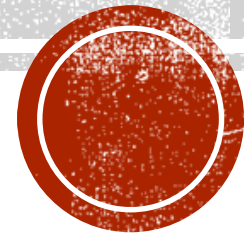


APPEALS & REVISION IN GST

Chapter XVIII of the CGST Act

AA = Appellate Authority; **RA** = Revisional Authority;
AT = Appellate Tribunal; **HC** = High Court; **SC** = Supreme Court

- By Prakhar Jain





APPEALS TO AA – SEC 107

Appeal By Person	<p><u>Person aggrieved</u> by any decision/ order passed by an adjudicating authority under this Act/ SGST/ UTGST Act, may <u>appeal</u> to prescribed AA in FORM GST APL-01, along with the <u>relevant documents</u>, and a <u>provisional acknowledgement</u> shall be issued to the appellant immediately. <u>Time Limit: 3 months</u> from date of communication of the said decision/ order to him.</p>	
Application By Officer on order of Commissioner	<ul style="list-style-type: none"> If commissioner wants to <u>satisfy</u> himself as to the <u>legality or propriety</u> of any decision/ order passed by an adjudicating authority under this Act/ SGST/ UTGST Act, then he may call for and <u>examine</u> the record of any <u>proceedings</u>, either on his own motion, or upon request from the Commissioner of SGST/ UTGST. If he finds any points where he has <u>doubts</u>, he may <u>order</u> any officer <u>subordinate</u> to him to <u>apply</u> to the prescribed AA in FORM GST APL-03, along with the <u>relevant documents</u>. <u>Time Limit: 6 months</u> from the date of communication of the decision/ order. 	
Application = Appeal	<p>Where authorised officer makes an application to the AA as above, it shall be dealt with as if it were an appeal made against the decision/ order of the adjudicating authority, and that the authorised officer were an appellant and all provisions relating to appeals shall apply.</p>	
Prescribed AA (Rule 109A)	<u>Decision/ Order Passed by -</u>	<u>Appellate Authority</u>
	Additional or Joint Commissioner	Commissioner (Appeals)
	Deputy or Assistant Commissioner or Superintendent	Additional Commissioner (Appeals)
Submission of copy of decision/ order appealed against	<p>A <u>certified copy of the decision/ order</u> appealed against shall be submitted within 7 days of filing the appeal. Then, a <u>final acknowledgement</u> in FORM GST APL-02, indicating appeal number shall be issued by the AA/ authorised officer. Appeal is treated ‘filed’ only when final acknowledgement is issued.</p>	
	<u>Whether Copy of Decision/ Order submitted within time limit?</u>	<u>Effective Date of filing of the appeal</u>
	Yes	Date of the issue of the provisional acknowledgement
	No	Date of the submission of such copy





APPEALS TO AA – SEC 107

Extension of time	The AA may allow appeal to be presented within a <u>further</u> period of <u>1 month</u> , if satisfied that appellant was prevented by from presenting the appeal within the time limit of 3/ 6 months.
Pre-Deposit	No appeal shall be filed, unless appellant has paid — (a) <u>100% of</u> the tax/ interest/ fine/ fee/ penalty arising from the impugned order which is <u>admitted</u> by him (b) <u>10% of the remaining</u> amount of tax in dispute.
Stay of Recovery	Where the appellant has paid above amount, recovery proceedings for balance amount shall be deemed to be stayed.
Hearing	The appellant shall be given an opportunity of being heard.
Adjournment	The AA <u>may grant time</u> to the parties, and <u>adjourn</u> the hearing of the appeal, if <u>sufficient cause</u> is shown at any stage of hearing of an appeal. Max adjournment = 3 times to each party.
Addition of Grounds	The AA <u>may allow</u> an appellant to add any ground of appeal, at the time of hearing, which was not specified in the grounds of appeal earlier, if it is satisfied that <u>omission was not wilful/ unreasonable</u> .
Order	<ul style="list-style-type: none"> • The AA shall pass a <u>just and proper order</u>, after making necessary inquiries. • Order may <u>confirm, modify or annul</u> the decision/ order appealed against, but shall <u>not refer back</u> the case to the adjudicating authority that passed the said decision or order. • The order shall be in writing and shall <u>state the points</u>, the <u>decision</u> and the <u>reasons</u> for such decision, and along with it will be issued a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed. • Any adverse order shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order. • Where AA finds - any amount (which was not subject matter of appeal) has not been paid/ short-paid/ erroneously refunded, or that ITC has been wrongly availed/ utilised; then appellant shall be given SCN, and required to show cause why an order should not be passed, requiring him to pay it, and the final order must be passed within the time limit specified u/s 73/ 74. [Means due procedure will be followed]
Time Limit for order	The AA shall hear and decide every appeal <u>within 1 year from date of its filing</u> (wherever it is possible to do so). Where issuance of order is stayed by any court/ Tribunal, period of such stay shall be excluded.
Communicate	On disposal of appeal, AA shall communicate order to <u>appellant, respondent and adjudicating authority</u> .
Copy Send	A copy of the order shall be sent to <u>jurisdictional Commissioners</u> of CGST, SGST & UTGST/ authority designated by them.



REVISIONS BY REVISIONAL AUTHORITY - SEC 108



- Subject to Sec 121 & its Rules, it is the power of the RA that it can call for and examine the record of any proceedings either –
 - on his own motion, or
 - upon information received by him or
 - on request from the Commissioner SGST/ UTGST
- And** if he considers that any decision/ order passed by a subordinate officer under this Act/ SGST/ UTGST Act, is –

Erroneous in so far as it is prejudicial to the interest of revenue	and	(i) Is <u>illegal</u>	(ii) Has <u>not taken into account</u> certain <u>material facts</u> (whether available at the time of issuance of the said order or not)
		(iii) Is <u>improper</u>	(iv) In consequence of an <u>observation by the CAG</u>

- Then he may stay operation of such decision/ order for such period as he deems fit. He will give the person concerned an opportunity of being heard, make necessary further inquiries, and pass a just and proper order, which may enhance/ modify/ annul the said decision/ order.
- Minimum Period, only after which revision can be done:- After expiry of period specified for appeal.
- Limitation Period (after which revision can't be done):- More than 3 years have expired after passing of decision/ order.

REVISIONARY POWER NOT TO BE EXERCISED

- The RA shall not exercise revisionary power if—
 - Order in question has been passed by a RA only.
 - Order in question has already been taken for revision at an earlier stage.
 - Order has been subject to an appeal u/s 107/ 112/ 117/ 118.
- But, RA may undertake revision and pass an order on points which has not been raised and decided in the appeal, before the earlier of –

Expiry of 1 year from date of decision of appeal

Expiry of 3 years from date of original decision/ order

(i) Revision proceedings have been initiated by way of issue of a notice under this section	Then →	For calculating above time limit of 3 years, the period spent between – Dates of Decisions of AT ↔ HC, or HC ↔ SC, shall be excluded
(ii) Decision/ Order in question involves such an issue, on which AT/ HC has given its decision in some other proceedings, and appeal against that decision is pending in HC/ SC		
(iii) Issuance of order is stayed by the order of a court/ AT	Then →	Such period of stay shall be excluded in calculating 3 years

GST – AT	The Govt. shall constitute an AT known as the “Goods and Services Tax Appellate Tribunal”, for hearing appeals against the orders passed by the AA/ RA.	
Benches of AT & their jurisdiction	The powers of AT shall be exercisable by - National Bench, its Regional Benches; State Bench, its Area Benches	
	The National Bench of the AT shall be situated at New Delhi, presided over by President, and consisting of <u>1 TMC and 1 TMS</u> .	The Govt. shall constitute such number of Regional Benches as may be required, and they shall consist of a <u>JM, 1 TMC and 1 TMS</u>
	<u>Jurisdiction</u> : The <u>National Bench/ Regional Benches</u> shall have <u>jurisdiction</u> to hear appeals against the orders passed by the AA/ RA, only in the cases where one of the issues involved <u>relates to</u> the place of supply.	
	The Govt. shall specify a State Bench of the AT, for each State/ UT, for exercising the powers of the AT within that State/ UT.	If any SG requests, then CG may constitute such number of Area Benches in that State, as may be recommended by the Council.
	Each State Bench & Area Benches shall consist of <u>1 JM, 1 TMC and 1 TMS</u> . SG may designate the <u>senior most JM</u> in a State as the <u>State President</u> .	
	<u>For a State</u> – On <u>request</u> from SG; <u>For UT</u> – On its <u>own motion</u> ; Govt. may notify the AT in a State to act as the AT for any other State/ UT, as may be recommended by the Council, subject to prescribed terms and conditions.	
	<u>Jurisdiction</u> : The <u>State Bench/ Area Benches</u> shall have <u>jurisdiction</u> to hear appeals against the orders passed by the AA/ RA in all the cases except those <u>where</u> one of the issues involved <u>relates to</u> the place of supply.	
Hearing by 2 members	In the absence of a Member in any Bench, due to <u>vacancy or otherwise</u> , any appeal <u>may be heard</u> by a Bench of <u>two Members</u> , with the <u>approval</u> of the <u>President/ State President</u> .	
Hearing by 1 member	Any <u>appeal where</u> the [tax/ ITC involved/ difference in tax or ITC involved/ the amount of fine, fee or penalty determined in the order appealed against], does not exceed Rs. 5 lakhs, and which does not involve any question of law <u>may be heard</u> by a bench consisting of a <u>single member</u> , with the approval of President and subject to prescribed conditions of the Council.	
Decision Making	<ul style="list-style-type: none"> If the <u>Members differ in opinion</u> on any point(s), it shall be decided according to majority opinion. If <u>no majority</u> is there, they shall <u>state the point(s) on which they differ</u>, and the <u>case</u> shall be referred to one or more of the <u>other Members</u> of the National Bench, Regional Benches, State Bench or Area Benches, by the President/ State President, for hearing on such point(s). Such point(s) shall then be decided according to the opinion of the aggregate majority (Majority of Members who have heard the case, <u>including those who first heard it.</u>) 	
Transfers	The CG in consultation with President may transfer, for the administrative convenience — <ul style="list-style-type: none"> (a) Any <u>JM</u> or a <u>TMS</u> from one National/ Regional Bench to another. (b) Any <u>TMC</u> from one National/ Regional/ State/ Area Bench to another. 	
	The SG in consultation with State President may transfer, for administrative convenience, a <u>JM</u> or a <u>TMS</u> from one Bench to another Bench within the State.	
No Invalidation	No act/ proceedings of AT shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the AT.	

COMPOSITION OF AT & ITS BENCHES – SEC 109

[Short Forms used →

Technical Member (Centre) = TMC;

Technical Member (State) = TMS;

Judicial Member = JM]

Distribution of cases

By general or special order, following shall distribute the business or transfer cases

President of AT	among <u>Regional Benches</u>
State President	among <u>Area Benches</u>



PRESIDENT AND MEMBERS OF AT – SEC 110

QUALIFICATION

President	He has been a Judge of the SC/ is or has been the Chief Justice of a HC/ is or has been a Judge of a HC for a min period of 5 years
JM	(i) He has been a <u>Judge of the HC</u> ; or (ii) He is/ has been a <u>District Judge qualified to be appointed as a Judge of a HC</u> ; or (iii) He is/ has been a <u>Member of Indian Legal Service</u> and has held a post of <u>Additional Secretary or higher post</u> for at least <u>3 years</u> .
TMC	He is/ has been a <u>member</u> of, and has completed at least <u>15 years of service, in Indian Revenue Service (Customs & Central Excise), Group A</u> .
TMS	He is/ has been an <u>officer of the SG</u> of rank <u>Additional Commissioner or higher</u> rank, of VAT/ SGST, or other notified rank by SG, on recommendations of Council; with <u>at least 3 years of experience in administration of old law/ SGST Act or in the field of finance and taxation</u> .

APPOINTMENT

For National & Regional Benches -

President & JM	Appointed by CG after <u>consultation</u> with the Chief Justice of India/ his nominee. <ul style="list-style-type: none"> If any vacancy in 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 enters upon his office. 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.
TMC and TMS	Appointed by the CG on the recommendations of a Selection Committee, consisting of prescribed persons and in prescribed manner.

For State & Area Benches -

JM	They shall be appointed by the SG after <u>consultation</u> with the Chief Justice of the HC of the State/ his nominee.
TMC and TMS	The <u>TMC</u> shall be appointed by the CG, and <u>TMS</u> shall be appointed by the SG.

OTHER POINTS

No Invalidation	<u>No appointment shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.</u>
Conflict of Interest checked	<u>Before appointing any person, the CG/ SG shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as President or Member of the AT.</u>

SALARY

- The salary, allowances and other terms and conditions of service of the President, State President and the Members of the AT shall be such as may be prescribed. They shall not be varied to their disadvantage after their appointment.

TENURE

Post	Term (years from the date on which enters upon his office)	Age Limit
President	3 years	70 years
JM & State President	3 years	65 years
TMC & TMS	5 years	65 years

All shall be eligible for reappointment

RESIGNATION

- The President/ State President/ Members of the AT may resign from their office, by **notice in writing** under their hand, **addressed to the CG/ SG**.

They shall **continue to hold office** until the earliest of –

(i) Expiry of 3 months from the date of receipt of such notice by the CG/ SG	(i) When a person duly appointed as his successor enters upon his office	(i) Expiry of his term of office
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FUTURE RESTRICTION

- 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/ plead before the Benches where they were the President/ Member.

REMOVAL

The **CG** in consultation with the Chief Justice of India, and the **SG** in consultation with the Chief Justice of HC, **may remove those persons** from the office, **whom they have power to appoint** respectively, **where** any person —

- has been adjudged an **insolvent**
- has been **convicted** of an **offence** which, in the opinion of such Govt. involves moral turpitude
- has become physically or mentally incapable of acting as such President, State President or Member
- has acquired such **financial or other interest** as is likely to affect prejudicially his functions
- Has so **abused** his position as to render his continuance in office prejudicial to the public interest

Any person 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.



MISBEHAVIOUR/ INCAPACITY



- Without prejudice to the provisions for removal discussed above, where it is found that the President/ JM/ TMC/ TMS are involved in misbehaviour or incapacity, then they may be removed by the Govt. which appointed them.
- **CG** shall **make reference** to Chief Justice of India, who shall **nominate a judge of the SC** to **conduct inquiry** into the charges of misbehaviour or incapacity.
- **SG** shall **make reference** to Chief Justice of the concerned HC, who shall **nominate a judge of the HC** to **conduct inquiry** into the charges of misbehaviour or incapacity.
- The **CG/ SG may**, in concurrence with CJI/ CJ of HC, **suspend from office**, the person against whom inquiry is being conducted.
- The concerned person shall be given an opportunity of being heard.
- **If** the inquiries **confirm** the charges, then CG/ SG shall pass an **order for removal** of the persons from their office.

POWERS OF AT – SEC 111



THE AT –

- Shall not be bound by procedure laid down in Code of Civil Procedure, 1908, while disposing of proceedings/ appeal.
- Shall be guided by the principles of natural justice.
- Shall have power to regulate its own procedure (Subject to the other provisions of this Act and the rules).

The AT shall have the **same powers** as are vested in a **civil court** while trying a suit, for the purposes of discharging its functions under this Act, in respect of the **following matters** :—

• Summoning and enforcing the attendance of any person and examining him on oath	
• Requiring the discovery and production of documents	• Receiving evidence on affidavits
• Requisitioning any public record/ document or a copy of them from any office (Subject to Sec 123/ 124 of the Indian Evidence Act)	• 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
• Any other prescribed matter	

- Any order made by the AT → enforced by it in the same manner as if it were a decree made by a court in a suit pending therein.
- It shall be lawful for the AT, to send its orders for execution, to the court within whose jurisdiction —
 - a) The **registered office** of the **company** is situated (In the case of an order against a company) or
 - b) The **person** concerned voluntarily **resides** or carries on **business** or personally **works** for gain (In the case of an order against any other person).
- All proceedings before AT - deemed to be judicial proceedings, and AT - deemed to be civil court.



Appeal time limit	Any person who is aggrieved by an order passed against him under section 107/ 108 (AA or RA) of this Act/ SGST/ UTGST Act, may appeal to the AT against such order, in FORM GST APL-05 along with the relevant documents, within 3 months from the <u>date of communication of the order appealed against</u>. A provisional acknowledgement shall be issued to the appellant immediately
Minimum Amt involved	The AT may refuse to admit any such appeal where [the tax/ ITC involved/ difference in tax or ITC involved or the amount of fine/ fee/ penalty] determined by such order, does not exceed Rs. 50,000.
Appeal by Commissioner	<ul style="list-style-type: none"> If commissioner wants to <u>satisfy</u> himself as to the <u>legality or propriety</u> of any order passed by AA/ RA under this Act/ SGST/ UTGST Act, then he may call for and <u>examine</u> the record of any <u>order passed</u>, either on his own motion, or upon request from the Commissioner of SGST/ UTGST. If he finds any points where he has <u>doubts</u>, he may <u>order</u> any officer <u>subordinate</u> to him to <u>apply</u> to the AT in FORM GST APL-07, along with the <u>relevant documents</u>. <u>Time Limit</u>: 6 months from the <u>date of passing</u> of the decision/ order.
Submission of copy of decision/ order appealed against	<p>A <u>certified copy of the decision/ order</u> appealed against shall be submitted to the Registrar within 7 days of filing the appeal. Then, a <u>final acknowledgement</u> in FORM GST APL-02, indicating appeal number shall be issued by the Registrar. Appeal is treated 'filed' only when final acknowledgement is issued.</p> <p>Whether Copy of Decision/ Order submitted within time limit?</p> <p>Yes → Effective Date of filing of the appeal = Date of the issue of the provisional acknowledgement</p> <p>No → Effective Date of filing of the appeal = Date of the submission of such copy</p>
Fees	The fees for filing of appeal or restoration of appeal shall be Rs. 1,000 for every Rs. 1 lakh of [tax/ ITC involved/ the difference in tax or ITC involved/ amount of fine/ fee/ penalty determined in the order appealed against], maximum Rs. 25,000. Where appeal for rectification of error, no fees shall be payable.
Application Appeal	= Where <u>authorised officer makes an application</u> to the AT as above, it shall be dealt with as if it were an appeal made against the order of the AA/ RA, and all provisions relating to appeals shall apply.
Memorandum of Cross-Objections	On receipt of notice that an appeal has been filed, the <u>party against whom the appeal has been filed</u> , may file a memorandum of cross-objections in FORM GST APL-06 - <u>against any part of the order appealed against</u> , <u>within 45 days</u> of the receipt of notice. Such memorandum shall be <u>disposed of</u> by the AT, <u>as if it were an appeal</u> . (The person can file the memorandum, notwithstanding that he may not have appealed against such order or any part thereof)
Extension of time	The AT may admit an <u>appeal</u> within 3 months after the expiry of its time limit, or permit the filing of a <u>memorandum of cross-objections</u> within 45 days after the expiry of its time limit, if it is satisfied that there was <u>sufficient cause</u> for not presenting it within time.
Pre-Deposit	<u>No appeal shall be filed, unless the appellant has paid</u> — <ul style="list-style-type: none"> (a) 100% of [tax/ interest/ fine/ fee/ penalty arising from the impugned order], which is admitted by him. (b) 20% of the remaining amount of tax <u>in dispute</u>, (in addition to amount paid during appeal to AA).
Stay on Recovery	Where appellant has paid the above amount → <u>Recovery proceedings</u> for the balance amount shall be deemed to be stayed <u>till the disposal of the appeal</u> .

APPEALS TO AT – SEC 112



ORDERS OF AT – SEC 113.



OOBH	The AT shall give the parties to the appeal an opportunity of being heard.
Passing of Order	After hearing, AT may pass an order as it thinks fit, <u>confirming, modifying or annulling</u> the decision/ order appealed against or may refer the case back to the AA/ RA/ original adjudicating authority, with directions as it may think fit, for a <u>fresh adjudication/ decision after taking additional evidence</u> , if necessary.
Adjournment	AT may at any stage of hearing of an appeal, grant time and adjourn the hearing of the appeal, if sufficient cause is shown, for reasons to be recorded in writing. Max adjournments = 3 times to each party.
Rectification	The AT may amend any order passed by it so as to rectify any error <u>apparent on the face of the record</u> , if such error is noticed by it on its <u>own accord</u> , or is <u>brought to its notice</u> by the <u>Commissioners</u> of CGST/ SGST/ UTGST or the <u>other party</u> to the appeal, within 3 months from the date of the order. <u>If</u> any amendment <u>adverse</u> to the other party is to be made, an <u>opportunity of being heard</u> shall be first given.
Time Limit for Decision	The AT shall hear and decide every appeal within 1 year from the date on which it is filed, as far as possible.
Copy Send	The AT shall send a copy of every order passed to the <u>AA/ RA/ the original adjudicating authority</u> , the <u>appellant</u> and the <u>jurisdictional Commissioner</u> of CGST/ SGST/ UTGST.
Final Demand	The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the <u>final amount of demand confirmed</u> by the AT.

FINANCIAL & ADMINISTRATIVE POWERS OF THE PRESIDENT – SEC 114

- The President shall exercise prescribed financial and administrative powers over the National Bench and Regional Benches of the AT. 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.

INTEREST ON REFUND OF PRE-DEPOSIT – SEC 115

- **Where an amount paid** by the appellant before filing of appeals to the AA/ AT (Pre-Deposit) is **required to be refunded** consequent to an order, **interest** at the rate specified **u/s 56** (6%) shall be **payable** in respect of such refund **from** the date of payment of such amount till the date of its refund.

QUALIFICATIONS

For whole CGST Act, “Authorised representative” shall mean a person authorised by any person to appear on his behalf, being—

- a) His relative or regular employee
- 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
- 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
- d) a retired officer of the Commercial Tax Department of any SG/ UT/ Board (CBEC) who, during his service under the Govt., had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than 2 years. But such officer shall not be entitled to appear for a period of 1 year from the date of his retirement/ resignation.
- e) Any person who has been authorised to act as a GST practitioner on behalf of concerned RTP.

DISQUALIFICATIONS

(a) A person who has been dismissed or removed from Govt. service

(c) A person who is found guilty of misconduct by the prescribed authority

(b) A person who is convicted of an offence connected with any proceedings under this Act/ SGST/ IGST/ UTGST Act, or under the old law or under any of the Sale tax Acts passed by a State Legislature.

- Above persons shall not be qualified to represent any person for all times (forever).

(d) Any person who has been adjudged as an insolvent, shall not be qualified to represent any person for the period during which the insolvency continues

(e) Any person disqualified under SGST/ UTGST Act shall be deemed to be disqualified under this Act also.

Rule 116 - Disqualification for misconduct of an authorised representative

Where an authorised representative (other than people referred in Sec 116(2)(b)/ (c) - advocates, chartered accountants, cost accountants, company secretaries) is found guilty of misconduct in connection with any proceedings under the Act, upon an enquiry into the matter → the Commissioner may disqualify him from appearing as an authorised representative, after providing him an opportunity of being heard.

APPEARANCE BY AUTHORISED REPRESENTATIVE – SEC 116



Any **person** entitled/ required to appear before an officer/ AA/ AT, in connection with any proceedings, **may appear by an authorised representative**, except when required to appear personally for examination on oath or affirmation.



APPEAL TO HIGH COURT – SEC 117



Appeal to HC – When admit	Person aggrieved by any <u>order passed by the State Bench/ Area Benches of the AT</u> may <u>file an appeal to the HC in FORM GST APL-08</u> , and it shall contain the <u>grounds of appeal</u> . The <u>HC may admit such appeal, if it is satisfied that the case involves a substantial question of law</u> .
Time Limit	Appeal shall be filed within 180 days from the <u>date of receipt of order</u> appealed against by the aggrieved person. HC <u>may entertain an appeal after time limit</u> , if it is satisfied that there was <u>sufficient cause</u> for not filing it within such period.
Question Formulation	<ul style="list-style-type: none"> HC shall formulate the question of law involved in the case, and the <u>appeal shall be heard only on the question so formulated</u>. The <u>respondents</u> shall, at the hearing of the appeal, be <u>allowed to argue that the case does not involve such question</u>. HC <u>may hear the appeal on any other substantial question of law not formulated</u> by it, if it is satisfied that the case involves such question, for reasons to be recorded.
Decision and order	The HC shall <u>take</u> decision on the question of law so formulated, and <u>deliver</u> such judgment thereon containing the <u>grounds on which such decision is founded</u> and may <u>award</u> such cost as it deems fit.
Affected Issue	The HC may determine any issue which has <u>not been determined/ wrongly determined</u> by the State Bench/ Area Benches <u>by reason of the decision on such question of law</u> .
Hearing	An appeal to the HC shall be heard by a <u>Bench of at least two Judges</u> of the HC, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
Difference of opinion	<u>Where there is no majority</u> , the Judges shall <u>state the point of law upon which they differ</u> . Then, the case shall be <u>heard by one or more of the other Judges</u> of the HC, <u>on that point only</u> , and such point shall be decided according to the opinion of the <u>aggregate majority</u> (Majority of the Judges who have heard the case including those who first heard it)
Effect	<u>Effect shall be given</u> to the judgment of HC <u>by either side</u> on the basis of a certified copy of the judgment.
CCP Applies	Save as otherwise provided in this Act, the <u>provisions of the Code of Civil Procedure, 1908</u> , relating to appeals to the HC shall, as far as may be, <u>apply</u> in the case of appeals under this section.

APPEAL TO SUPREME COURT – SEC 118



1. An appeal can be made to the SC against —
 - Any **order passed by the National Bench or Regional Benches of the AT**; or
 - Any **judgment or order passed by the HC**. For this, HC certificate is required certifying the case to be 'fit for appeal to SC'. This certificate can be provided by the HC its own motion, or on an application made immediately after passing of the judgment or order, by or on behalf of the party aggrieved.
2. The provisions of the Code of Civil Procedure, 1908, relating to appeals to the SC shall, so far as may be, apply in the case of appeals to SC, as they apply in the case of appeals against decrees of a HC.
3. Where the judgment of the HC is varied or reversed in the appeal, effect shall be given to the order by either side on the basis of a certified copy of the judgment.

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 HC/ SC.

SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL – SEC 119

- **Notwithstanding** that an **appeal** has been **filed** to HC/ SC, sums due to the Govt. as a result of an order passed by the National/ Regional/ State/ Area Benches of the AT shall be payable in accordance with the order so passed.

PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE AA/ AT – RULE 112

1. The appellant shall not be allowed to produce before the AA/ AT any evidence (whether oral or documentary) other than those produced by him during the course of the proceedings before the adjudicating authority/ AA except in the following circumstances -
 - a) Where the adjudicating authority/ AA had refused to admit evidence which ought to have been admitted
 - b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority/ AA, or which is relevant to any ground of appeal.
 - c) Where the adjudicating authority/ AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
2. Evidence shall be admitted as above only when AA/ AT records in writing the reasons for its admission.
3. The AA/ AT shall not take any 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.
 - b) To produce any evidence or any witness in rebuttal of the evidence produced by the appellant.
4. Power of the AA/ AT to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal, shall not be affected by this section.

APPEAL NOT TO BE FILED BY OFFICER – SEC 120

1. The Board may issue orders or instructions or directions - fixing monetary limits for the purposes of regulating the filing of appeal/ application by the CGST officers. (As we saw in appeals to AA/ AT)
2. Where a CGST officer has not filed an appeal/ application against any decision or order, in pursuance of such above order, it shall not preclude such officer from filing appeal/ application in any other case involving the same/ similar issues or questions of law. Also, no person, being a party in appeal or application shall contend that the officer of the central tax has accepted the decision on the disputed issue by not filing an appeal or application.
3. The AT/ court hearing such appeal/ application shall have regard to the circumstances under which the appeal/ application was not filed by the officer in pursuance of the orders issued.

NON-APPEALABLE ORDERS – SEC 121

- NWA in this Act, **no appeal shall lie against any decision/ order of an officer of CGST, if such decision/ order relates to following matters —**
 - a) An order of the Commissioner/ other authority empowered to direct transfer of proceedings from one officer to another
 - b) An order pertaining to the seizure or retention of books of account, register and other documents
 - c) An order sanctioning prosecution under this Act
 - d) An order passed under section 80 (allowing payment in instalments)

END OF PRESENTATION!!

WHAT WE LEARNED -

- Appeals to AA – Sec 107
- Revisions by Revisional Authority - Sec 108
- Composition of AT & Its Benches – Sec 109
- President and Members of AT – Sec 110
- Qualification
- Appointment
- Other Points
- Salary
- Tenure
- Resignation
- Removal
- Misbehaviour/ Incapacity
- Future Restriction
- Powers of AT – Sec 111
- Appeals to AT – Sec 112
- Orders of AT – Sec 113.
- Financial & Administrative Powers of the President – Sec 114
- Interest on Refund of Pre-Deposit – Sec 115
- Appearance by Authorised Representative – Sec 116
- Qualifications
- Disqualifications
- Appeal to High Court – Sec 117
- Appeal to Supreme Court – Sec 118
- Demand confirmed by the Court -
- Sums Due to be paid notwithstanding Appeal – Sec 119
- Appeal Not to be Filed by Officer – Sec 120
- Non-Appealable Orders – Sec 121
- Production of additional evidence before the AA/ AT – Rule 112



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