

16. Appeals/Revision

Q 1. Who is an adjudicating authority under GST?

*Ans. “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 Indirect Taxes and Customs(CBIC), the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal **and the Authority referred to in sub-section (2) of section 171 (National Anti-Profiteering Authority).***

Q 2. Whether any person aggrieved by any order or decision passed against him has the right to appeal?

Ans. Yes. Any person aggrieved by any order or decision passed under the GST Act(s) has the right to appeal to the Appellate Authority under Section 107. It must be an order or decision passed by an “adjudicating authority”.

However, some decisions or orders (as provided for in Section 121) are not appealable.

Q 3. Who is an appellate authority under GST?

Ans. “Appellate Authority” means an authority appointed or authorised to hear appeals as referred to in section 107.

Q 4. What is the time limit within which appeals should be filed against any order under GST?

Ans. For an Appeal by the aggrieved person - Appeal to the prescribed Appellate Authority has to be made within three months from the date on which the said decision or order is communicated to such person.

For an appeal by the department (Revenue) - the time limit is 6 months within which review proceedings have to be completed and appeal filed before the Appellate Authority. The Commissioner of CGST/SGST may, in case he is of the opinion that the order passed by the adjudicating authority is not legal and proper, 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.

The appellate authority can condone a delay of up to one month from the end of the prescribed period of 3/6 months for filing the appeal (3+1/6+1), provided there is "sufficient cause" as laid down in the section 107(4). A delay beyond one month cannot be condoned by the appellate authority under any circumstances.

Q 5. Who are the proper officers to whom appeals will lie under GST?

Ans. The appellate authorities under the CGST and SGST Act(s) are as under:

For an appealable order passed under the CGST Act

Any person aggrieved by any decision or order passed under this Act or the SGST / UTGST Act may appeal to -

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) 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,

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

(Rule 109A of the CGST Rules, 2017)

For an appealable order passed under the respective SGST Act

Any person aggrieved by any decision or order passed under the SGST Act or the CGST Act may appeal to

(a) the Additional Commissioner where such decision or order is passed by the Joint Commissioner;

(b) the Joint Commissioner (Appeals) where such decision or order is passed by the Deputy Commissioner;

(c) the Deputy Commissioner (Appeals) where such decision or order is passed by the Assistant Commissioner or State Tax Officer, within three months from the date on which the said decision or order is communicated to such person.

Q 6. Whether appeal can be filed to CGST

appellate authority against the order passed by an officer of SGST or vice versa?

Ans. Section 6 (3) of the CGST Act specifically mandates that any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST or UTGST Act. Similar provisions exist in SGST/UTGST Act also. Thus appeal against any order passed by CGST officer lie before the Appellate Authority specified under the CGST Act. Similarly appeal against any order passed by SGST officer lie before the Appellate Authority specified under the SGST Act.

Q 7. If the proper officer of CGST passes an order under the CGST Act, can such proper officer issue an order under the corresponding State/UT GST Act?

Ans. Yes. Where any proper officer issues an order under the CGST Act, he shall also issue an order under the SGST/UTGST Act, as authorised by the SGST/UTGST Act, under intimation to the jurisdictional officer of State tax or Union territory tax. Similar provisions exist under the SGST/UTGST Act also.

Q 8. Does the appellate authority have the power to condone any delay beyond three/six months in filing of appeal. If so, what is the period of delay that can be condoned by the appellate authority?

*Ans. Yes. The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months (for aggrieved person) or six months (for revenue), as the case may be, allow it to be presented within a further period of **one month**. A delay beyond one month cannot be condoned by the appellate authority under any circumstances.*

Q 9. Is there any requirement of any pre-deposit for filing of appeal before the Appellate Authority?

Ans. Yes. Such a requirement is there where the appeal is filed by the aggrieved person (i.e. taxable person and not departmental officer). No appeal shall be admitted 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, in relation to which the appeal has been filed.

This 10% shall be subject to a maximum limit of Rs. 50 crores (25 crore each under CGST and SGST) as per the CGST (Amendment) Act, 2018, however, the notification to bring the Act into effect is yet to be issued.

Q 10. Whether the appellate authority has any powers to allow additional grounds not specified in the appeal memo?

Ans. Yes. He has the powers to allow additional grounds

not specified in the grounds of appeal if he is satisfied that the omission was not willful or unreasonable. (Section 107(10) of the CGST Act, 2017)

Q 11. Is there any format in which appeal has to be filed before the appellate authority?

Ans. Yes. Appeal has to be filed in FORM GST APL-03 along with relevant documents. (Rule 109 of CGST Rules).

Q 12. If an appeal is filed and pre-deposit made, can the Revenue authorities still proceed and recover the balance amount?

Ans. No. In terms of Section 107(7) of CGST Act, 2017, where the appellant has paid the amount of prescribed amount of pre-deposit, the recovery proceedings for the balance amount shall be deemed to have been stayed.

Q 13. Is there any time limit within which the appellate authority has to decide the appeal?

Ans. Yes, however, the limit is recommendatory in nature. As per section 107(13) of CGST Act, 2017, 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. This has been done to avoid deliberate acts to delay the process to get substantive benefits which is not desirable.

Further, there is a provision of not granting more than three adjournments during an appeal so as to speed up the process.

Q 14. Does the appellate authority have the power to remand the case back to the adjudicating authority?

*Ans. No. As per the mandate of Section 107(11) of the CGST Act, 2017, 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.***

Q 15. Can the appellate authority enhance any fees/penalty/fine in lieu of confiscation or reduce any amount of refund or ITC etc from that contained in the order of the adjudicating authority?

Ans. Yes. However, an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

Q 16. Can the appellate authority enhance any tax demand from that contained in the order of adjudicating authority?

Ans. Yes. However, 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 utilised, 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.

Q 17. Who is the Revisional authority under GST?

Ans. "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108.

Q 18. What are the powers of the revisional authority?

Ans. 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 SGST /UTGST 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 the 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. Such powers are generally to be exercised within three years from passing of the decision or order sought to be revised.

Q 19. What are the circumstances in which the revisional authority shall not exercise his power?

Ans. The Revisional Authority shall not exercise any power under sub-section (1) of Section 108, if—

(a) the order has been subject to an appeal under section 107 (appellate authority) or section 112 (Tribunal) or section 117(High Court) or section 118 (Supreme Court); 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 an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

However, 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) above, 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) above, whichever is later.

Thus, if the impugned order is subject matter of an appeal, revision proceedings will not be taken up in respect of the said order.

Q 20. An order can be taken up for revision within a time period of three years from the date of passing

of the original order. Can this time period of 3 years be relaxed under any circumstances?

Ans. Yes. 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 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 three years where proceedings for revision have been initiated by way of issue of a notice under this section.

Further, where the issuance of an order of revision 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 of three years.

Q 21. To whom will an appeal lie against the order of the appellate and revisional authority?

Ans. The appeal against the order of the appellate authority will lie before the GST Tribunal.

Q 22. What is the structure of Tribunal envisaged under GST?

Ans. A two tier Tribunal structure is envisaged under GST, which will hear and decide appeals filed against orders of appellate and revisional authority. There shall be a National Bench and Regional Benches and there shall be a

State Bench and Area Benches of the Tribunal.

Q 23. What is the jurisdiction of the National (& Regional Benches) & the State (& area benches) of the Tribunal?

Ans. 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.

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 cases where the issues involved relates to the place of supply.

Q 24. What would be the composition of National/Regional Bench?

Ans. The National Bench shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

The Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

Q 25. What would be the composition of the State/Area Benches?

Ans. 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.

Q 26. What happens in case of difference of opinion amongst the members of the Bench?

Ans. 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 by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

Q 27. What is the time limit within which an aggrieved person should file an appeal before the Tribunal?

Ans. Any person aggrieved by an order passed against him under section 107 (by the appellate authority or section 108 (revisional authority) may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

Q 28. How can Revenue file appeals against orders of appellate/revisional authority? What is the time limit for filing such appeals by the Revenue?

*Ans. Revenue appeals before the Tribunal are filed by way of a review mechanism. The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the **Appellate Authority or the Revisional Authority** under the CGST Act or the SGST/ UTGST Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal **within six months** from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.*

Q 29. Does the Appellate Tribunal have power to condone the delay in filing appeal/memorandum of cross objections, by the aggrieved person/Revenue. If so, to what extent?

Ans. The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in Section 112(1) (which is three months for aggrieved person and six months for Revenue), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to Section 112 (5) (which is 45 days from the date of receipt of appeal) if it is satisfied that there was sufficient cause for not presenting it within that period.

Thus, the Tribunal does not have unlimited powers to condone the delay of any period. A delay of only upto three months can be condoned by the Tribunal.

**Q 30. What is memorandum of cross objections?
What is the time limit for filing memorandum of cross objections before Tribunal?**

Ans. A memorandum of cross objection is a tool to file an appeal at a later stage even though a decision not to file an appeal has been earlier taken and the time limit for filing such an appeal is already over, when the other party prefers an appeal in the case. Thus, in the event of an aggrieved person filing appeal, the respondent can also file memorandum of cross objections to be treated as appeal filed by him.

As per section 112(5) of the CGST Act, 2017, the party against whom the appeal has been filed, 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 of appeal, file a memorandum of cross-objections, 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 prescribed time limit specified for filing appeal.

Q 31. Is there any prescribed form for filing an appeal before the Appellate Tribunal?

Ans. Yes. The appeal has to be filed FORM GST APL – 05 as prescribed under rule 110 of the CGST Rules, 2017.

Q 32. What are the pre-deposit requirements for an appeal to be heard by the Appellate Tribunal?

Ans. No appeal shall be filed under Section 112 (8), 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 (amount of pre-deposit paid before the appellate authority), arising from the said order, in relation to which the appeal has been filed.

This 20% shall be subject to a maximum limit of Rs. 100 crores (50 crore each under CGST and SGST) as per the CGST (Amendment) Act, 2018, however, the notification to bring the Act into effect is yet to be issued.

Q 33. If the pre-deposit amount becomes refundable to the taxable person as a consequence of the favourable decision in appeal, will any interest be paid on such amount?

Ans. Yes. As per section 115 of the CGST Act, where an amount paid by the appellant under section 107(6) (appellate authority) or section 112(8) (appellate Tribunal) 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 (not from date of order-in-appeal) till the date of

refund of such amount. The rate of interest notified is six percent.

Q 34. Does the Tribunal have any power to amend its own order?

Ans. Yes. The Appellate 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 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 the 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.

Q 35. To which authority will further appeals lie from the order of Appellate Tribunal?

Ans. 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.

Against an order of the National Bench/Regional benches, the appeal will lie to the Hon'ble Supreme Court.

Q 36. What is the time limit within which an appeal has to be filed before the High Court?

Ans. An appeal before the High court has to be within a period of 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:

However, the High Court can 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.

Q 37. Against which orders will appeals lie to the Hon'ble Supreme Court?

Ans. An appeal shall lie to the Supreme Court—

(a) from any order passed by the National Bench or 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.

Q 38. Which are the orders against which no appeal shall lie?

Ans. 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 proceedings 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. (Payment of tax in instalments).

Q 39. In case the aggrieved person prefers an appeal before the High Court/Supreme Court, will the sums due on account of order of Tribunal be payable?

Ans. Yes. Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the 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.

Thus, unless the Hon'ble High Court/Supreme Court stays the operation of the order of the Tribunal, the amount due will be payable by the taxable person.

Q 40. Does the Board have the powers to issue directions fixing any monetary limits for filing of appeals?

Ans. Yes. The Board may, on the recommendations 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. No such circular has been issued so far.

Q 41. Whether the fee paid by litigants in the Consumer Disputes Redressal Commissions are leviable to GST?

Ans. Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services.

It has been clarified vide CBIC Circular no. 32/06/2018 dated 12th February, 2018 that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.

Q 42. What is the concept of authorised representative in GST?

Ans. Any person who is entitled or required to appear before an officer appointed under the CGST Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, authorise a person to appear on his behalf. A person can authorise to appear on his behalf as his representative:

- 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 authorised to act as a GST Practitioner on behalf of the concerned registered person.*

(Section 116 of the CGST Act, 2017)

Q 43. How can a taxpayer search for a GST Practitioner?

Ans. There is a functionality on the dashboard of the registered person on the GST Portal wherein he can get the contact details of all GST Practitioners in a State, district and pincode wise.

Q 44. Can a person be disqualified to act as authorised representative?

Ans. Yes, where an authorised representative, other than those referred to in clause (b) or clause (c) in above

question, 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.

(Rule 116 of the CGST Rules, 2017)

Any person who has been disqualified under the provisions of the SGST / UTGST Act shall be deemed to be disqualified under this CGST Act and vice versa.

(Section 116(4) of the CGST Act, 2017)
