

TWO DAYS NATIONAL CONFERENCE ON GST

SHOW CAUSE NOTICES – ADJUDICATION & APPEALS

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Agenda



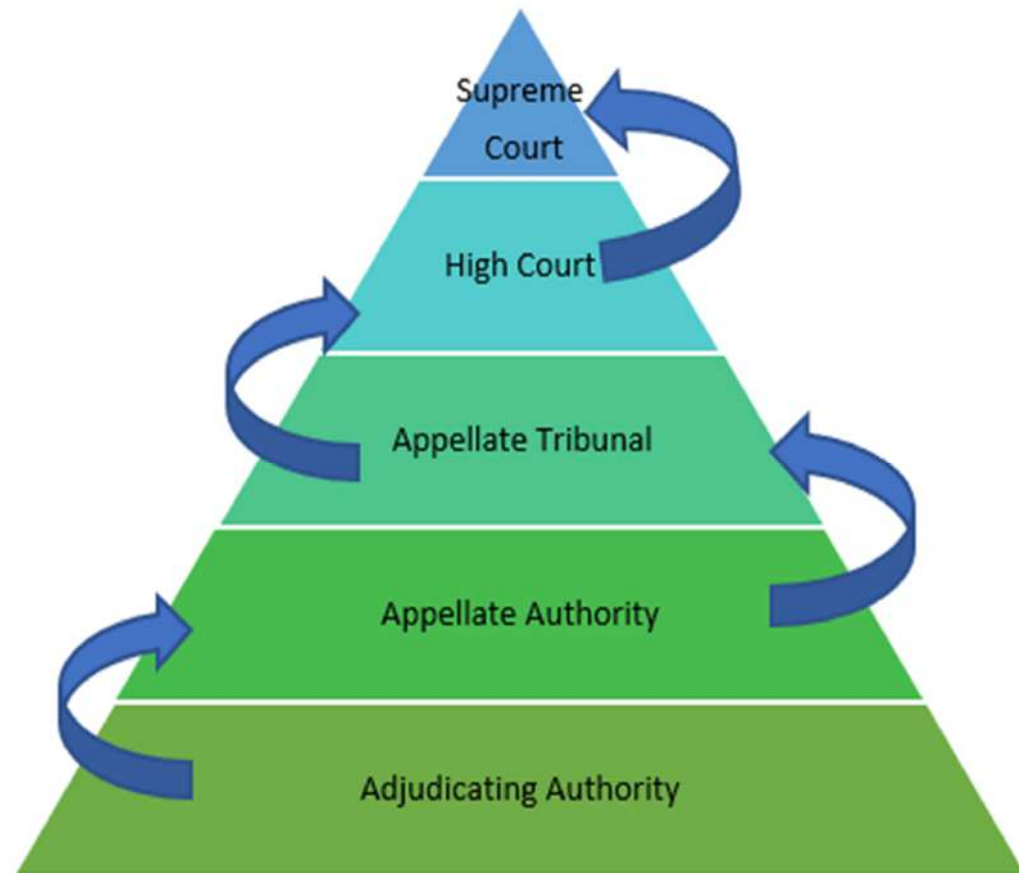
SHOW CAUSE NOTICE



APPEAL PROCEEDINGS

HIERARCHY OF ADJUDICATION AND APPEALS UNDER GST LAWS

In respect of adjudication and appeals, GST laws have incorporated provisions in pari-materia with the erstwhile laws such as Central Excise Act 1944, Central Sales Tax Act 1956 and State VAT laws.



Appeal from Principal Bench of Appellate Tribunal shall lie before Supreme Court

SHOW CAUSE NOTICES

Chapter XV of CGST Act deals with show cause notices.

Section 73 deals with determination of tax and issue of show cause notice for reasons other than fraud/willful misstatement/suppression of facts.

Section 74 deals with determination of tax and issue of show cause notice for fraud/willful misstatement/suppression of facts.

Section 76 deals with issue of SCN in relation with taxes collected but not paid to the government

SHOW CAUSE NOTICES

Section 73(1)- Normal SCN	Section 74(1)- Fraud/Suppression SCN
<p>Where it appears to proper officer that:-</p> <ul style="list-style-type: none">• Any tax has not been paid or• Any tax has been Short Paid or• Any tax has been erroneously refunded or• Where any Input Tax credit have wrongly availed or• Any Input Tax Credit have been wrongly utilised.• For any reason, other than fraud or willful-misstatement or suppression of facts	<p>Where it appears to proper officer that:-</p> <ul style="list-style-type: none">• Any tax has not been paid or• Any tax has been Short Paid or• Any tax has been erroneously refunded or• Where any Input Tax credit have wrongly availed or• Any Input Tax Credit have been wrongly utilised.• By reason of fraud or willful-misstatement or suppression of facts

Section 73 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts

- ✓ In terms of sub-section (10) of the Section 73 the Adjudication authority shall pass the order with in 3 years from the due date of filing of annual return.
- ✓ The Notice shall be issued at least three months prior to the time limit specified in sub-section(10) of Section 73 for issuance of order (2 Years and 9 Months from date of Annual Return)
- ✓ If tax is paid along with interest before issuance of SCN or within thirty days of issue of Show Cause Notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. The exceptions are-
 - Self Assessed Tax; and
 - Tax Collected but not deposited.
- ✓ Penalty leviable under section 73 is 10% of the tax amount

Section 74 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts

- ✓ In terms of sub-section (10) of the Section 74 the Adjudication authority shall pass the order with in 5 years from the due date of filing of annual return.
- ✓ The Notice shall be issued at least six months prior to the time limit specified in sub-section(10) of Section 74 for issuance of order (4 Years and 6 Months from date of Annual Return).
- ✓ If tax is paid along with interest and 15% of tax amount as penalty before the issue of show case notice, then all proceedings in respect of the said notice shall be deemed to be concluded.
- ✓ If tax is paid along with interest and 25% of tax amount as penalty within thirty days of the issuance of show case notice, then all proceedings in respect of the said notice shall be deemed to be concluded.
- ✓ Where any person served with an order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty percent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.
- ✓ For the purposes of this suppression shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act, or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Comparison of Section 73 & 74 under CGST ACT, 2017

Particulars	When there is no fraud(Section 73)	When there is a fraud (Section 74)	Comments
Show Cause Notice	Yes	Yes	–
Max. Time Limit	3 years	5 years	Time is calculated from the due date of filing the annual return for the year to which the demand relates or date of refund.
The time limit for SCN	3 months before the expiry of 3 years	6 months before the expiry of 5 years	Hence, 3 or 5 years, as the case may be, is the maximum time limit for issuing the order of GST demand payment
Penalty	10% of tax	100% of tax	–

168A- Power of Government to extend time limit in special circumstances

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation. - For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.

Time Limit for Issuance of SCN under Section 73

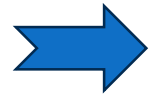
Year	Due Date for Filing of Annual Return	SCN can be issued up to (2 Yrs. & 9 Mon. from Due Date of Annual Return)	Order to be passed within (3 Yrs. from Due Date of Annual Return)	Extended time limit for passing order under section 73.
2017-2018	07- Feb- 2020	06- Nov -2022	06- Feb -2023	31- Dec -2023
2018-2019	30- Sep -2020	29- Jun -2023	29- Sep -2023	30- April -2024
2019-2020	31- Mar -2021	30- Dec -2024	30-Mar -2024	31- Aug -2024
2020-2021	31- July - 2022	30- April -2025	31- July -2025	–

The Notification extending time limit issued under Section 168A have been challenged before various High Courts and courts have stayed the proceedings initiated.

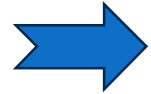
Time Limit for Issuance of SCN under Section 74

Year	Due Date for Filing of Annual Return	SCN can be issued up to (4 Yrs. & 6 Mon. from Due Date of Annual Return)	Order to be passed within (5 Yrs. from Due Date of Annual Return)
2017-2018	07- Feb- 2020	05- Aug -2024	06- Feb -2025
2018-2019	30- Sep -2020	28- Mar -2024	29- Sep -2025
2019-2020	31- Dec -2021	29- Jun -2026	30- Dec -2026
2020-2021	31- July - 2022	31- Jan -2027	31- July -2027

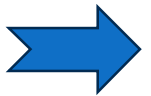
Section 75 –General provisions relating to determination of tax



(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.



(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.



(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.



(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

Section 75 –General provisions relating to determination of tax

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

➔ (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

➔ (8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

➔ (9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

➔ (10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

➔ (11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in subsection (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

Section 75 –General provisions relating to determination of tax

➔ (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Explanation.-For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

➔ (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Section 76- Tax collected but not paid to Government

Section 76 deals with taxes collected but not paid to the government. Under the GST Acts, any amount collected "as tax" must be paid to the government immediately, regardless of whether the transactions were taxable.

The person is permitted to make representation in FORM GST DRC-06, against the notice served on to him. The person ought to be given an opportunity of being heard where a request is made by such person in writing.

Before effecting recovery, the Proper Officer has to serve a notice along with a summary in FORM GST DRC-01, on to any person who has collected any amount representing as tax requiring to show cause as to why :-

- the said amount should not be paid by him to the Government;
- penalty equivalent to such amount specified in the notice should not be imposed on him.

After considering such representation made by the person, the Proper Officer shall determine the amount due from the person and pass an order within one year from the date of issue of notice. Where the service of notice is stayed by order of the Court or Tribunal, the period covered by the stay shall stand excluded for the purpose of computing the time limit.

Titan Company Ltd. Vs Joint Commissioner of GST & Central Excise (2024) 124 GSTR 449

Clubbing Of Show Cause Notice Under A Single Show Cause Notice



Facts -

The Petitioner was issued a single SCN for 5 Assessment years , starting from 2017-18 to 2021-22.

The Petitioner argued that such bunching was impermissible under Section 73 of the CGST Act, as it only allows the determination of tax within a specified limitation period of three years and prohibits extending the period through bunching of notices.



Judgment -

Writ Allowed.

The court examined Section 73(10) of the Act and referring to the apex court judgment of State of Jammu and Kashmir and Others v. Caltex (India) Ltd which ruled that where an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods.

HC in the judgement held that each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The said principle would apply to the present case as well and hence held that the bunching of show cause notices for multiple assessment years was against the spirit of the law.

Maya Appliances (P.) Ltd. v. Assistant Commissioner, Circle
8, Chennai

(2022) 56 GSTL 403



Facts -

The petitioner was a manufacturer & supplier of LPG stoves, wet grinders etc. and registered tax payer under the Goods and Services Tax. The Competent Authority issued show-cause notice to petitioner and provided all details regarding allegations and asked to submit within 30 days its representations/defence or documents to defend its case by availing opportunity. The petitioner filed writ petition praying to quash impugned show-cause notice.



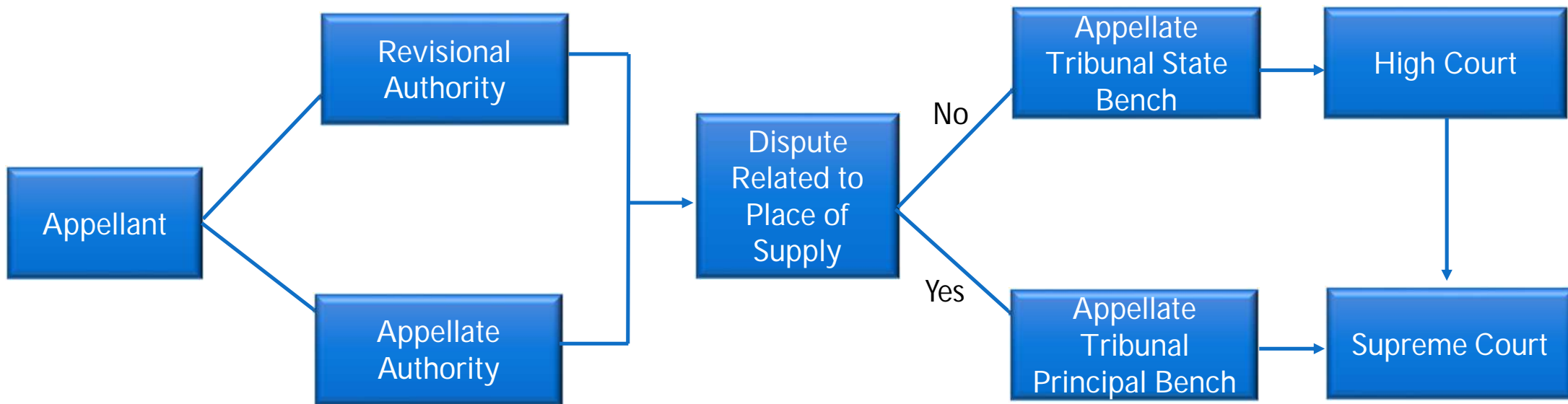
Judgment -

The Honorable High Court observed that writ against a show cause notice may be entertained only if it is established that authority issued show cause notice has no jurisdiction to issue such or allegation of mala fides are raised against official concerned. The petitioner had not established any acceptable ground for the purpose of entertaining the writ Petition. Thus, the petition to be dismissed and the petitioner would be expected to defend case before competent authority by submitting defense statements and thereafter, the authorities would be bound to consider the materials available on record as well as the grounds raised by the petitioner in their defense statement and pass speaking order.

Writ Petition
filed against a
Show Cause
Notice

Chart for Hierarchy of Appeal

- The law envisions constitution of a two-tier Tribunal i.e. Principal Bench and the State Bench
- If place of supply is one of the issues in dispute, then the Principal Bench of the Tribunal will have jurisdiction to hear the appeal. If the dispute relates to issues other than the place of supply, then the State Benches will have the jurisdiction to hear the appeal.



Appeal Structure under GST Regime

Appeal Against the Orders passed by...	lies to the following authority	Appeal level	Sections in CGST Act
Adjudicating Authority	First Appellate Authority	1 st	107
First Appellate Authority	Appellate Tribunal	2 nd	112
Appellate Tribunal	High Court	3 rd	117
High Court	Supreme Court	3 rd & 4 th	118

Section 107- Appeals to Appellate Authority

- 1 Any person aggrieved by any decision or order passed under this Act/State GST Act/UNGST Act by an adjudicating authority may appeal to such Appellate Authority within 3 months from the date on which the said decision or order is communicated to such person.
- 2 The Commissioner may, on his own motion, or upon request from the Commissioner of ST or the Commissioner of UT , call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the SGST Act or the UTGST Act, for the purpose of satisfying himself as to the legality of the said decision and may direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said order.
- 3 Where the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorized officer were an appellant.
- 4 The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 3 months or 6 months, allow it to be presented within a further period of 1 month.

Section 107- Appeals to Appellate Authority

5

No appeal shall be filed under sub-section (1), unless the appellant has paid —
(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, ¹[subject to a maximum of twenty-five crore rupees], in relation to which the appeal has been filed.

6

No appeal shall be filed against an order under Section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

7

Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the *balance amount shall be deemed to be stayed*.
The Appellate Authority shall give an opportunity to the appellant of being heard.

8

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:
Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

Section 107- Appeals to Appellate Authority

9

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.

10

The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

Section 107- Appeals to Appellate Authority

Heading	Details
Time Limit	<ul style="list-style-type: none">• 3 months (for assessee)• 6 months (for department)
Delay	<ul style="list-style-type: none">• Delay of up to 1 month may be condoned by the Authority if he is satisfied that the Appellant had sufficient cause preventing him from filing the Appeal.
Pre-deposit	<ul style="list-style-type: none">• Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and• Pre-deposit of sum equal to 10% of remaining amount of tax in dispute (subject to a maximum of Rs. 25 crore).• In case of appeal against an order issued under Section 129(3), pre-deposit required is 25% of the penalty has been paid by the appellant.
Adjournments	<ul style="list-style-type: none">• Not more than three times to a party during hearing of the appeal.
Personal hearing	<ul style="list-style-type: none">• Opportunity for hearing to be provided.• At the time of hearing, the Appellate Authority may allow Appellant to add additional ground not specified in the grounds of appeal, if it is satisfied that the omission of the same was not willful or unreasonable.

Procedure for Filing Appeal before Appellate Authority

Assessee / Department	Authority Passing the Order	Appellate Authority	Time for Filing Appeal	Condonable Period	Pre-Deposit	Form / Procedure
Assessee / Any person	Additional or Joint Commissioner	Commissioner (Appeals)	Within 3 months of date of communication of the order or decision/ order	One Month (Section 107(4) of CGST Rules, 2017)	(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by assessee; and (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed. (Section 107(6) of CGST Act, 2017)	<ol style="list-style-type: none"> 1. Appeal along with relevant document to be filed in FORM GST APL-01 electronically or otherwise, for which a provisional acknowledgment shall be issued to the appellant immediately. 2. The grounds of appeal and the verification as contained in FORM GST APL-01 shall be signed in the manner specified in Rule 26. 3. A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgment, indicating that the appeal number shall be issued thereafter FORM GST APL-02 by the Appellate Authority or an officer authorized by him in this behalf. (Rules 26 and 108 of CGST Rules,
	Deputy or Assistant Commissioner or Superintendent	Additional Commissioner (Appeals)	(Section 107 of CGST Act, 2017 r/w Rule 169A of CGST Rules)			

Procedure for Filing Appeal before Appellate Authority

ASSESSEE/ DEPARTMENT	AUTHORITY PASSING THE ORDER	APPELLATE AUTHORITY	TIME LIMIT FOR FILING APPEAL	CONDONABLE PERIOD	PRE- DEPOSIT	FORM/ PROCEDURE
Department	Additional or Joint Commissioner	Commissioner (Appeals)	Within 6 months of date of communication of the decision/ order	One month (Section 107(4) of the Act, 2017)		<ol style="list-style-type: none"> 1. Application along with relevant documents to be filed in FORM GST APL-03 either electronically or otherwise. (Rule 109(1) of CGST Rules, 2017) 2. A Certified copy of the decision or order appealed against shall be submitted within seven days of the filing of application under sub-rule (1) and appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf. (Rule 109(2) of CGST Rules, 2017)
	Deputy or Assistant Commissioner or Superintendent	Additional Commissioner (Appeals)	(Section 107 of the CGST Act, 2-17 r/w Rule 109 A of the CGST, Rules)			

CASE LAWS

JYOTI
CONSTRUCTION
Versus
DY. COMMR. OF
CENTRAL TAX & GST,
JAIPUR

The appellant made payment of pre-deposit through e-credit ledger. The authority dismissed the same on the ground that pre-deposit can be made only through e-cash ledger.

The Hon'ble High Court held that "Output Tax" as defined under Section 2(82) of Orissa Goods and Services Tax Act, 2017 cannot be equated to pre-deposit under Section 107(6). Further Section 41(2) limits usage to which e-credit ledger only to output tax. Hence, the same cannot be debited for making payment of pre-deposit at time of filing of appeal under Section 107(6).

**CIRCULAR NO. 172/04/2022-GST [F.NO. CBIC-20001/2/2022-GST],
DATED 6-7-2022**

S. No.	Issue	Clarification
6.	Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws ?	<ol style="list-style-type: none"> 1. In terms of sub – section (4) of section 49 of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules. 2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act. 3. Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism. 4. Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person. 5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism implying thereby that the

**CIRCULAR NO. 172/04/2022-GST [F.NO. CBIC-20001/2/2022-GST],
DATED 6-7-2022**

S. No.	Issue	Clarification
y.	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8.	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub – section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

CASE LAWS

Oasis Relaty v. UOI- (2023) 3 Centax 86 (Bom.)

- Assessee made pre-deposit using e-credit ledger, which was challenged by the department.
- The High Court held that a party can pay 10 per cent of disputed Tax either using amount available in Electronic Cash Ledger or amount available in Electronic Credit Ledger, particularly in view of clarification vide Circular F. No. CBIC-20001/2/2022-GST, dated 6-7-2022 [Section 107, read with section 49 of Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017

CASE LAWS

FlipKart Internet Private
Limited v. State of Bihar'

2024 (80) G.S.T.L. 3 (S.C.)

The appellant in this case, for filing appeal paid the required pre deposit through Electronic Credit Ledger. The Appellate Authority held that the pre-deposit cannot be made through Electronic Credit Ledger but only through Electronic Cash Ledger. On appeal the High Court held that the amount in the electronic credit ledger cannot be utilized for the purposes of paying pre deposit under Section 107(6) of the Act. Therefore, the High Court held that there is no requirement of interference of the order of the appellate Authority.

The assessee filed Special Leave Petition before the Supreme Court. The Supreme Court stayed the impugned order of the High Court pending disposal of the Special Leave Petition.

Section 108- Revisional Authority

Section 108(1)

Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act / SGST Act / UTGST Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of 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.

Section 108(2)

The Revisional Authority shall not exercise any power under sub-section (1), if-

- (a) the order has been subject to an appeal under section 107 / 112 / 117 / 118; or
- (b) the period specified under section 107(2) has not yet expired or more than 3 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):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in sub-section (2)(a), before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

Section 108- Revisional Authority

Section 108(3)

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 / 117 / 118, be final and binding on the parties.

Section 108(4)

(4) If the said decision or order involves an issue on which the Appellate Tribunal / High Court has given its decision in some other proceedings and an appeal to the High Court / Supreme Court against such decision of the Appellate Tribunal / 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 referred to in sub-section (2)(b) where proceedings for revision have been initiated by way of issue of a notice under this section.

Section 108(5)

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in sub-section (2)(b).

Section 108- Revisional Authority

Section 108(6)

- (6) For the purposes of this section, the term,--
- (i) "record" shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;
 - (ii) "decision" shall include intimation given by any officer lower in rank than the Revisional Authority.

Section 109- Constitution of Appellate Tribunal and Benches thereof.

- (1) The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.
- (2) The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and sub-section (4).
- (3) 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).
- (4) 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).
- (5) The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:
Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.

Section 109- Constitution of Appellate Tribunal and Benches thereof.

(6) The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

(7) 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.

(8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member

(9) 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.

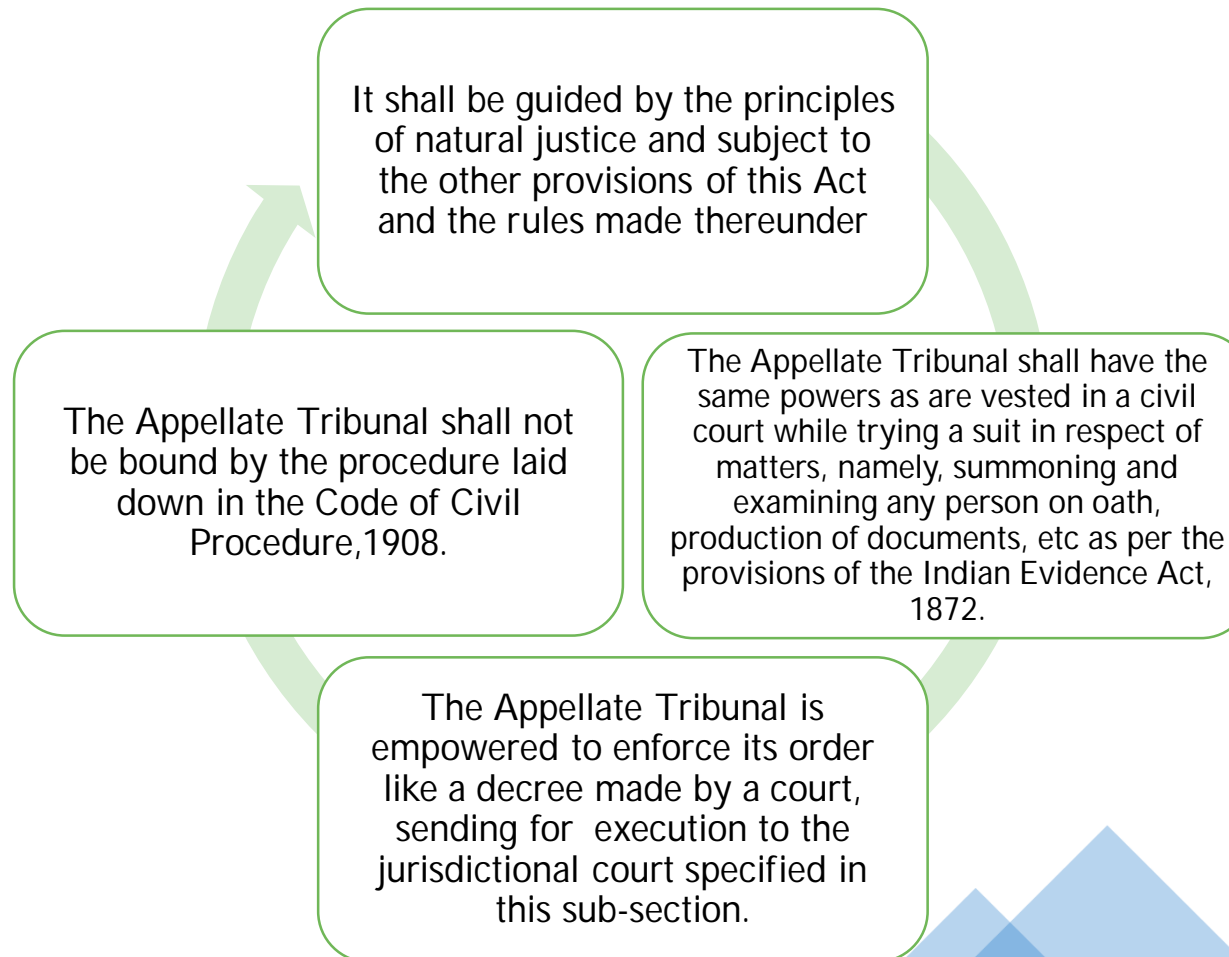
Section 109- Constitution of Appellate Tribunal and Benches thereof.

(10) 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.

(11) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.]

Section 111- Procedure before Appellate Tribunal.



Section 112- Appeals to Appellate Tribunal.

Any person aggrieved by an order passed by Appellate Authority or Revisional Authority of CGST/SGST/UTGST may appeal to the Appellate Tribunal against such order within three months from the date on which the impugned order is communicated to the person preferring the appeal.

The Appellate Tribunal, in its discretion, may refuse to admit any such appeal where the disputed amount comprising of tax, input tax credit, fine, fee or penalty does not exceed fifty thousand rupees.

The Commissioner may, on his own motion, or upon request from the Commissioner of SGST/UTGST, may examine the legality or propriety of any order passed by Appellate Authority or Revisional Authority for his satisfaction and by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the impugned order has been passed.

The respondent party may file, within forty-five days of the receipt of notice from Tribunal, 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 an appeal presented within the time specified in sub-section (1)

The Appellate Tribunal may condone delay in filing appeal u/s (1)/(5) up to three months/forty-five days respectively, if it is satisfied that there was sufficient cause for delay.

Section 112- Appeals to Appellate Tribunal.

Pre-deposit to be made by the appellant under sub-section (1) shall be:-

- (a) full amount of admitted tax, interest, fine, fee and penalty and
- (b) a sum equal to twenty per cent of the remaining amount of tax in dispute, arising from the impugned order, subject to a maximum of fifty crore rupees, (one hundred crore in IGST), in addition to the amount paid before filing appeal to the Appellate Authority under section 107(6).

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

The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of disputed amount of tax or input tax credit or the amount of fine, fee or penalty, subject to a maximum of twenty-five thousand rupees.

Section 112- Appeals to Appellate Tribunal.

Heading	Details
Time Limit	<ul style="list-style-type: none">• 3 months (for assessee)• 6 months (for department)
Cross-Objections	<ul style="list-style-type: none">• To be filed within 45 days of the receipt of Notice
Pre-deposit	<ul style="list-style-type: none">• Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and• Pre-deposit of sum equal to 25% of remaining amount of tax in dispute (subject to a maximum of Rs. 50 crore).
Delay	<ul style="list-style-type: none">• Delay of up to 3 month may be condoned by the Tribunal if it is satisfied that the Appellant had sufficient cause preventing him from filing the Appeal.

Section 113- Orders of Appellate Tribunal

The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority.

The Appellate Tribunal may on its own or brought to its notice by concerned parties, amend any order passed by it, so as to rectify any error apparent on the face of the record, within a period of three months from the date of the order, giving an opportunity of being heard to the party adversely affected.

The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner of CGST/SGST/UTGST.

Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties

Appointment of the President- GST Appellate Tribunal

- The Central Goods and Services Tax (9th Removal of Difficulties) Order, 2019 dated 3rd December 2019 mentions that:
 - the “three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal” in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-
 - (i) date of communication of order; or
 - (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;
 - the “six months from the date on which the said order has been passed” in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:-
 - (i) date of communication of order; or
 - (ii) the date on which the President or the State President, as the case may be of the Appellate Tribunal after its constitution under section 109, enters office

Appointment of the President- GST Appellate Tribunal

- Circular 132/2/2020 – GST dated 18th March 2020, mentions that:-
 - "the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later."
- On 6th May 2024 Justice (Retd.) Sanjaya Kumar Mishra has been appointed as the President of GST Appellate Tribunal.

Multiple Order Numbers in a single OIO

Reckon Diagnostics P Ltd Vs C.C.E. & S.T.-Vadodara-I-
2023 Allahabad CESTAT



Facts -

Reckon Diagnostics P Ltd filed an appeal against an original order which had two separate order numbers. The Learned Commissioner (Appeals) partially upheld one of the demands but dismissed the other. The reason cited was that the appellant had filed only one appeal against the original order, even though it had two order numbers.



Judgment -

The CESTAT Ahmedabad clarified that past judgments have consistently ruled in favor of the appellant's position. It highlighted that the number of appeals should correspond with the number of distinct decisions or orders, not the number of order numbers in an original order. Essentially, if a single order-in-original has multiple numbers, it doesn't necessitate multiple appeals

Section 115

Interest of refund of amount paid for admission of appeal

Where an amount paid by the appellant under Section 107(6) or Section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under Section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount

After the order of Appellate authority or Appellate Tribunal is passed allowing refund of amount deposited by Appellant, interest is payable calculated from the date of payment till the date of refund.

The rate of interest is specified under Section 56 of CGST Act.

Section 116- Appearance by authorized representative

Under section 116(2) of the Act, authorized persons to represent the Assessee before adjudicating authority, Appellate Authority, Revisional Authority or Appellate Tribunal in any proceeding under the Act shall be

(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) authorised GST practitioner of the concerned registered person.

(e) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who 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, after a cooling period of one year

Section 117- Appeal to High Court

Order passed by the State Bench or Area Benches of the Appellate Tribunal may be appealed to the High Court, if the case involves a substantial question of law

The appeal shall be filed in Form APL- 08, within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person. However, the High Court may condone delay with sufficient cause to its satisfaction.

Only the question formulated on substantial question of law in appeal and substantial question of law aroused during hearing, if any, shall be heard in the High court.

Section 117- Appeal to High Court

The High Court shall decide and deliver judgment containing the grounds on decision and may award such cost as it deems fit.

The High Court may determine any issue which either is not determined or wrongly determined by the State Bench or Area Benches.

The appeal shall be heard by a Bench of not less than two Judges of the High Court and decided by the opinion of majority.

Section 118- Appeal to Supreme Court

Section 118(1) —

- An appeal shall lie to the Supreme Court— (a) directly from any order passed by the Principal Bench or State Benches of the Appellate Tribunal; or (b) from any judgment or order passed by the High Court, provided the High Court certifies it to be a fit case for appeal to the Supreme Court

Section 118(2) —

- The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

Section 118(3) —

- Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.



Section 119

Interest of refund of amount paid for admission of appeal

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 Principal Bench or State Benches of the Appellate Tribunal 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.

Whether the order of Tribunal is appealed to High Court/Supreme Court or not, amount payable to Govt., if any, as a result of Tribunal order, taxpayer has to make the payment. Same provision is applicable in case of High Court judgement

Section 120- Appeal not to be filed in certain cases.

On the recommendations of the Council, the Board may issue orders, instructions, and/or directions to fix monetary limits for the purpose of regulating the filing of appeal or application by the Officer of Central Tax

In pursuance of orders, instructions or directions issued under Section 120 (1), in case an Officer of Central Tax has not filed an appeal or application against a decision or order passed under the provisions of this act, it does not prevent the officer from filing an appeal/application in a different case involving a similar issue or question of law.

An appeal withdrawn/ not filed by the department in light of the monetary limit, cannot be considered to settling the issue in favour of the assessee and will not have precedential value

The Appellate Tribunal or Court shall consider the circumstances under which an appeal or application has not been filed by the Officer of Central Tax, in pursuance of the orders, instructions or directions issued under Section 120 (1).

Section 121- Non-appealable decisions and orders.

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:

(a) an order of the Commissioner or other authority empowered to direct transfer of 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.

Signing Authority for an Appeal

Rule 26- Method of authentication

(1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf:

(2) Each document including the return furnished online shall be signed or verified through electronic verification code-

- (a) in the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
- b) in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
- (c) in the case of a company, by the chief executive officer or authorised signatory thereof;
- (d) in the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;
- (e) in the case of a firm, by any partner thereof, not being a minor or authorised signatory thereof;
- (f) in the case of any other association, by any member of the association or persons or authorised signatory thereof;
- (g) in the case of a trust, by the trustee or any trustee or authorised signatory thereof; or
- (h) in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48.

Signing Authority for an appeal in case of Corporate & Non-Corporate

Corporate	Non- Corporate
<p data-bbox="331 595 1135 687">An Appeal before Commissioner(Appeal)/ GST Tribunal can be signed by:</p> <ul data-bbox="331 746 1135 1145" style="list-style-type: none"><li data-bbox="331 746 1135 839">• In case of a Company, by the chief executive officer or authorised signatory.<li data-bbox="331 847 1135 986">• In case of a firm, by any partner who is not a minor or authorised signatory thereof;<li data-bbox="331 994 1135 1145">• In case of any other association, it can be signed by ny member of the association or persons or authorised signatory.	<p data-bbox="1153 595 1957 687">An Appeal before Commissioner(Appeal)/ GST Tribunal can be signed by:</p> <ul data-bbox="1153 746 1957 1326" style="list-style-type: none"><li data-bbox="1153 746 1957 962">• In the case of an individual, by the individual himself or by some other person duly authorised by him in this behalf, by his guardian or by any other person competent to act on his behalf;<li data-bbox="1153 1018 1957 1193">• In the case of a Hindu Undivided Family, by a Karta and in his absence by any other adult member of such family or by the authorised signatory of such Karta;<li data-bbox="1153 1241 1957 1326">• In the case of a trust, by the trustee or any trustee or authorised signatory



Invocation of Writ Jurisdiction

CASE LAWS

Radha Krishnan
Industries
vs
State of Himachal
Pradesh and Ors.

2021-TIOL-179-SC-
GST

- Power to issue writs under Article 226 can be exercised for any purpose, not just for enforcement of fundamental rights
- High Court has discretion not to entertain a Writ petition. Restriction on power of the High Court is where an alternate remedy is available to the aggrieved person
- Exception to the rule of alternate remedy
 - Writ Petition filed for enforcement of fundamental right protected by Part III
 - Violation of principles of natural justice
 - Order or proceedings are wholly without jurisdiction
 - Vires of a legislation is challenge

CASE LAWS

Radha Krishnan
Industries
vs
State of Himachal
Pradesh and Ors.

2021-TIOL-179-SC-
GST

The principles of law emerging from the case:

- Alternate remedy does not divest the High Court of its powers under Article 226 though a Writ Petition should not be entertained when efficacious alternate remedy is provided by law
- When a right is created by a statute, prescribing the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking discretionary remedy under Article 226. The rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion
- High Court may decide to decline jurisdiction in a Writ Petition where there are disputed questions of fact. If High Court is objectively of the view that the nature of controversy requires exercise its Writ Jurisdiction, the view would not be readily interfered with

CASE LAWS

Rahman Steel Traders v.
Assistant Commissioner
(ST), Chennai' –

2023 (79) G.S.T.L. 426
(Mad.)

The petitioner was issued a show cause notice. The petitioner did not file reply to the show cause notice. He also did not appear before the Assessing Officer since he is aware that the impugned order is going to be passed. Therefore it could not be assumed to no opportunity was provided to the petitioner. The time limit for filing appeal was also expired. The petitioner did not take steps to challenge the assessment order. Instead he filed the present writ petition before the High Court.

The High Court observed that the petitioner filed the present writ petition only because of the attachment order passed by the Department. The High Court rejected the writ petition. The High Court directed the petitioner to file a statutory appeal before the Appellate Authority within a period of 30 days from the date of the order ie., 20.10.2023.

CASE LAWS

Ram Krishna Mission
Ashrama v. State of Bihar

2024(80) G.S.T.L. 173
(Pat.)

In the writ petition is filed by the petitioner challenging the assessment orders for the years 2018-19 and 2019-20, dated 13-2-2021. The petitioner contended that he had no information about the said order and even the notice was served on him properly. The order was passed ad ex-parte order. The petitioner came to know the order when the Department initiated attachment proceedings. The High Court was of the view that uploading the order in the portal is also a proper mode of service.

The High Court held that having not availed the statutory remedies available the petitioner could not seek writ jurisdiction to challenge the assessment order especially with respect to computation of turnover and determination of taxable turnover and tax payable as arrived at by the Assessing Officer when no Jurisdictional error, violation of principles of natural justice or abuse of process of court was argued by the petitioner. The High Court dismissed the writ petition.

A large, white, 3D question mark is mounted on a bright orange wall. The question mark is positioned on the right side of the image. The wall is a solid, vibrant orange color. The floor is made of light-colored wooden planks. The lighting is soft, creating a slight shadow of the question mark on the wall behind it. The overall scene is simple and clean, with a strong color contrast between the white question mark and the orange wall.

Question and Answer session