



# **CHAPTER 23**

# ***APPEALS &***

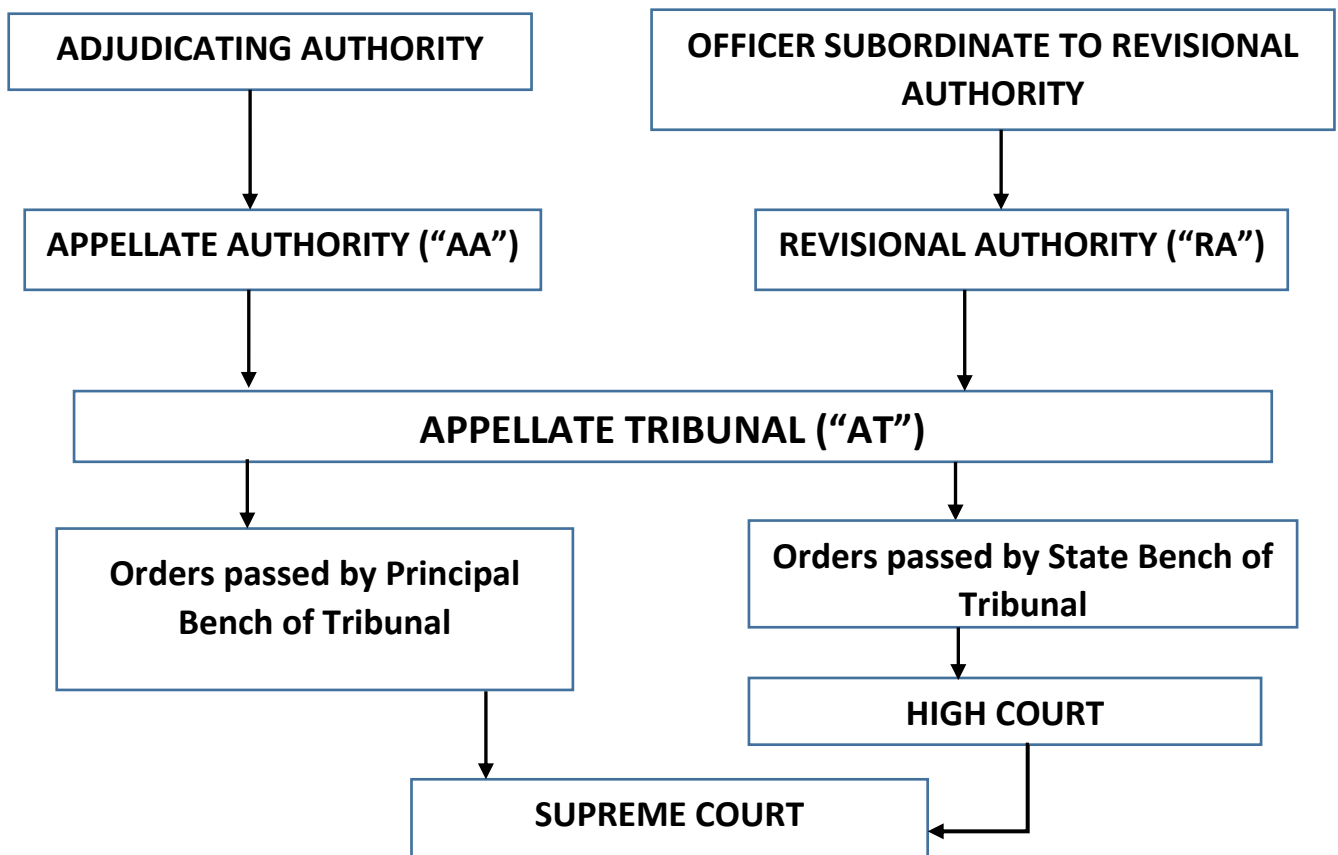
# ***REVISION***

**CHAPTER OVERVIEW**

<b>SECTION</b>	<b>TOPIC</b>
<b>Hierarchy of appeals &amp; revision and relevant definitions</b>	
<b>107</b>	<b>Appeals to Appellate Authority</b>
<b>108</b>	<b>Powers of Revisional Authority</b>
<b>109</b>	<b>Constitution of Appellate Tribunal and Benches thereof</b>
<b>110</b>	<b>Qualifications of President and members of Tribunal</b>
<b>111</b>	<b>Procedure before Appellate Tribunal</b>
<b>112</b>	<b>Appeals to Appellate Tribunal</b>
<b>113</b>	<b>Orders of Appellate Tribunal</b>
<b>114</b>	<b>Financial and administrative powers of President</b>
<b>115</b>	<b>Interest on refund paid for admission of appeal</b>
<b>116</b>	<b>Appearance by authorized representative</b>
<b>117</b>	<b>Appeal to High Court</b>
<b>118</b>	<b>Appeal to Supreme Court</b>
<b>119</b>	<b>Sums due to be paid notwithstanding appeal, etc.</b>
<b>120</b>	<b>Appeal not to be filed in certain cases</b>
<b>121</b>	<b>Non-appealable decisions and orders</b>



## 1. HIERARCHY OF APPEALS & REVISION



Disputes related to Place of Supply – Principal Bench

Other Disputes – State Benches

## 2. DEFINITIONS

**“Adjudicating authority”** means any authority, appointed or authorized to pass any order or decision under this Act, **but does not include**

- the Central Board of Indirect tax and Customs,
- the Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- **the National Appellate Authority for Advance Ruling,**
- the Appellate Authority
- the Appellate Tribunal; and
- the Anti-Profiteering Authority

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



**“Appellate Tribunal”** means the Goods and Services Tax Appellate Tribunal u/s 109;

**“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;

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

### **Basic Points on Appeal and Revision**

- Right to appeal against an adverse decision or order is a statutory right available with all assessees under any law and GST law also.
- However, this right is not an absolute right and is conditioned by fretters of timely filing of appeal and mandatory payment of part dues as pre-deposit.
- Under GST regime the taxable supplies of goods or services are attracting the levy which is being leviable by both Central Tax and State Tax.

**Question: Person aggrieved should approach both the authorities of Central and State for exercising the right of appeal?**

**Answer:** As per CBEC clarification the answer to this question is 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.**



### 1. Appeal to Appellate Authority (AA) [Section 107]

#### 1.1. APPEAL BY ASSESSEE

##### 1) Orders appealable before AA

An appeal against a decision/order passed by any “**adjudicating authority**” under CGST Act /SGST Act/UTGST Act lies before the AA against a decision or order passed under the Act. **Only the aggrieved person** can file the appeal.

##### 2) Time limit for filing appeal

It can be filed 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]*

##### 3) 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 in **Form GST APL-02**.

A hard copy of the appeal then shall be submitted in triplicate and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents **within 7 days of filing electronic appeal**.

Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf and **the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal**:

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within **7 days from the date of filing of FORM GST APL-01** and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within **7 days** from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

**4) Mandatory pre-deposit for filing appeal**

No appeal can be filed before the AA **unless amount of pre-deposit** as mentioned below is deposited by the appellant:

- a) **Full amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is **admitted** by him; and
- b) **10% of the remaining amount of tax in dispute** arising from the impugned order **subject to maximum of ₹ 25 crs. (₹ 50 crs. in case of IGST)**

Provided that no appeal shall be filed against an order u/s 129(3), unless a sum equal to **25% of the penalty has been paid by the appellant.**

**Illustration 1**

X Ltd. received a protective demand notice from the department Assistant Commissioner of Central Tax on 1.9.2017 under Section 73 of the CGST Act, 2017 where

CGST & SGST due	= 5,00,000
Interest	= @15% p.a. for no. of days delay.
Penalty	= 10% of tax due or ₹ 10,000 whichever is higher

The assessee went for appeal and filed the case in the Appellate Authority on 25.9.2019. This appeal has been taken up for hearing on 06-10-2019.

**Case 1:** How much has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Appellate Authority (i.e. Commissioner (Appeals)).

**Case 2:** Whether your answer is different if the assessee appeals only part of the amount say ₹ 3,00,000 is in dispute arising from the said order

**Solution:**

Case 1: Pre-deposit is ₹ 50,000 (5,00,000 x 10%) is to deposit on or before 6<sup>th</sup> October 2019.

Case 2: Disputed amount ₹ 3,00,000:

Pre-deposit is ₹ 2,00,000 plus ₹ 30,000 (₹ 3,00,000 x 10%) together is ₹ 2,30,000. It should be deposited on or before 6<sup>th</sup> October 2019.



### 1.2. APPEAL BY DEPARTMENT

#### (A) When will Department file appeal?

The Department itself is not in agreement with the order passed by the adjudicating authority and hence it can file “*review application/appeal*” with the Appellate Authority.

#### (B) Orders appealable before 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 order under the CGST Act or SGST Act/UTGST Act **to satisfy himself about the legality or propriety of the said decision/order.**

#### (C) Time limit for filing appeal

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

*[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]*

#### (D) Form for “application” to AA by the department

The Application to the AA shall be filed in **GST APL-03** either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately. Such application is treated as appeal.

Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

**Provided** that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of **seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority** or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

**Provided further** that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.”.



### 1.3. APPEAL PROCESS FOLLOWED BY AA

#### Procedure followed by AA

- a) The AA may allow the appellant during the hearing to go in to any ground of appeal not specified in the grounds of appeal and grant **upto 3 adjournments**.
- b) The AA can make further inquiry and pass appellate order which may **confirm, modify or annul** the order appealed against
- c) The AA **shall not refer the case back** to the adjudicating authority that passed the said order.

The Appellate Authority shall not remanded the matter back to the adjudicating authority. Accordingly the AA shall also issue a summary of the order in **Form GST APL-04** clearly indicating the final amount of demand confirmed.

- d) The Appellate order shall be a **“speaking order”** i.e., it shall state the points for determination, the decision thereon and the reasons for the decision.
- e) The AA can also increase the **“rigour”** of the order appealed against by enhancing any fee / penalty / fine in lieu of confiscation / confiscating goods of greater value or reducing the amount of refund or ITC. **[This can only be done after AA has given to appellant a reasonable opportunity of showing cause against the proposed order]**
- f) The AA shall communicate order passed by it to the appellant, respondent and to the adjudicating authority. Such order shall also be sent to the jurisdictional Commissioner / authority designated by him in this behalf and the jurisdictional SGST/UTGST Commissioner / an authority designated by him in this behalf.
- g) Every order passed by the AA shall be **final and binding on the parties** unless the dispute is taken to a higher appellate forum

#### Time limit to dispose appeal by AA

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.

#### Facility for filing appeal manually to Appellate Authority in certain specified circumstances [Rules 108(1) and 109(1)]

An appeal against any decision or order passed by an adjudicating authority to Appellate Authority can be filed either:

- (i) by the aggrieved person (taxpayer) [Section 107(1) read with rule 108] or
- (ii) by the Department [Section 107(2) read with rule 109].

**Proviso** have been inserted to each rule 108(1) and rule 109(1) to provide as follows:



## APPEALS & REVISION

An appeal to the Appellate Authority may be filed manually in GST APL- 01 (in case of appeal by aggrieved person) or GST APL-03 (in case of appeal by Department), along with the relevant documents, only if-

- (i) the Commissioner has so notified, or
- (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

### 1.4. Appointment of Appellate Authority [Rule 109A]

#### Assessee Appeal

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

- **The Commissioner (Appeals)** where such decision or order is passed by the **Additional or Joint Commissioner**
- **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 **3 months** from the date on which the said decision or order is communicated to such person.

#### Departmental Appeal

An officer directed u/s 107(2) to appeal against any decision or order passed under this Act or the SGST Act / the UTGST Act may appeal to

- The **Commissioner (Appeals)** where such decision / order is passed by the Additional or Joint Commissioner;
- Any **officer not below the rank of Joint Commissioner (Appeals)** where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent,

within **6 months** from the date of communication of the said decision or order.

Order Passed by	Relevant Appellate Authority
Deputy or Assistant Commissioner or the Superintendent	Any officer not below the rank of Joint Commissioner (Appeals)
Additional or Joint Commissioner	Commissioner (Appeals)

#### Withdrawal of Appeal [Rule 109C]

The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in **FORM GST APL-01** or **FORM GST APL-03**, file an application for withdrawal of the said appeal by filing an application in **FORM GST APL-01/03W**:



**Provided** that where the final acknowledgment in **FORM GST APL-02** has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within **7 days** of filing of such application:

**Provided further** that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be.”;

## **2. POWERS OF REVISIONAL AUTHORITY (“RA”) [SECTION 108]**

### **(A) Orders which can be revised**

If Revisional Authority is of the view that the order passed under the relevant Acts by any officer *subordinate to him* is

- ✓ *erroneous*, 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 India

*he may, if necessary, stay the operation of such decision or order for such period as he deems fit.*

### **(B) Powers of RA**

The RA, after giving the person concerned an opportunity of being heard and after making such further inquiry, pass such order, as he thinks just and proper, *including enhancing or modifying or annulling the said order.*

‘Order shall include intimation given by any officer lower in rank than the RA.

### **Whether order passed by RA is appealable and final?**

Every revision order **shall** be, subject to further appeal to the Tribunal, High Court or Supreme Court, **be final and binding** on the parties.

### **(C) Orders which CANNOT be revised by RA**

The RA shall **not exercise** the power of revision if:

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



## APPEALS & REVISION

\*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 **1 year** from date of the order in such appeal or
- before **3 years** from date of initial order, **whichever is later.**

### (D) Period to be excluded in computing period of 3 years

Particulars	Period excluded
If the order sought to be revised involves an issue on which Appellate Tribunal / High Court has given its decision in <b><i>some other proceedings</i></b> and	
a) appeal to the High Court against such decision of the Appellate Tribunal and appeal to the Supreme Court against such decision of the High Court is <b><i>pending</i></b>	1) Date of decision of the Appellate Tribunal and date of decision of the High Court <b>OR</b> 2) Date of decision of the High Court and the date of decision of the Supreme Court  where proceedings for revision have been initiated by way of issue of a notice under this section.
b) Stay of revision order by order of Court or Tribunal	Period of stay of decision

### (E) Prior notice to person in case of adverse order by Revisional Authority [Rule 109B]

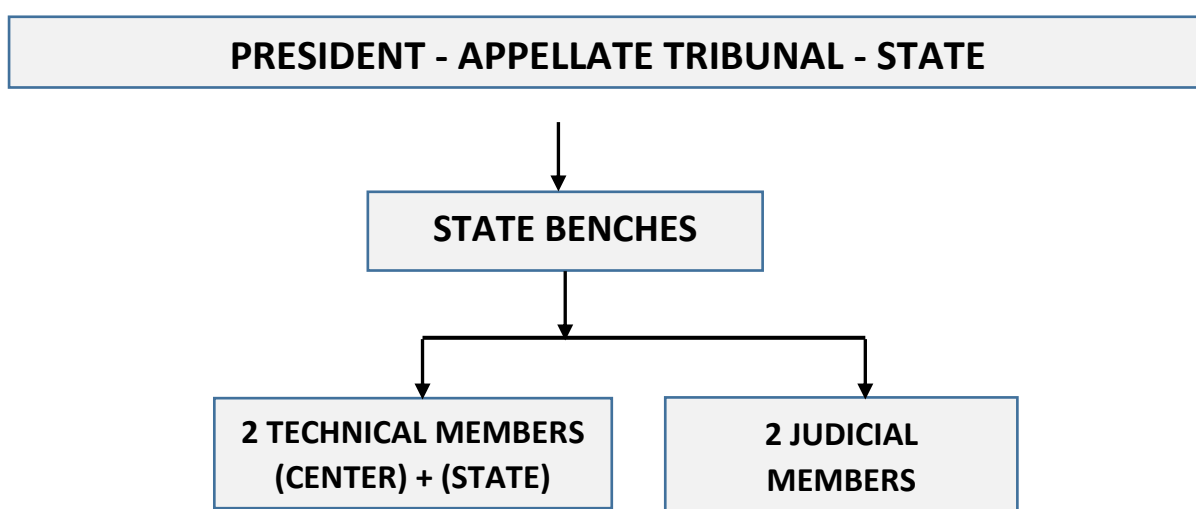
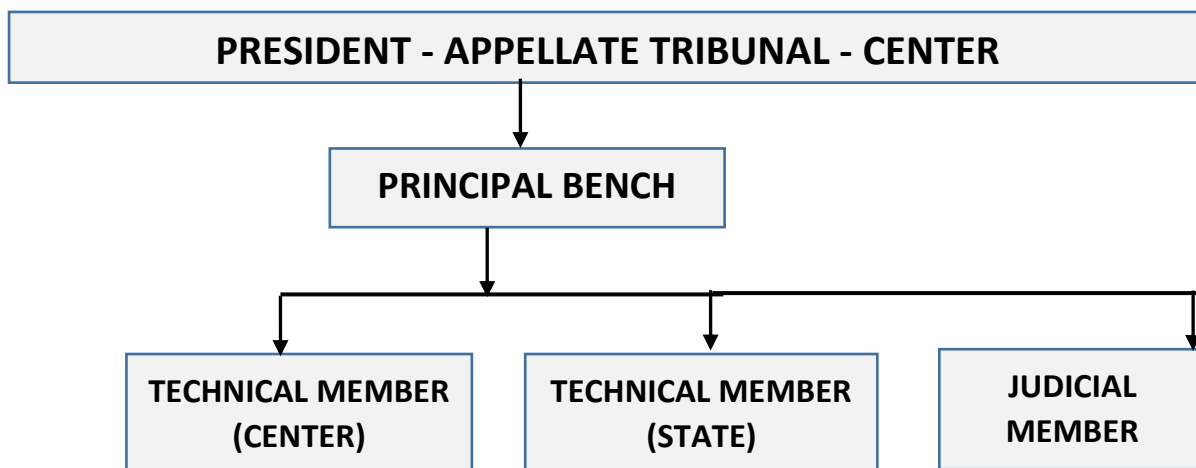
If the Revisional Authority decides to pass an order in revision under section 108 of the CGST Act which is likely to affect the person adversely, an obligation has been cast on the Revisional Authority to serve a notice in **Form GST RVN-01** on such person and give him a reasonable opportunity of being heard.

Along with the order under section 108(1), the Revisional Authority will also issue a summary of the order in **Form GST APL-04** clearly indicating the final amount of demand confirmed.

### (F) Revisional Authority under Section 108 [Notification No. 05/2020 CT dated 13.01.2020]:

The following officers have been authorised as the Revisional Authority under section 108 of the CGST Act:

- Principal Commissioner or Commissioner for decisions or orders passed by the Additional or Joint Commissioner; and.
- Additional or Joint Commissioner for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent.

**3. APPEAL TO APPELLATE TRIBUNAL [SECTION 109-111]****(A) CONSTITUTION OF APPELLATE TRIBUNAL [SECTION 109]**

The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:



## APPEALS & REVISION

### What is the constitution of National Appellate Tribunal and how it is constituted?

The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the **Goods and Services Tax Appellate Tribunal (referred to as “Appellate Tribunal”)** for hearing appeals against the orders passed by the **Appellate Authority or the Revisional Authority**.

### State the place and composition of Principal Bench?

The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the **President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State)**.

### What is State Bench?

On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of **two Judicial Members, a Technical Member (Centre) and a Technical Member (State)**.

### What is the jurisdiction of Principal Bench / State Bench?

Issue	Powers to hear the appeal against order of Appellate Authority or Revisional Authority
Place of Supply	Principal Bench of Tribunal
Issues other than Place of Supply	State Bench of Tribunal

### What is the composition of State Benches?

Each State Bench of the Appellate Tribunal shall consist of 2 Judicial Members, 1 Technical Member (Centre) and 1 Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

### Whether any matter could be heard by bench consisting of members less than 3?

Yes, in the absence of a Member in any Bench **due to vacancy or otherwise**, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members.

**Can a Single Member Bench hear appeals?**

Yes, subject to following conditions:

- a) Tax / ITC involved or
- b) Difference in tax or ITC involved or
- c) Fine, fee or penalty determined in any order appealed against,
- d) Does not exceed ₹ 50,00,000 and
- e) Does not involve any question of law,
- f) Approval of the President granted

**and in all other cases, shall be heard together by one Judicial Member and one Technical Member.**

**Transfer of Members and Difference in Opinion of Members**

If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—

(a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;

(b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench, and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:

Provided that a Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

**(B) APPEAL TO APPELLATE TRIBUNAL BY ASSESSEE [SECTION 112]****1) Orders appealable before AT**

An appeal against a decision/order passed by any “*appellate authority*” / “*revisional authority*” under CGST Act /SGST Act/UTGST Act lies before the Appellate Tribunal.

**2) Time limit for filing appeal**

It can be filed within **3 months** from the date of communication of such decision/order.

*[The AT can condone the delay upto 3 months in filing of appeal beyond 3 months if it is satisfied that there was sufficient cause for such delay]*



## APPEALS & REVISION

### 3) Form for appeal to AT by the assessee

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

### 4) Mandatory pre-deposit for filing appeal

No appeal can be filed before the AT **unless amount of pre-deposit** as mentioned below is deposited by the appellant:

- c) **Full amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is **admitted** by him; and
- d) **20% of the remaining amount of tax in dispute** arising from the impugned order **[Additional]** **subject to maximum of ₹ 50 crs.**

#### Notes:

- (i) The abovementioned amount of pre-deposit is in addition to the amount deposited before AA as pre-deposit
- (ii) The recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal once the amount is paid.

### Pre-deposit limit u/s 20 of IGST Act, 2017

Section 20 of the IGST Act provides that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, **the maximum amount payable shall be ₹ 50 crore and ₹ 100 crore respectively**. Section 20 of the IGST Act specifies the provisions of the CGST Act which are applicable in case of IGST Act as well.

**Note: Pre-deposit will be refunded with Interest @ 6% where said amount becomes refundable on account of order in favor of assessee.**

#### Illustration 2:

X Ltd. received a protective demand notice from the department Assistant Commissioner of Central Tax on 1.9.2019 under Section 73 of the CGST Act, 2017 where

	<b>Amount ₹</b>
CGST & SGST due	= 5,00,000
Interest	= @15% p.a. for no. of days delay.
Penalty	= 10% of tax due or ₹ 10,000 whichever is higher

The assessee went for appeal and filed the case in the Appellate Tribunal on 25.9.2019. This appeal has been taken up for hearing on 06-10-2019.

**Case 1:** How much has to pay as pre-deposit of duty under section 112(8) of the CGST Act, 2017 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Appellate Tribunal?



**Case 2:** Whether your answer is different if the assessee appeals only part of the amount say ₹ 3,00,000 is in dispute arising from the said order

**Solution:**

**Case 1:** Pre-deposit is ₹ 1,00,000 ( $5,00,000 \times 20\%$ ), it is in addition to pre-deposit of ₹ 50,000

**Case 2: Disputed amount ₹ 3,00,000**

Pre-deposit is ₹ 2,00,000 plus ₹ 60,000 ( $₹ 3,00,000 \times 20\%$ ) together is ₹ 2,30,000, it is in addition to pre-deposit of ₹ 30,000.

### 5) Power of Tribunal to refuse to admit an appeal

The Appellate Tribunal can refuse to admit an appeal if following conditions are fulfilled:

- a) tax or ITC involved or
- b) difference in tax or ITC involved or
- c) amount of fine, fee or penalty determined

by such order does not exceed ₹ 50,000.

### 6) Jurisdiction to admit appeals by Appellate Tribunal

The Principal Bench shall have jurisdiction to hear appeals against the orders passed by the appellate authority i.e., Commissioner (Appeals) or the Revisional Authority in the cases where one of the issues involved relates to the **place of supply**.

**Other matters** will fall in jurisdiction of State benches

### 7) Fees for filing appeal

<b>Normal Appeal</b>	<b>Minimum Fees:</b> ₹ 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 and penalty <b>determined in order</b>  <b>Maximum Fees:</b> ₹ 25,000.
<b>Application for rectification of errors</b>	<b>No fee for application made</b>



### (C) APPEAL BY DEPARTMENT

#### (A) When will Department file appeal?

The Department itself is not in agreement with the order passed by the appellate authority (AA)/ revisional authority (RA) and hence it can file “*appeal*” with the Appellate Tribunal.

#### (B) Orders appealable before AT

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an AA/RA has passed any order under the CGST Act or SGST Act/UTGST Act to satisfy himself about the legality or propriety of the said decision/order

#### (C) Time limit for filing appeal

The Commissioner may, **by order**, direct any officer subordinate to him to apply to the AT. Appeal can be filed within **6 months** from date on which determination of points arising out of said order as specified. Delay in filing can be condoned by Tribunal by another **3 months**.

#### (D) Form for “application” to AT by the department

The Application to the AT shall be filed in **GST APL-07** either electronically or otherwise as may be notified by the Commissioner. Such application is treated as appeal

### No pre-deposit required in case of departmental appeal

### (D) ORDERS OF APPELLATE TRIBUNAL [SECTION 113]

#### (I) Final decision of AT

The AT may pass such orders as following as it thinks fit:

- ✓ **confirming, modifying or annulling** the decision or order appealed against or
- ✓ **refer case back to the AA / 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) Adjournments

The Tribunal may, *if sufficient cause is shown*, grant up to **3 adjournments** to hearing of appeal to either side.

#### (III) Time limit to pass order

An advisory time limit of **1 year** from date of filing of appeal for the Tribunal to decide the appeal.



Every order passed by the Tribunal shall be **final and binding** on the parties unless the dispute is taken to a higher appellate forum

#### (IV) Revision of order passed by AT

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 CGST/SGST Commissioner or
- the other party to the appeal

within **3 months** from the date of the order:

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, unless the party has been given an **opportunity of being heard**.

#### (E) Memorandum of cross objections

##### (I) Who shall file cross objections?

The Respondent (i.e. the party against whom the appeal has been preferred) against whom appeal is filed to file such objections against such part of order against which the respondent may initially not have chosen to file an appeal.

##### (II) Time limits to file appeal?

The respondent to 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.

#### The Appellate Tribunal is the final fact-finding authority

#### FINANCIAL AND ADMINISTRATIVE POWERS OF PRESIDENT [SECTION 114]

The President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed.



### 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.

### AUTHORISED REPRESENTATIVE [SECTION 116]

Following persons are **authorised** to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act on behalf of an assessee:

- 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; 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:

However, such officer shall not be entitled to appear before any proceedings under this Act for a period of **1 year** from the date of his retirement or resignation; or

- e) any person who has been authorised to act as a **goods and services tax practitioner** on behalf of the concerned registered person.

### Disqualifications for acting as authorised representative

The GST law provides some disqualifications for an authorised representative as follows. **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, IGST Act or the UTGST Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
- c) who is found **guilty of misconduct** by the prescribed authority;
- d) who has been **adjudged as an insolvent**

shall be qualified to represent any person

(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)**.

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

**Disqualification for “misconduct” of an authorised representative [Rule 116]**

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

**4. APPEAL BEFORE HIGH COURT [SECTION 117]****1) Orders appealable before HC**

An appeal against a decision/order passed by the State Benches of AT lies before the High Court. The High Court may admit such appeal if it is satisfied that the case involves a **substantial question of law.**

**2) Time limit for filing appeal**

It can be filed within **180 days** from the date of receipt of the order to be appealed against. The High Court may entertain an appeal after the expiry of such period if it is satisfied that there was sufficient cause for not filing it within such period.

**3) Form for appeal to AT by the assessee**

The appeal to the HC shall be filed in **GST APL-08.**

**4) Decision of the High Court**

- a) The High Court shall formulate that question, and the appeal shall be heard ***only on the question so formulated.***
- b) 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.
- c) The High Court **may determine any issue** which has ***not been determined by the Tribunal*** (State Benches) or has been **wrongly determined** by the State Benches of the Tribunal, by reason of a decision on such question of law.
- d) The appeal shall be heard by a bench of at-least **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.**
- e) Pre-deposit of **all tax dues** is required to be made. *[The High Court and Supreme Court has powers to be invoked for obtaining a stay pending disposal of the appeal].*



## 5. APPEAL BEFORE SUPREME COURT [SECTION 118]

### Appealable orders before Supreme Court

- 1) Appeal can be filed against the order of the High Court passed u/s 117 *if the High Court certifies* to be a fit one, for appeal to the Supreme Court.
- 2) A **direct appeal** shall also lie to the Supreme Court **from any orders passed by the Principal Bench of the Tribunal.**

**The Principal Bench of the Tribunal has jurisdiction to entertain appeal if the dispute / one of the issues in dispute involves PLACE OF SUPPLY**

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.

### OTHER MISCELLANEOUS POINTS

#### Tax to be paid to Government irrespective whether appeal has been filed or not: [Section 119]

Sums due to the Government as a result of an order passed by the Principal Bench/State Benches of the Appellate Tribunal / 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.

#### Departmental Appeal not be filed in certain cases: [Section 120]

- a) 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.
- b) 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
- c) No person, being a party in appeal or application shall 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).
- d) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the CGST officer on account of monetary limits fixed by the Board.

**NON-APPEALABLE DECISIONS AND ORDERS [SECTION 121]**

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

**SUMMARY OF APPEAL CHAPTER****Pre-Deposits before filing of appeal**

Provision	Orders issued by	Appeal to	Basic Deposit	Additional Deposit
Section 107(6)	Adjudicating Authority/ Proper Officer (below the rank of Tribunal)	Appellate Authority	Full amount of tax, interest, fine and penalty as is admitted by him arising from the impugned order	10% of the remaining amount of tax in dispute arising from the said order, subject to a maximum of ₹ 25 Crores
Section 112(8)	Appellate Authority	Appellate Tribunal		20% of the remaining amount of tax in dispute arising from the said order, subject to a maximum of ₹ 50 Crores

**Note:**

In the case, where the pre-deposit made by the appellant before the AA or Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest at the rate specified in Section 56 shall be payable from the date of payment of the amount (and not from the date of order of AA or of the Tribunal) till the date of refund of such amount.

**Illustration:**

Tax Liability as disclosed by the taxpayer through return – ₹ 500 lakhs

Tax paid by the taxpayer – ₹ 400 lakhs

Tax liability as assessed by the Adjudicating authority – ₹ 900 lakhs

Find the total amount of deposit required by the taxpayer for being eligible to file and an appeal before the 1<sup>st</sup> appellate authority?

**Solution:**

(i) Tax Due = ₹ [500,00,00,000 - 400,00,00,000] = ₹ 100,00,00,000

(ii) 10% of remaining amount = 10% of ₹ [900,00,00,000 - 500,00,00,000] = ₹ 40,00,00,000 subject to the maximum of ₹ 25,00,00,000. Deposit to be made = ₹ 25,00,00,000



## APPEALS & REVISION

### Time Limit for filing of Appeals

Against Order issued by	Appeals to be made to	Within the time limit	Extension / Condonation of Delay
Adjudicating Officer/ Proper Officer	Appellate Authority (AA)	3 months from the date of the impugned order	One month in case of just and equitable causes/ reasons
Against Orders-in appeal passed by AA or Order in Revision passed by the Revisional Authority	Tribunal ✓ State Benches ✓ Principal Bench	3 months from the date of the order under appeal Cross Objections can be filed by the respondent within 45 days from the date of receipt of notice of filing of appeal	Upto 3 months in case of appeal and upto 45 days in case of cross-objections, beyond the mandatory period
Against Orders of Tribunal	High Court	180 days from the date of order passed by the Tribunal	Power to condone delay on sufficient reasons/ cause
Against Order of the High Court	Supreme Court	Only if the High Court certifies the matter as 'fit' to be appealed before the Apex Court	

### Forms prescribed in connection with the filing of appeals

Forms	Deals with
GST APL 01	Appeal to Appellate Authority
GST APL 02	Acknowledgement for submission of Appeal
GST APL 03	Application to the Appellate Authority u/s Section 107(2)
GST APL 04	Summary of the demand after issue of order by the Appellate Authority, Tribunal or Court
GST APL 05	Appeal to the Appellate Tribunal
GST APL 06	Cross-objections before the Appellate Tribunal
GST APL 07	Application to the Appellate Tribunal u/s Section 112(3)
GST APL 08	Appeal to High Court
GST RVN 01	Notice by the revisional authority to a person who may be affected by its proposed order