST vide Section 20 of IGST Act and Section 21 of UTGST**

Q64. Whether all decisions and orders can be appealed?

Ans. No. in terms of Section 121, orders listed below cannot be appeal against:

- (a) An order of the Commissioner or other competent authority for transfer of proceeding 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 relating to payment of tax, interest and other dues in installments.