

## Chapter XVIII

# Appeals and Revision

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### FAQ's

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

**Section 107 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 1. What is the appeal mechanism provided under the CGST Act, 2017 against the order/ decision of the Adjudicating Authority?

Ans. Section 107 of the CGST Act, 2017 read with Rule 108 and 109 of the CGST Rules, 2017, provides provisions for preferring an appeal against the order of the Adjudicating Authority to the Appellate Authority. However, some decisions or orders (as provided in sec. 121) are not appealable.

Q 2. Who is an adjudicating authority?

Ans. Section 2(4) of the CGST Act, 2017 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) Central Board of Indirect Taxes and Customs<sup>1</sup>
- (b) Revisional Authority,
- (c) Authority for Advance Ruling,
- (d) Appellate Authority for Advance Ruling,
- (e) The Appellate Authority
- (f) The Appellate Tribunal
- (g) The Authority referred to in sub-section (2) of section 171<sup>2</sup> [Inserted to exclude National Anti- Profiteering Authority constituted by the Central Government under section 171 of the CGST Act from the definition of '*adjudicating authority*'.]

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

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<sup>1</sup> Effective date yet to be notified. Earlier "*Central Board of Customs and Excise (Board)*"

<sup>2</sup> Effective date yet to be notified.

Q 3. Who is an Appellate Authority?

Ans. “*Appellate Authority*” means an authority appointed or authorised to hear appeals as referred to in section 107. Section 107 provides that appeal shall be preferred before such Appellate Authority as may be prescribed. Rule 109A provides that for the purpose of appeal, an Appellate Authority shall be:

- (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
- (b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.

Q 4. Who could prefer an appeal before the Appellate Authority?

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

- (a) Any person aggrieved by the order or decision of the adjudicating authority [FORM GST APL-01 → Chapter-XIII – Appeals and Revision of the CGST Rules]
- (b) Any authorised officer on direction of the Commissioner (this is referred to as application and filed in FORM GST APL-03).

Q 5. Under what circumstances Commissioner could direct the Officer to prefer an appeal against the order of the adjudicating authority?

Ans. The Commissioner may, 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 the CGST Act or the SGST Act or the UTGST 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 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.

Q 6. Is there any time limit for filing an appeal before the Appellate Authority?

Ans. Yes. Time limit to file appeal before the Appellate Authority, 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, the same shall have to be filed within 6 months from date of communication of the decision or order.

Q 7. Whether Appellate Authority has power to condone the delay in filing of appeal filed beyond 3 months / 6 months?

Ans. Yes. As per Section 107(4) of the CGST Act, 2017, Appellate Authority 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.

Q 8. Whether entire amount of tax, interest, penalty, fine or fee has to be remitted before preferring appeal?

Ans. For filing appeal following amounts shall have to be remitted:

Demands which are not contested	Entire amount of such demands (tax, interest, fine, fee and penalty) arising from the impugned order,
Demands which are contested	a sum equal to 10% of the remaining amount of tax in dispute arising from the said order, <i>subject to a maximum of twenty-five crore rupees<sup>3</sup></i> in relation to which the appeal has been filed.,

Q 9. 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.

Q 10. Is it mandatory on the part of Appellate Authority to provide opportunity of hearing?

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

Q 11. Whether parties to an appeal could seek adjournment of the hearing?

Ans. Yes. The Appellate Authority may, grant adjournment of personal hearing if, sufficient cause is shown at any stage of hearing of an appeal, 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.

Q 12. Whether a new ground could be taken up before Appellate Authority?

Ans. The Appellate Authority 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.

Q 13. What type of order could the Appellate Authority pass? Whether Appellate Authority could refer the case back to Adjudicating Authority?

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<sup>3</sup> Effective date yet to be notified.

Ans. The Appellate Authority 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. The Appellate Authority shall, along with its order under section 107(11), issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed. However, the Appellate Authority does not have power to refer the case back to the Adjudicating Authority that passed the said decision or order.

Q 14. Whether the Appellate Authority can enhance the penalty or fee? If so, under what circumstances?

Ans. Yes, the Appellate Authority 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.

Q 15. Is there any time limit within which the Appellate Authority has to decide the Appeal?

Ans. Yes, the Appellate Authority has to hear and decide every appeal, where it is possible to do so, within a period of one year from the date on which it is filed. Provided that, in case where the issuance of Order is stayed by an Order of a Court or Tribunal, the period of such stay shall not be included in computing the one year period.

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

**Section 108 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 16. Under what circumstances Revisional Authority can revise the order passed under the CGST Act?

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

The Revisional Authority may 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 the 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 is 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

(b) in consequence of an observation by the Comptroller and 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.

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 Revisional Authority.

Q 17. Whether Order of the Appellate Authority could also be stayed by Revisional Authority?

Ans. The Order which has been subject to an appeal before the Appellate Authority (section 107) as well as orders of the Appellate Authority which are appealed before the Tribunal cannot be stayed by the Revisional Authority.

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

Q 18. When a Revisional Authority cannot exercise its powers?

Ans. Revisional authority shall not exercise its powers, in case of following:

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

Q 19. What are the powers conferred on the Revisional Authority as regards passing of order?

Ans. Revisional Authority, may stay the operation of the order sought to be revised 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.

Q 20. Can the “*Revisional Authority*” order for staying of operation of any order passed by his subordinates pending such revision?

Ans. Yes, except in the circumstances stated in Section 108(2) of the CGST Act, 2017.

Q 21. Whether the assessee shall be given personal hearing before making the orders by Revisional Authority?

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

Q 22. 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 revised?

Ans. Such period has to be computed from the date of respective order. 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 section 108(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 section 108(2)(b).

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

**Section 109 of the CGST Act, 2017 made applicable to IGST *vide* Section 20 of the IGST Act, 2017 and UTGST *vide* Section 21 of the UTGST Act, 2017**

Q 23. 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) for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

Q 24. Where the National Bench and Regional Bench shall be located?

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

Q 25. 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).

Q 26. What is jurisdiction of National or Regional Benches of the Appellate Tribunal?

Ans. National 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.

Q 27. 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, for 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.

Q 28. 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 all cases other than those involving matters where one of the issues involved relates to the place of supply.

Q 29. 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.

Q 30. 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 ` 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.

Q 31. 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.

Q 32. Whether members of the Tribunal could be transferred from one bench to another bench?

Ans. The Central Government in consultation with the President, may, for the administrative convenience, 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, 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.

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

**Section 110 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 33. What qualification is required for appointment of 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;

Q 34. What qualification is required for appointment of a Judicial Member?

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

Q 35. What qualification is required for appointment of a 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 old law or the State Goods and Services Tax Act or in the field of finance and taxation.

Q 36. Who would appoint the President and Members?

Ans. *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.

*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.

*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.

Q 37. For what period President and Members could hold the office?

Ans. 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

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.

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.

Q 38. 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 at (a) to (e) 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 the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 39. 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 the CGST Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

Q 40. 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 the CGST 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.

Q 41. 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.

Q 42. 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 the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 43. What are the orders against which an appeal could be preferred before the Tribunal?

Ans. Any person aggrieved by the order of the Appellate Authority or order of the Revisional Authority could prefer an appeal before the Appellate Tribunal (the Tribunal) in **FORM GST APL-05**.

Q 44. 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 ` 50,000/-

Q 45. Whether the Department can also file an appeal before the Tribunal against the orders of Appellate Authority or Revisional Authority?

Ans. Yes. The department could also prefer an appeal before the Hon'ble Tribunal in **FORM GST APL-07**. 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 the CGST Act or the STGST Act or the UTGST 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.

Q 46. Whether other party could file cross objections against the appeal preferred by the assessee or by the department?

Ans. On receipt of notice that an appeal has been preferred under section 112, other party against whom an appeal is preferred, could file a cross objection to the appeal even though he has not preferred an appeal. A Memorandum of Cross-Objections have to be filed within 45 days from the date of receipt of the notice of appeal in **FORM GST APL-06**. The Tribunal shall dispose of the cross objections as if it is an appeal.

Q 47. 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 filed.

**Memorandum of Cross-Objections: 45 days** from the date of receipt of notice of appeal.

Q 48. 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.

Q 49. Whether entire amount of tax, interest, penalty, fine or fee has to be remitted before preferring appeal to the Appellate Tribunal?

Ans. For preferring an appeal before the Appellate Tribunal, 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 20% of the remaining amount of tax in dispute arising from the said order, *subject to a maximum of fifty crore rupees*,<sup>4</sup> in relation to which the appeal has been filed shall be paid. This amount (20%) is in addition to the pre-deposit paid while filing appeal before Appellate Authority.

Q 50. Whether payment of balance amounts of demand would be stayed?

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<sup>4</sup> Effective date yet to be notified.

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

Q 51. Whether any fee shall have to be paid for filing appeals or application before the Appellate Tribunal?

Ans. Yes. There is a requirement to pay fee for filing appeals and applications. The fees for filing of appeal or 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 a maximum of twenty-five thousand rupees.

Q 52. Whether interest becomes payable on refund of pre-deposit amount?

Ans. Yes. As per sec 115 of the Act, where an amount deposited by the appellant under section 107(6) or under section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be. 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.

### **Orders of Appellate Tribunal (Section 113-116)**

**Section 113-116 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 53. Whether the parties to an appeal could seek adjournment of the hearing?

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

Q 54. What are the orders that could be passed by the Appellate Tribunal?

Ans. The Hon'ble 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.

Q 55. Whether the Tribunal has power to rectify / amend the orders passed by it?

Ans. Yes, the 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. The Hon'ble Tribunal could undertake rectification on its own or on application by either of the parties to the appeal (by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party 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 section 113(3), unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

Q 56. Where an assessee gets a favourable decision either before the Appellate Authority 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.

Q 57. Who could represent before GST officer or Appellate Authority or the Tribunal?

Ans. Following persons could act an *authorized representative* and appeal before the officer or Appellate Authority or the Hon'ble Tribunal on behalf of an Appellant:

- (a) relative of the Appellant; or
- (b) regular employee of the Appellant; or
- (c) 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
- (d) 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
- (e) 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

- (f) 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** as authorised representative:

- (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 STGST Act, the IGST Act or the UTGST Act, or under the old 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 the CGST Act, 2017 made applicable to IGST *vide* Section 20 of the IGST Act, 2017 and UTGST *vide* Section 21 of the UTGST Act, 2017

Q 58. What is the time limit within which appeal could be preferred before the High Court?

Ans. Appeal before the High Court shall be filed in **FORM GST APL-08**, within 180 days from the date on which the order appealed against is received by the Department or the other party.

Q 59. Whether the 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.

Q 60. Whether a question involving factual disputes could be taken up before the High Court?

Ans. Appeal before the 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.

Q 61. Which are the matters on which the appeal against order of the Tribunal could be preferred before the High Court?

Ans. Appeal shall lie to the High Court against an Order passed by the State Bench or Area Benches of the Tribunal.

Q 62. Whether the High Court can determine an 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.



Q 63. 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 the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 64. 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 the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 65. Whether amounts confirmed in terms of the order of the Tribunal / the High Court to be remitted even though appeal is preferred before the High Court or the 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 the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

Q 66. 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.