

## Chapter 18

# Appeals and Revision

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### 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 per cent of the remaining amount of tax in dispute arising from the said order <sup>1</sup>[subject to a maximum of twenty-five crore rupees], in relation to which the appeal has been filed.*
- [Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.]<sup>2</sup>*
- (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:*

<sup>1</sup> Inserted vide *The Central Goods and Services Tax (Amendment) Act, 2018* w.e.f. 01.02.2019

<sup>2</sup> Inserted vide *The Finance Act, 2021* effective from 01.01.2022 notified vide *Notf No. 39/2021 – CT dt. 21.12.2021.*

*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.*

## Extract of the CGST Rules, 2017

**108. Appeal to the Appellate Authority**

- (1) *An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in Form GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.*
- (2) *The grounds of appeal and the form of verification as contained in Form GST APL-01 shall be signed in the manner specified in rule 26.*
- (3) *A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in Form GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:*

*Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the Form GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.*

*Explanation.– For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.*

**109. Application to the Appellate Authority**

- (1) *An application to the Appellate Authority under sub-section (2) of section 107 shall be made in Form GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.*
- (2) *A certified copy of the decision or order appealed against shall be submitted within seven days of the filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.*

**<sup>3</sup>109A. Appointment of 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 may appeal to -*
  - (a) *the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;*
  - (b) *<sup>4</sup>[any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,*

<sup>3</sup> Inserted vide *Noff No. 55/2017-CT dt. 15.11.2017*

<sup>4</sup> Substituted for "the Additional Commissioner (Appeals)" vide *Noff No. 60/2018 – CT dt. 30.10.2018*

*within three months from the date on which the said decision or order is communicated to such person.*

- (2) *An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –*
- (a) *<sup>5</sup>[any officer not below the rank of Joint 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 the Superintendent,*
- within six months from the date of communication of the said decision or order].*

**112. 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*

<sup>5</sup> Substituted for "the Additional Commissioner (Appeals)" vide *Notf No. 60/2018 – CT dt. 30.10.2018*

<p>(b) <i>to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1)</i></p> <p>(4) <i>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.</i></p>
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#### Related provisions of the Statute

<b>Section or Rule</b>	<b>Description</b>
Section 2(4)	Definition of Adjudicating Authority
Section 2(8)	Definition of Appellate Authority
Section 2(24)	Definition of Commissioner
Section 73	Recovery of tax for reasons other than fraud or any wilful-misstatement or suppression of facts.
Section 74	Recovery of tax for reasons of fraud or any wilful-misstatement or suppression of facts.
Rule 108(1) and 108(2)	Forms to be filed for appeal
Rule 26	Method of Authentication
Rule 108(3)	Time limit for submitting a copy/decision/order

#### 107.1 Introduction

- (a) This section pertains to appeals to the appellate authority by any person who is aggrieved against any decision or order passed by the adjudicating authority.
- (b) Adjudicating authority means any Authority appointed or authorized to pass any order or decision under this Act but does not include CBIC, revisional authority, Advance Ruling Authority, Appellate Authority for Advance Ruling, National Appellate Authority for Advance Rulings, the Appellate Authority, the Appellate Tribunal and Anti-profiteering Authority. (Section 2(4))
- (c) Appellate Authority means an authority appointed or authorised to hear appeals as referred to in Section 107.
- (d) This section also provides for appeal by the tax authorities against a decision or order passed by adjudicating authority.

#### 107.2 Analysis

- (i) An assessee, aggrieved by any decision or order passed by adjudicating authority may prefer an appeal within a period of three months from the date of communication of decision or order in **Form GST APL-01**, along with relevant documents either

electronically or otherwise as notified by the Commissioner against which a provisional acknowledgement will be issued immediately. The grounds of appeal and form of verification must be duly signed as specified in rule 26. The certified copy of the decision or order is to be filed before the Appellate Authority within 7 days of filing the appeal. Thereafter, a final acknowledgement indicating the appeal number shall be issued in Form **GST APL-02** by the said authority. In such a situation, the appeal shall be deemed to be filed on the date of issue of provisional acknowledgement. In case the said certified copy is submitted after a period of seven days, the date of filing of appeal shall be the date of submission of such copy. The appeal shall be considered as filed only when the final acknowledgement, indicating the appeal number is issued. Hence where the certified copy is not submitted within seven days, the date of submission of the same shall be the date of filing of appeal.

- (ii) Alternatively, the Commissioner of Central / State or any Union Territory can, with a view to satisfy himself about the legality or propriety of any order or decision passed by an adjudicating authority, direct a subordinate officer to file an application before the appellate authority within six months from the date of communication of decision or order in Form **GST APL-03**, along with relevant documents either electronically or otherwise as notified against issue of an acknowledgement. A certified copy of the decision or order of the appeal is to be filed before the Appellate Authority within seven days of filing the application and an appeal number shall be generated accordingly.
- (iii) The appellate authority shall treat the application filed by authorized officer as if such authorized officer is the appellant and the provisions of the Act relating to appeal will be applicable to such application.
- (iv) The Appellate Authority in either of the above cases is empowered to condone the delay up to a period of one month.
- (v) The appeal has to be filed before the following authorities:
  - Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner; and
  - Any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent
- (vi) The appeal has to be filed in the prescribed form and manner along with payment of:
  - amount of tax, interest, fine, fee and penalty, as is admitted, in full; and
  - pre-deposit of sum equal to 10 per cent of the remaining amount of tax in dispute (subject to a maximum of twenty- five crore rupees (effective from 01.02.2019).
- (vii) In *Jyoti Construction v. Deputy Commissioner of CT & GST, Barbil Circle 2021 (10) TMI 524*, a Division Bench of the Hon'ble Orissa High Court held that pre-deposit cannot be paid using balance of ITC in the electronic credit ledger.

- (viii) On payment of the above amount, the recovery proceedings for balance amount are deemed to be stayed.
- (ix) The Appellate Authority shall give an opportunity to the appellant of being heard.
- (x) Not more than three adjournments could be granted to a party on showing reasonable cause that is to be recorded in writing.
- (xi) The 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.
- (xii) The Appellate Authority has to pass an order confirming, modifying or annulling the decision or order appealed against, but shall not remand the case back to the adjudicating authority. This power of remand was a major reason of dispute in the erstwhile regime but now the same is settled.
- (xiii) 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 the amount of refund/input tax credit after issuing show cause notice.
- (xiv) 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.
- (xv) The Appellate Authority has to hear and decide the appeal, wherever possible, within a period of one year from the date of filing the appeal.
- (xvi) 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.
- (xvii) The Appellate Authority is required to communicate the copy of order to the appellant, the respondent, the adjudicating authority, Jurisdictional Commissioner of CGST, SGST and UTGST or an authority designated in their behalf
- (xviii) The order passed under this section shall be final and binding on the parties subject to provisions of section 108 (powers of Revisional Authority) or section 113 (Orders of Appellate Tribunal) or section 117 (Appeal to High Court).
- (xix) The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a summary of the order in Form **GST APL-04** clearly indicating the final amount of demand confirmed. The jurisdictional officer shall issue a statement in Form APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

### 107.3 Comparative review

- (i) Similar provisions can be found in section 84 & 85 of the Finance Act, 1994 & section 35 of the Central Excise Act, 1944
- (ii) Under service tax and central excise, an appeal was required to be filed by an assessee before the Commissioner (Appeals) against the order of the adjudicating authority, within two months from the date of receipt of the decision or order of such adjudicating authority.



- (iii) The pre-deposit of tax for filing an appeal before Commissioner (Appeals) under service tax and central excise was 7.5 per cent of the disputed duty/tax/penalty, as the case may be.
- (iv) After examining the records of proceedings related to the decision or order passed by the adjudicating authority subordinate to him, the Principal Commissioner of Central Excise or Commissioner of Central Excise may pass an order for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the [Principal Commissioner of Central Excise or] Commissioner of Central Excise in his order.
- (v) Under the service tax, earlier the time limit for filing first appeal to CCE (Appeals) by the adjudicating authority was one month from the date of order or decision of the Principal Commissioner of Central Excise or Commissioner of Central Excise.

### 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 proceedings 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 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 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.*
- (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; or*
  - (c) *the order has already been taken for revision under this section at any earlier stage; or*

- (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 the 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 the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.*
- (5) *Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation 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.*

#### Extract of the CGST Rules, 2017

##### **<sup>6</sup>[109B. Notice to person and order of Revisional Authority in case of revision**

- (1) *Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in Form GST RVN-01 and shall give him a reasonable opportunity of being heard.*
- (2) *The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed.]*

<sup>6</sup> Inserted vide Notf No. 74/2018-CT dt. 31.12.2018

**Related provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 2(99)	Definition of Revisional Authority
Section 121	Non-appealable decisions and orders
Section 107	Appeals to Appellate Authority
Section 112	Appeals to Appellate Tribunal
Section 117	Appeals to High Court
Section 118	Appeals to Supreme Court

**108.1 Introduction**

This section pertains to powers of revisional authority.

**108.2 Analysis**

- (i) "Revisional authority" means an authority appointed or authorised for revision of decision or orders as referred to in this section.
- (ii) The revisional authority is empowered to examine any proceedings and stay the operation of any decision or order, if he considers that such decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the Revenue or illegal or improper or has not taken into account certain material facts.
- (iii) After giving the concerned person an opportunity of being heard and making further necessary inquiry, the revisional authority may pass an order within three years of passing of the said order sought to be revised including enhancing or modifying or annulling the said decision or order.
- (iv) The revisional authority shall not exercise such revisionary powers if
  - (a) an appeal is filed against the order to –
    - the Appellate Authority under section.107
    - the Appellate Tribunal under section .112
    - High Court under section.117
    - Supreme Court under section 118
  - (b) the period of six months specified in section 107(2) has not expired or more than three years have expired after passing the decision or order
  - (c) the order has already been taken up under this section for revision at any earlier stage
  - (d) revisionary order has already been passed once.

- (v) However, the revisional authority may pass an order on any point which has not been raised and decided in an appeal either before the appellate authority, Appellate Tribunal, High Court or Supreme Court.
- (vi) The revisional authority must pass the order within one year from the date of order passed in such appeal or within three years from the date of passing such decision or order sought to be revised, whichever is later.
- (vii) The order passed under this section shall be final and binding on the parties subject to the provisions of section 113 (Orders of Appellate Tribunal) or section 117 (Appeal to High Court) or section 118 (Appeal to Supreme Court).
- (viii) The time span between the date of decision of the Appellate Tribunal and the date of decision of the High Court or the date of decision of the High Court and the date of decision of Supreme Court should be excluded in computing the period of limitation of three years. Even the period of stay is excluded in computing the period of limitation of three years. Refer the discussion on administrative law whereunder the executive officer is not to interfere with the quasi-judicial officer's orders but that seems to be given a pass in section 108.

#### Statutory Provisions

##### **109 Constitution of the Appellate Tribunal and Benches thereof**

- (1) *The Government shall, on the recommendations 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 orders passed by the Appellate Authority or the 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 (hereinafter 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 <sup>7</sup>[except for the State of Jammu and Kashmir:*

*~~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 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.]<sup>8</sup>*

*[Provided also 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.]<sup>9</sup>*

- (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*

<sup>7</sup> Omitted vide *The Finance Act, 2020* w.e.f. 30<sup>th</sup> June 2020.

<sup>8</sup> Substituted by *The Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017* w.e.f. 08.07.2017

*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.*

#### Related provisions of the Statute

<b>Section or Rule</b>	<b>Description</b>
Section 2(9)	Definition of "Appellate Tribunal"
Section 2(36)	Definition of "Council"

#### 109.1 Introduction

This section pertains to constitution of GST Appellate Tribunal

#### 109.2 Analysis

- (a) Based on the recommendation of the Council and by Notification, the Central Government shall constitute Goods & Service Tax Appellate Tribunal (GSTAT) for hearing appeals against the orders passed by the appellate authority or revisional authority.
- (b) The powers of the Appellate Tribunal shall be exercisable by the National Bench or Regional Benches, State Bench and Area Benches.
- (c) The National Bench shall be situated at New Delhi which shall be presided over by the President, one Technical Member (Centre) and one Technical Member (State).
- (d) The Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

- (e) The National Bench or Regional Benches shall hear the appeals only where one of the issues involved relates to the place of supply.
- (f) The State Bench or Area Benches shall hear the appeals involving matters other than that relating to place of supply.
- (g) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or Area Benches in a State.
- (h) The State Bench and Area Branch 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.
- (i) In the absence of a member of any Bench due to vacancy or otherwise, any appeal may, with the approval of President or State President, be heard by a Bench of two members.
- (j) Any appeal (which does not involve any question of law) involving tax, input tax credit, fine, fee or penalty determined in any order appealed against, not exceeding ₹5 Lakhs may be heard by Single Member Bench, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council.
- (k) No act or proceedings of the Appellate Tribunal shall be questioned or shall be held invalid *merely* on the ground of the existence of any vacancy or defect in the constitution of Appellate Tribunal.

The locations where the State Bench or the Area Benches are proposed are as at Table 1 hereunder:

On 21<sup>st</sup> August 2019, in exercise of the powers conferred by the sub section 6 of section 109 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendation of the Goods and Services Tax Council, notified the creation of the State Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) as per the details contained in Table 1 below and Area Benches as per the details contained in Table 2 below, with effect from the date of publication of this notification in the Gazette of India (Extraordinary):

TABLE-1

S.No.	Name of State/Union Territory	Location
1.	Andhra Pradesh	Vijayawada
2.	Bihar	Patna
3.	Chhattisgarh	Raipur
4.	Delhi	New Delhi
5.	Goa	Panaji
6.	Gujarat	Ahmedabad

7.	Haryana	Hisar
8.	Himachal Pradesh	Shimla
9.	Jharkhand	Ranchi
10.	Karnataka	Bengaluru
11.	Kerala	Thiruvananthapuram
12.	Maharashtra	Mumbai
13.	Odisha	Cuttack
14.	Puducherry	Pondicherry
15.	Punjab	Chandigarh
16.	Tamil Nadu	Chennai
17.	Telangana	Hyderabad
18.	Tripura	Agartala
19.	Uttarakhand	Dehradun
20.	West Bengal	Kolkata
21.	Assam	Common State Bench of GSTAT at Guwahati, Assam
22.	Arunachal Pradesh	
23.	Manipur	
24.	Nagaland	
25.	Sikkim	
<i>UTs (Without Legislature)</i>		
26.	Andaman & Nicobar	State Bench of West Bengal (Kolkata)
27.	Dadra & Nagar Haveli	State Bench of Maharashtra (Mumbai)
28.	Daman & Diu	State Bench of Maharashtra (Mumbai)
29.	Lakshadweep	State Bench of Kerala (Ernakulum)
30.	Chandigarh	State Bench of Punjab (Chandigarh)

TABLE 2

S.No.	Name of State	Location
1.	Andhra Pradesh	One Area Bench each at Vishakhapatnam and Tirupati
2.	Gujarat	One Area Bench each at Surat and Rajkot
3.	Maharashtra	One Area Bench each at Pune and Nagpur
4.	West Bengal	Two Area Benches at Kolkata



In view of the recent decision, Madras HC striking down certain provisions of section 109 in *Revenue Bar Association v. Union of India* (2019) 30 G. S. T. L. 584 (Mad.), it is expected that some legislative changes may be made, subject to the outcome of the Government's appeal against the same in the Supreme Court.

### 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 erstwhile 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. In *Revenue Bar Association's* case before the Madras HC, the composition of GSTAT was challenged and to this extent, the petition was allowed. It needs to be seen how the Government will address the decision of Madras HC.

### 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

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, 1908. But it shall certainly be guided by the principles of natural justice.
- (ii) The Appellate Tribunal is empowered to regulate its own procedure.
- (iii) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure 1908 in respect of certain matters such as summoning and enforcing attendance of person, receiving evidence on affidavits, requiring production of documents, issuing commissions for the examination of witnesses or documents, dismissing a representation for default or deciding it *ex parte*, setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*, etc.
- (iv) All the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 228 & 196 of the Indian Penal Code.

- (v) The Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973
- (vi) It is important to note that inherent powers of the Court under section 151 of the CPC will be available to self-regulate proceedings before GSTAT.

### 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 <sup>9</sup>[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 <sup>10</sup>[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

<sup>9</sup> Section 2(a) of the *Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019* clarifies that the start of the three months period shall be considered to be the later of the following dates:-

- (i) date of communication of order; or
- (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office

<sup>10</sup> Section 2(b) of the *Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019* clarifies that the start of the six months period shall be considered to be the later of the following dates:-

- (i) date of communication of order; or
- (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office

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 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 the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (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 per cent of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order <sup>11</sup>[subject to a maximum of fifty crore rupees], 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.

#### Extract of the CGST Rules, 2017

##### **110. Appeal to the Appellate Tribunal.**

- (1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in Form GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

<sup>11</sup> Inserted vide *The Central Goods and Services Tax (Amendment) Act, 2018* w.e.f. 01.02.2019

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either electronically or otherwise as may be notified by the Registrar, in Form GST APL-06.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in Form GST APL-02 by the Registrar:

*Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the Form GST APL-05, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.*

*Explanation. – For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.*

(5) 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.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

**111. Application to the Appellate Tribunal.**

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be made electronically or otherwise, in Form GST APL-07, along with the relevant documents on the common portal.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

**112. 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.*

#### Related provisions of the Statute

<b>Section or Rule</b>	<b>Description</b>
Section 107	Appeals to Appellate Authority
Section 108	Powers of Revisional Authority
Section 2(9)	Definition of "Appellate Tribunal"

#### 112.1 Introduction

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

**112.2 Analysis**

(a) An assessee, aggrieved by any decision or order may prefer an appeal within a period of three months from the date of communication of the decision or order in Form **GST APL-05**, along with relevant documents either electronically or otherwise as notified by the Commissioner against which a provisional acknowledgement will be issued. The grounds of appeal and form of verification must be duly signed as per the requirements of rule 26 of the CGST Rules 2017 and a certified copy of the decision or order, along with the prescribed fees is to be filed before the Registrar within seven days of filing the appeal.

(b) Thereafter, a final acknowledgement indicating the appeal number shall be issued in Form GST APL-02 by the said authority. In such a situation, the appeal shall be deemed to be filed on the date on which the provisional acknowledgement stands issued.

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

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

(c) The Appellate Tribunal has the 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 the amount of fine, fees or penalty ordered against does not exceed Rs. 50,000/-.

(d) The Commissioner may, on his own motion or on request from the Commissioner of State Tax or Commissioner of Union Territory Tax can call for and examine any order or decision passed by the Appellate Authority or Revisional Authority with a view to satisfy himself about the legality or propriety thereof, and direct a subordinate officer to file an application before the Appellate Tribunal within six months from the date of communication of decision or order in Form **GST APL-07**, along with relevant documents either electronically or otherwise as notified against issue of an acknowledgement. A certified copy of the decision or order of the appeal, along with the prescribed fees is to be filed before the Registrar within seven days of filing the application and an appeal number shall be generated accordingly.

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

(f) The Appellate Tribunal is empowered to condone the delay in filing appeal by assessee for a further period of 3 months or memorandum of cross objection for a further period of 45 days if there was sufficient cause for not presenting within specified period. This again is going to be a big challenge. Under the erstwhile indirect tax's regime, the Tribunal was having no time limit for condoning the delay but now under GST regime condonation is restricted to three months only.

- (g) An appeal has to be filed in the prescribed form and manner along with:
  - payment of tax, interest, fine, fee & penalty, as is admitted, in full; and
  - pre-deposit of sum equal to 20 per cent of remaining amount of tax in dispute *subject to a maximum of fifty crores (effective from 01.02.2019)* in addition to the amount deposited during the filling appeal before the appellate authority.
- (h) On payment of the above amount (interest, tax, fine, fee, etc), the recovery proceedings for the balance amount are deemed to be stayed till the disposal of the appeal.
- (i) No pre-deposit is required in the case of appeal filed by the tax authorities.
- (j) Every miscellaneous application shall be filed along with prescribed fees.
- (k) 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.
- (l) There shall be no fee for the application made before the Appellate Tribunal for rectification of errors.

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

- (a) In addition to the evidence produced by the appellant before the adjudicating authority during the course of the proceedings, he is permitted to produce before the appellate authority additional evidences in the following cases:
  - (i) where evidence that ought to be admitted has been refused by the adjudicating authority or Appellate Authority; or
  - (ii) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or Appellate Authority; or
  - (iii) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or Appellate Authority, any evidence which is relevant to any ground of appeal; or
  - (iv) where the adjudicating authority or 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.
- (b) The evidence shall be admitted only after the appellate authority or Appellate Tribunal records in writing the reasons for its admission.
- (c) The appellate authority or Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the reason for its admission is not recorded in writing and the adjudicating authority has been allowed a reasonable opportunity -
  - (i) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

- (ii) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).
- (d) The above rules shall not 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.

### 112.3 Comparative review

Similar provisions are contained in section 86 of the Finance Act, 1994 and 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 an 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 and 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 by the Appellate Tribunal on an appeal shall be final and binding on the parties.*

**Extract of the CGST Rules, 2017****113. Order of Appellate Authority or Appellate Tribunal**

- (1) The Appellate Authority shall, along with its order under sub-section (11) of section 107, issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed.
- (2) The jurisdictional officer shall issue a statement in Form GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

<b>Section or Rule</b>	<b>Description</b>
Section 107	Appeals to Appellate Authority
Section 2(9)	Definition of "Appellate Tribunal"

**113.1 Introduction**

- (i) This section pertains to the orders that can be passed by the Appellate Tribunal

**113.2 Analysis**

- (i) The Appellate Tribunal has the power to pass an 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) A maximum of three adjournments could 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, the Tribunal may rectify its order if the mistake is brought to its notice by Commissioner or other party to appeal within a period of three months from the date of such order. Opportunity of being heard to be granted in case such rectification results in enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party.
- (v) The Appellate Tribunal to hear and decide the appeal, as far as possible, within a period of one year from the date of filing of the appeal.
- (vi) The Appellate Tribunal is required to send a copy of order to the 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.

**Summary of Forms**

Sl. No.	Particulars	Form no.	Time Limit
1	Appeal to prescribed Appellate Authority by assessee	GST APL-01	Within 3 months from date of receipt of order
2	Final Acknowledgement indicating Appeal No.	GST APL-02	After filing of certified copy of the decision or order
3	Application to Appellate Authority u/s 107(2)	GST APL-03	Within 6 months from date of receipt of order
4	Summary of the Order	GST APL-04	Maximum within 1 year
5	Appeal to Appellate Tribunal by assessee	GST APL-05	Within 3 months from dt. of receipt of order
6	Cross objection by opposition party	GST APL-06	Within 45 days
7	Department's appeal to Tribunal	GST APL-07	Within 6 months from dt. of receipt of order
8	Appeal to High Court	GST APL-08	Within 180 days from the date of receipt of order appealed against.

**Summary of provisions**

S. No.	Particulars	Description
1	Date of filing appeal	a) Date of filing appeal on portal when provisional acknowledgement issued (if hard copy of order submitted within seven days from the date of filing) b) Date of filing hard copy if submitted after seven days from the date of filing
2	Refusal to admit appeal by Appellate Tribunal	Where tax or ITC involved or the difference between the two is less than ₹50, 000/-

3	Fees for filing Appeal	₹1,000/- for every one lakh rupees of tax or ITC involved or difference in tax and ITC or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of ₹ 25,000/-.
4	Condonation of delay in filing appeal	If satisfied, condone delays upto 3 months.
5	Pre-deposit requirement for disputed amount	Assessee paid in full/ part amount of tax, interest, fine, fee and penalty arising from the order appealed against: - 10 per cent in case of appeal to Appellate Authority [subject to maximum of Rs. 25 crores (effective from 01.02.2019)] 20 per cent in case of Tribunal in addition to 10 per cent deposited at the time of appeal to Appellate Authority [subject to maximum of Rs. 50 crores (effective from 01.02.2019)]
6	Interest on refund of pre-deposit	Payable from date of payment till the date of refund
7	Orders of Appellate Tribunal	As far as possible within one year confirming/ modifying/ annulling the order OR refer the case back to Appellate Authority

### 113.3 Comparative review

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

### Statutory Provisions

#### **114. Financial and administrative powers of President**

*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 the 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.*

**Related provisions of the Statute**

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

**115.1 Introduction**

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 56 (9 per cent as specified) shall be payable on delayed refund of the 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* provided for interest on delayed refund of pre-deposit at the rate of 6 per cent per annum.

**115.4 FAQs**

Q1. What is time period for calculation of interest on delayed refund of pre-deposit?

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.*

**Extract of the CGST Rules, 2017****116. Disqualification for misconduct of an authorised representative.**

*Where an authorised representative, other than those referred to in clause (b) or clause (c) of sub-section (2) of section 116 is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.*

**Related provisions of the Statute**

<b>Section</b>	<b>Description</b>
Section 2(23)	Definition of Chartered Accountant
Section 2(28)	Definition of Company Secretary
Section 2(35)	Definition of Cost Accountant
Section 2(55)	Definition of Goods and Services Tax Practitioner

**116.1 Introduction**

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 in the Commercial Tax Department for not less than two 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 two years in the Commercial 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 one 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 erstwhile laws,
  - who is found guilty of misconduct by the prescribed authority
- shall not be qualified to act as an 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

Section 35Q of the Central Excise Act, 1944 contained similar provisions relating to authorised representatives.

### 116.4 MCQs

- Q1. Any person who has retired/resigned after serving two years as Gazetted Officer in the Commercial Tax Departments of the Government of India or any State Government shall be entitled to appear as authorised representative after: -
- (a) One year from date of resignation / retirement
  - (b) Two years from date of resignation / retirement
  - (c) Three years from date of resignation / retirement
  - (d) Not entitled to appear at all
- Ans. (a) One year from the 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: -
- (a) One year from the date of dismissal / removal
  - (b) Two years from the date of dismissal / removal
  - (c) Three years from the date of dismissal / removal
  - (d) Not entitled to appear at all
- Ans. (d) Not entitled to appear at all
- Q3. Any insolvent person shall not be entitled to appear as authorised representative: -
- (a) Up to a period of one year of insolvency
  - (b) Up to a period of two years of insolvency

- (c) During the period of insolvency
- (d) Not entitled to appear at all

Ans. (c) During the period of insolvency

Q4. Any person who is disqualified to represent, being found guilty of misconduct, has no further remedy at all under the CGST Act, 2017.

- (a) True
- (b) False

Ans. (a) 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.*

**Extract of the CGST Rules, 2017****114. Appeal to the High Court**

(1) *An appeal to the High Court under sub-section (1) of section 117 shall be filed in Form GST APL-08.*

(2) *The grounds of appeal and the form of verification as contained in Form GST APL-08 shall be signed in the manner specified in rule 26.*

**115. Demand confirmed by the Court**

*The jurisdictional officer shall issue a statement in Form GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.*

**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 of the Tribunal.

**117.2 Analysis**

- (i) The High Court may admit an appeal if it is satisfied that the case involves a substantial question of law
- (ii) No appeal shall lie before a High Court if such order is passed by National Bench or Regional Benches. In other words, appeal shall be filed before High Court if such order is passed by State Bench or Area Benches of the Appellate Tribunal.
- (iii) Appeal has to be filed in the Form **GST APL 08**, precisely stating the substantial question of law involved, within 180 days from the date of receipt of the order appealed against accompanied by the prescribed fee.
- (iv) The High Court is empowered to condone the delay in filing appeal for sufficient reasons shown by the appellant.

- (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 itself, 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 State Bench or Area Benches.
- (ix) Appeal to be heard by a Bench of not less than two Judges of High Court and shall be decided in accordance with the majority 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.
- (xiii) Revision petition under section 114 is not the same as judicial review under Article 226/227 of the Constitution before the High Court.

### 117.3 Comparative review

Section 35G of the Central Excise Act, 1944 contains similar provisions.

### 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 High Court shall be heard by a Bench consisting of not less than two judges.

### 117.5 MCQs

- 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 differing views regarding eligibility of input tax credit, 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 up to

- (a) 1 Month
- (b) 2 Months
- (c) Without any time limit
- (d) No condonation powers

Ans. (c) Without any time limit

#### Statutory Provisions

##### **118. Appeal 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 the High Court in an appeal made under section 117, in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.*
- (2) *The provisions of the Code of Civil Procedure, 1908, (5 of 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.*

**Extracts of the CGST Rules, 2017****115. Demand confirmed by the Court**

*The jurisdictional officer shall issue a statement in Form GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.*

**Related provisions of the Statute**

<b>Section</b>	<b>Description</b>
Section 117	Appeal to High Court

**118.1 Introduction**

This section provides for appeal to the 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) The High Court must certify the Judgement/order to be fit one for appeal to the Supreme Court. When an appeal is reversed, or varied, 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 contained similar provisions.

**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 sub-section (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

This section provides for payment of sums due to Government notwithstanding a pending appeal.

### 119.2 Analysis

The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding the fact that an appeal has been preferred before the High Court or Supreme Court, as the case may be.

### 119.3 Comparative review

Section 35N of the Central Excise Act, 1944 contained analogous provisions.

### 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 of the Central tax under the provisions of this Chapter.*
- (2) *Where, in pursuance of the orders or instructions or directions issued under sub-section (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 the 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 the Central tax in pursuance of the orders or instructions or directions issued under sub-section (1).*

### 120.1 Introduction

This section provides for non-filing of appeal by the tax authorities in certain cases.

### 120.2 Analysis

- (i) On the recommendation of Council, the Board may issue an 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

Section 35R of the Central Excise Act, 1944 had similar provisions .

### 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 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; 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.*

#### Related provisions of the Statute:

<b>Section</b>	<b>Description</b>
Section 2(41)	Definition of Document
Section 67	Power of inspection, search and seizure
Section 80	Payment of tax and other amount in instalments
Section 132	Punishment for certain offences

#### 121.1 Introduction

This section specifies the decisions or orders which are non-appealable.

#### 121.2 Analysis

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 the 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 under section 80 relating to payment of tax and other amounts in instalments.