



APPEALS AND REVISION



For the sake of brevity, the terms 'Appellate Authority', 'Revisional Authority', 'input tax credit' have been referred to as 'AA', 'RA' and 'ITC' respectively in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- identify the various kinds of appellate fora available under the CGST Act and their hierarchy
- explain the various aspects relating to filing of an appeal before the Appellate Authority by the assessee as well as by the Department and the provisions relating to revision of orders by the Revisional Authority
- appreciate and explain the provisions relating to constitution and structure of Appellate Tribunal as also the various aspects relating to filing of an appeal before it by the assessee as well as by the Department
- comprehend and explain the concept of mandatory pre-deposit for filing appeals
- explain the various aspects relating to filing of an appeal before the High Court and the Supreme Court
- apply the above and other provisions relating to appeals and revision in problem solving

1. INTRODUCTION

Tax laws (or any law, for that matter) impose obligations. Such obligations are broadly of two kinds: tax-related and procedure-related. The taxpayer's compliance with these obligations is verified by the tax officer (by various instruments such as scrutiny, audit, anti-evasion, etc.), as a result of which, sometimes there are situations of actual or perceived non-compliance. If the difference in views persists, it results into a dispute, which is then required to be resolved.



Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further channels of appeal, to both sides.

However, since the right to appeal is a statutory right, the statute also places reasonable fetters on the exercise of that right. The time limits prescribed by the statute for filing of appeals and the requirement of pre-deposit of a certain sum before the appeal can be heard by the competent authority are examples of such fetters on the statutory right.

India has adopted a dual GST i.e., to say every supply attracting the levy will be leviable to both CGST and SGST. So, does this mean that if a taxpayer is aggrieved by any such transaction, he will have to approach both the authorities for exercising his right of appeal? The answer is a plain NO.

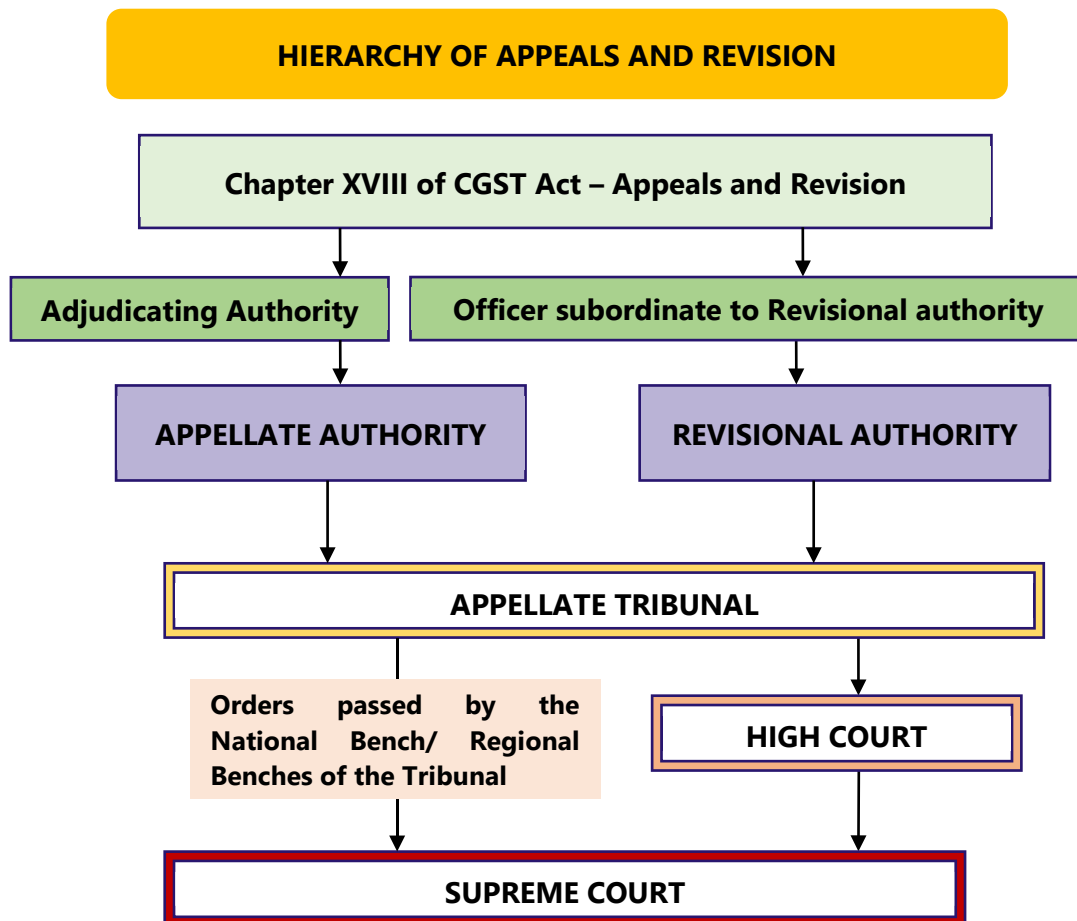
The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. The Act also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act). So also, if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with

the proper officer of SGST only.

Chapter XVIII [Sections 107 to 121] of the CGST Act supplemented with Chapter XIII [Rules 108 to 116] of the CGST Rules prescribe the provisions relating to appeals and revision. State GST laws also prescribe identical provision relating to appeals.

Provisions of appeals and revision under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

A brief overview of the provisions covered under the aforesaid sections 107 to 121, are outlined in this chapter.



2. RELEVANT DEFINITIONS



- ❑ **Adjudicating authority** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal [Section 2(4)].
- ❑ **Appellate Authority** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- ❑ **Appellate Tribunal** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9)].
- ❑ **Authorised representative** means the representative as referred to in section 116 [Section 2(15)].
- ❑ **Board** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 [Section 2(16)].
- ❑ **Commissioner** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- ❑ **Revisional Authority** means an authority appointed or authorised for revision of decision or orders as referred to in section 108 [Section 2(99)].

3. APPEALS TO APPELLATE AUTHORITY [SECTION 107]

A. Appeal before the Appellate Authority (AA) by the assessee

(i) Orders appealable to AA

An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/UTGST Act lies before the AA.

It is important to note that it is only the aggrieved person who can file the appeal. Also, the appeal must be against a decision or order passed under the Act.

(ii) Time limit for filing appeal

A person aggrieved by any decision/order of an Adjudicating Authority can file an appeal before the AA within 3 months from the date of communication of such decision/order.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].



(iii) Form for appeal to AA by the assessee

The appeal to the AA shall be filed in GST APL-01 either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgement shall be issued to the appellant immediately.

(iv) Mandatory pre-deposit for filing appeal

No appeal can be filed before the AA unless a specified amount of pre-deposit is made by the appellant. *The concept of pre-deposit has been discussed separately under Heading No. 7.*

B. Application before the AA by the Department

At times, the Department itself is not in agreement with the decision or order passed by the adjudicating authority. Section 107(2) provides that in such cases, the Department can file what is commonly known as a "review application/appeal" with the Appellate Authority.



(i) Orders against which the application can be filed before the AA

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order under the CGST Act or SGST Act/UTGST Act to satisfy himself about the legality or propriety of the said decision/order [Section 107(2)].

(ii) Time limit for filing the application

The Commissioner may, by order, direct any officer subordinate to him to apply to the AA within 6 months from the date of communication of the decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

(iii) Form for application

The application shall be made in GST APL-03 either electronically or otherwise as may be notified by the Commissioner.

(iv) Application to be treated as appeal

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)].

There is no requirement of making a pre-deposit in case of departmental appeal.

C. Appeal process followed by AA**(i) Duties of the AA**

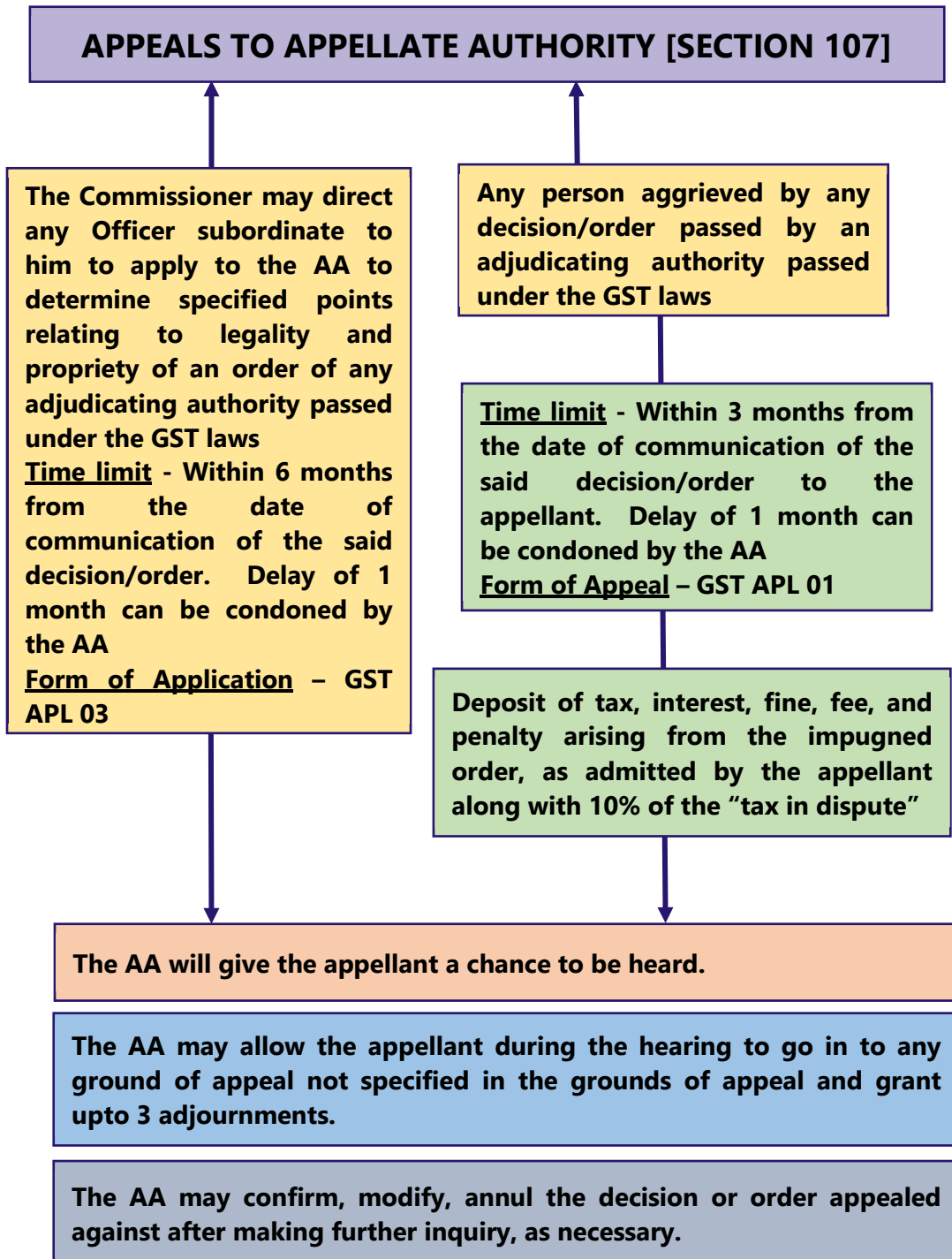
The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds (if found reasonable), etc.

(ii) Orders of the AA

- The AA can also make further inquiry and pass its (Order-in-Appeal) which may confirm, modify or annul the decision/order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision/order.

- ❑ The AA can also increase the “rigour” of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or ITC, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order.
- ❑ If the AA is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where ITC has been wrongly availed or utilized, no order requiring the appellant to pay such tax or ITC 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.
- ❑ The Order-in-appeal shall be a **“speaking order”** i.e., it shall state the points for determination, the decision thereon and the reasons for the decision.
- ❑ The law provides an advisory time limit of 1 year from date of filing of appeal for the AA to decide the appeal. The period of stay ordered by any Court or Tribunal shall be excluded in computing the period of one year.
- ❑ On disposal of the appeal, the AA shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- ❑ A copy of the order passed by the AA shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional SGST/UTGST Commissioner or an authority designated by him in this behalf.
- ❑ Every order passed by the Appellate Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

The provisions of section 107 have been summarized by way of a diagram given at next page.





4. POWERS OF REVISIONAL AUTHORITY [SECTION 108]

A. Orders which can be revised

- (i) The GST laws also provides for the mechanism of revision, by the Revisional Authority (RA), of the orders passed by its subordinate officers.
- (ii) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings. 'Record' shall include all records relating to any proceedings under the CGST Act available at the time of examination by the RA.
- (iii) On examination of the case records, if RA is of the view that the decision or order passed under the CGST Act/ SGST Act/ UTGST Act by any officer subordinate to him is
 - erroneous, in so far as it is prejudicial to the interest of the revenue, and
 - is illegal or improper or
 - has not taken into account material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of Indiahe may, if necessary, stay the operation of such decision or order for such period as he deems fit.
- (iv) The RA, 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. 'Decision' shall include intimation given by any officer lower in rank than the RA.
- (v) Every revision order shall be, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.

B. Fetters to the powers of revision

The power of revision is subject to the condition that non-appealable orders and decisions under section 121 cannot be revised [Section 121 which provides for such orders/decisions has been discussed under Heading 14 of this Chapter].

The RA shall not exercise the power of revision if:

- (a) the order has been subject to an appeal before AA or Tribunal or High Court or Supreme Court*; or
- (b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or
- (c) the order has already been taken for revision at an earlier stage; or
- (d) the order sought to be revised is a revisional order in the first place.

*The RA may pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

C. Period to be excluded in computing limitation period of 3 years

- (i) If the decision/order sought to be revised 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 the decision of the High Court and the date of the decision of the Supreme Court

shall be excluded in computing the period of limitation of 3 years where proceedings for revision have been initiated by way of issue of a notice under section 108 [Section 108(4)].

- (ii) When the issuance of a revision order is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of limitation of 3 years [Section 108(5)].

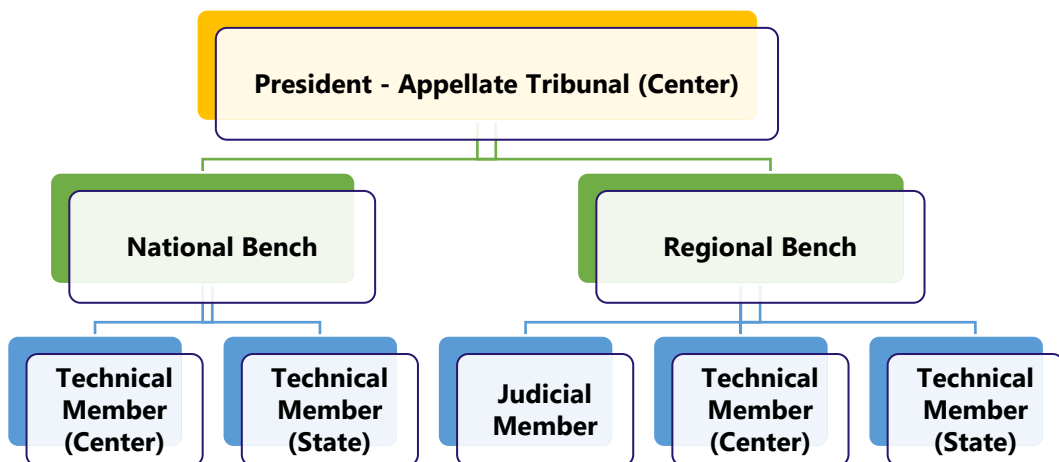


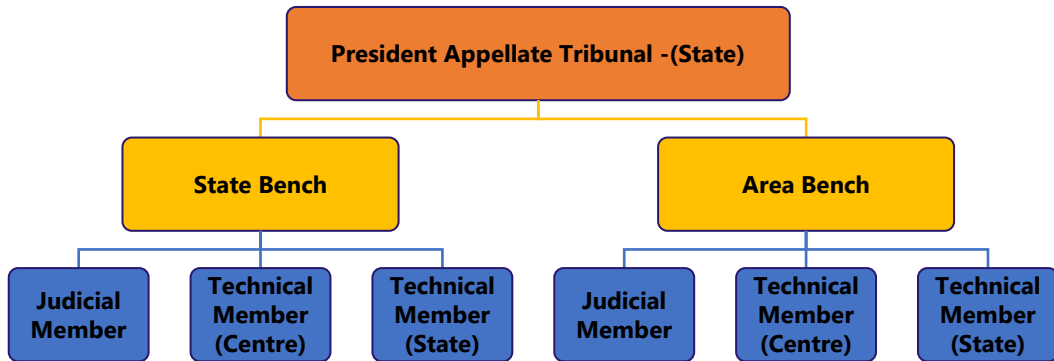
5. APPELLATE TRIBUNAL UNDER GST LAWS [SECTIONS 109-111]

The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by RA, by any person aggrieved by such an Order-in-Appeal/ Order-in-Revision.

A. Constitution and structure of Appellate Tribunal [Section 109]

- (i) The law envisages constitution of a two tier Tribunal i.e. National Bench/Regional Benches and the State Bench/ Area Benches. Jurisdiction of the two constituents of the GST Tribunal is also defined.
- (ii) If place of supply is one of the issues in dispute, then the National Bench/ Regional benches of the Tribunal will have jurisdiction to hear the appeal.
If the dispute relates to issues other than the place of supply, then the State/Area Benches will have the jurisdiction to hear the appeal.
- (iii) An appeal from the decision of the National Bench will lie directly to the Supreme Court and an appeal from the decision of the State Bench will lie to the jurisdictional High Court on substantial questions of law.
- (iv) A diagrammatic representation of the structure of the Appellate Tribunal is shown below.





The appointments to the Tribunal and functioning shall be in the manner prescribed under sections 110 and 111 of the CGST Act. On ceasing to hold office, the appointees to the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

- (v) 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.

However, any appeal where the tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed ₹ 5,00,000 and which does not involve any question of law may, with the approval of the President, be heard by a bench consisting of a single member.

B. Procedure before Appellate Tribunal [Section 111]

- (i) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice and shall have power to regulate its own procedure.
- (ii) The Appellate Tribunal shall 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:—
- summoning and enforcing the attendance of any person and examining him on oath;
 - 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.
- (iii) Order of the Appellate Tribunal may be enforced in the same manner as if it were a decree made by a court in a suit pending therein. The Appellate Tribunal can 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.
- (iv) 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. 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.



6. APPEAL TO APPELLATE TRIBUNAL [SECTIONS 112 & 113]

A. Appeal by the assessee

(i) Orders appealable to Appellate Tribunal

Any person aggrieved by an order passed against him by an AA or RA under CGST Act/SGST Act/ UTGST Act may appeal to the Appellate Tribunal.

(ii) Time limit for filing appeal

The appeal can be filed before the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.

(iii) Form for filing appeal

The appeal shall be filed in GST APL-05 either electronically or otherwise as may be notified by the Registrar on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

**(iv) Power of Tribunal to refuse to admit an appeal**

The Appellate Tribunal can refuse to admit an appeal if

- the tax or ITC involved or
- the difference in tax or ITC involved or
- the amount of fine, fee or penalty determined by such order does not exceed ₹ 50,000.

(v) Memorandum of cross objections

The law also provides for filing of cross-objections by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal.

It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding, that he may not have appealed against such order or any part thereof, file within 45 days a memorandum of cross-objections in GST APL-06 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 for the initial appeal.

The Tribunal can condone the delay of up to 45 days beyond the specified time period of 45 days, if it is satisfied that there was sufficient cause for the delay.

(vi) Fees for filing appeal

The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed ₹ 25,000.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

(vii) Mandatory pre-deposit for filing appeal

No appeal can be filed before the Appellate Tribunal unless a specified amount of pre-deposit is made by the appellant. *The concept of pre-deposit has been discussed separately under Heading No. 7.*

B. Departmental appeal

- (i)** The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any order passed by the AA or RA under the CGST Act/SGST Act/ UTGST Act for the purpose of satisfying himself as to the legality or propriety of the said order.
- (ii)** The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified him
- (iii)** The application shall be made in GST APL-07 either electronically or otherwise on the common portal.
- (iv)** Such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the AA or RA.

There is no requirement of making a pre-deposit in case of departmental appeal.

C. Orders of the Appellate Tribunal [Section 113]

- (i) The Tribunal, after hearing both sides may
- pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or
 - refer the case back to the AA or to the RA, 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.
- (ii) For reasons of natural justice (reasonable opportunity) it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to hearing of appeal to either side.
- (iii) The law provides an advisory time limit of 1 year from the date of filing of appeal for the Tribunal to decide the appeal.
- (iv) The Tribunal shall send a copy of its order to
- AA/RA/Original adjudicating authority
 - Appellant
 - Jurisdictional Commissioner or the SGST/UTGST Commissioner
- (v) Every order passed by the Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

Rectification of errors [Section 113(3)]

- The Tribunal can correct its own order for any apparent mistakes but it has no power of review.
- The Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the Commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of 3 months from the date of the order.
- No amendment which has the effect of enhancing an assessment or reducing a refund or ITC or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.



7. MANDATORY PRE-DEPOSIT

The right to appeal is a statutory right which operates within the limitation placed on it by the law. One such limitation flows from the principle that, an appellant must first deposit the adjudged dues before his further appeal can be heard. However, often an appellant may succeed in his appeal, and hence it would (in retrospect) be unfair to saddle him with this financial burden. To balance these factors, tax laws mandate some “pre- deposit” so as to discourage frivolous appeals and also safeguard the *bonafide* interests of both the taxpayers and the revenue.

Section 107(6) provides that no appeal shall be filed before the AA, unless the appellant has paid—

- (a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him; **and**
- (b) a sum equal to 10% of the remaining amount of **tax in dispute** arising from the impugned order.

The payment of pre-deposit ensures staying of the recovery proceedings for the balance amount.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

- (a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him, **and**
- (b) 20% of the remaining amount of **tax in dispute**,

in addition to the amount deposited before the AA, arising from the said order, in relation to which appeal has been filed.

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

Authority	Pre-deposit
AA	Admitted liability in full plus 10% of the tax in dispute
Appellate Tribunal	Admitted liability in full plus 20% of the tax in dispute, in addition to the amount deposited before AA as pre-deposit

Interest on refund of pre-deposit [Section 115]

If the pre-deposit made by the appellant before the AA or the Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest as provided under section 56 shall be payable from the date of payment of the amount (and not from the date of the order of the AA or of the Tribunal) till the date of refund of such amount.



8. PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE APPELLATE AUTHORITY OR THE APPELLATE TRIBUNAL

- (i) Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the AA or the 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 AA.

(ii) Exceptions

However, the rule provides exceptional circumstances where the production of additional evidence before the AA or the Tribunal will be allowed as under:

- (a) where the adjudicating authority or, as the case may be, the AA 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 AA; or
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or



- (d) where the adjudicating authority or, as the case may be, the AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (iii) No additional evidence shall be admitted unless the AA or the Appellate Tribunal records in writing the reasons for its admission.
- (iv) The AA or the Appellate Tribunal shall not take any additional evidence 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 additional evidence produced by the appellant.
- (v) The provisions of this rule shall not affect the power of the AA 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.



9. APPEARANCE BY AUTHORISED REPRESENTATIVE [SECTION 116]

Any person who is entitled or required to appear before a GST Officer or the AA or the Tribunal, in connection with any proceedings under the CGST Act, may appear through an authorised representative (except when he is required under the Act to appear personally for examination on oath or affirmation).

(i) Who can be authorized representative?

Broadly an authorised representative can be a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or a GST Practitioner. It is also provided that indirect tax gazetted officers can appear as authorised representative after one year from retirement/resignation.

(ii) Disqualifications for authorized representative

The GST law also provides some disqualifications for an authorised representative. Section 116(3) lays down that no person,—

- (a) who has been dismissed or removed from Government service; or

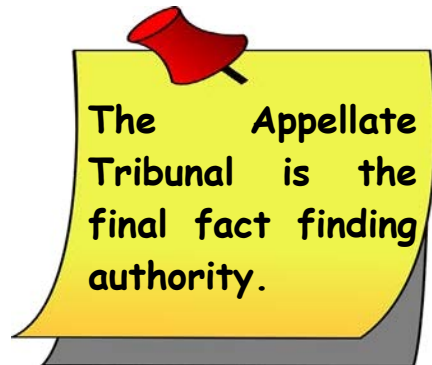
- (b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods and/or services; or
 - (c) who is found guilty of misconduct by the prescribed authority;
 - (d) who has been adjudged as an insolvent,
- shall be qualified to represent any person—
- (i) for all times in case of persons referred to in clauses (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).
- (iii) Any person who has been disqualified under the provisions of the SGST Act/ UTGST Act shall be deemed to be disqualified under the CGST Act also.

10. APPEAL TO THE HIGH COURT [SECTION 117]

(i) Appealable orders

The law provides that either side (department or party), if aggrieved by any order passed by the State Bench or Area Bench of the Tribunal, may file an appeal to the High Court.

The High Court may admit such appeal if it is satisfied that the case involves a **substantial question of law**.



(ii) Time limit for filing appeal

Appeals to the High Court are to be filed within 180 days from the date on which the order appealed against is received by the aggrieved person. However, the High Court has the power to condone the delay on being satisfied of sufficient cause for the same.

(iii) Form of appeal

The appeal shall be filed in GST APL 08.

(iv) Decision of the High Court

On being satisfied that a substantial question of law is involved, the High Court shall formulate that question, and the appeal shall be heard only on the question so formulated. However, the High Court has the power to hear the appeal on any other substantial question of law, if it is satisfied that the case involves such question.

The High Court shall decide the questions 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. The High Court may determine any issue which has not been determined by the Tribunal (State Bench/Area Bench) or has been wrongly determined by the Tribunal, by reason of a decision on such question of law.

The Code of Civil Procedure relating to appeals to High Court shall apply to the appeals before the High Court under this section.

The appeal shall be heard by a bench of not less than two judges, and the points on which they differ, if any, shall, then, be heard, upon that point only by one or more judges of the High Court. The final judgment on the point shall be decided by majority of all Judges who heard the case, including those first heard it.

Pre-deposit of all tax dues is required to be made; otherwise the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.



11. APPEAL TO THE SUPREME COURT [SECTIONS 118 - 119]

The law provides for appeals to the Supreme Court from any **judgment or order passed by the High Court**, 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.



A **(direct) appeal** shall also lie to the Supreme Court from any orders passed by the **National/Regional Bench of the Tribunal.**

The provision of the Code of Civil Procedure relating to appeals to the Supreme Court shall apply to appeals before the Supreme Court under this section. Pre-deposit of all tax dues will be required unless stay is obtained from the Supreme Court pending the disposal of the appeal.



The Supreme Court can vary, confirm or reverse the judgement of the High Court or the Tribunal as the case may be and may award costs. It can also remand the matter for fresh consideration.

12. SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL ETC. [SECTION 119]

Sums due to the Government as a result of an order passed by the Appellate Tribunal or the High Court, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, shall be payable in accordance with the order so passed.

13. APPEAL NOT TO BE FILED IN CERTAIN CASES [SECTION 120]

- (i) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.
- (ii) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

- (iii) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- (iv) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.



14. NON APPEALABLE DECISIONS AND ORDERS [SECTION 121]

Section 121 lays down that no appeals whatsoever can be filed against the following orders:-

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the Act; or
- (d) an order passed under section 80 (payment of tax in instalments).

TEST YOUR KNOWLEDGE

1. Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.
2. Describe the provisions relating to Departmental appeal to Appellate Authority under section 107 of the CGST Act.
3. Specify the amount of mandatory pre-deposit which should be made along with every appeal before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings?
4. With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.
5. The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.

ANSWER/HINTS

1. Yes. Any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed within 3 months from the date of communication of such order or decision. However, the Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal if there is sufficient cause for the delay. The appeal can be filed only when the admitted liability and 10% of the disputed tax amount is paid as pre-deposit by the appellant.

However, no appeal can be filed against the following orders in terms of section 121:-

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the Act; or

(d) an order passed under section 80 (payment of tax in installments).

2. Section 107(2) provides that Department can file a "review application/appeal" with the Appellate Authority.

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order to satisfy himself as to the legality or propriety of the said decision /order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)]. There is no requirement of making a pre-deposit in case of departmental appeal.

3. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—
 - (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) 20% of the remaining amount of tax in dispute,

in addition to the amount deposited before the AA, arising from the said order, in relation to which appeal has been filed.

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

4. Section 2(99) defines "Revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108.

Section 108 of the Act authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the noticee. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

The "revisional authority" shall not revise any order 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 section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.
 - (c) the order has already been taken up for revision under this section at any earlier stage.
 - (d) the order is a revisional order
5. The statement is partially correct.

Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order, does not exceed ₹ 50,000.