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APPEAL AND REVISION

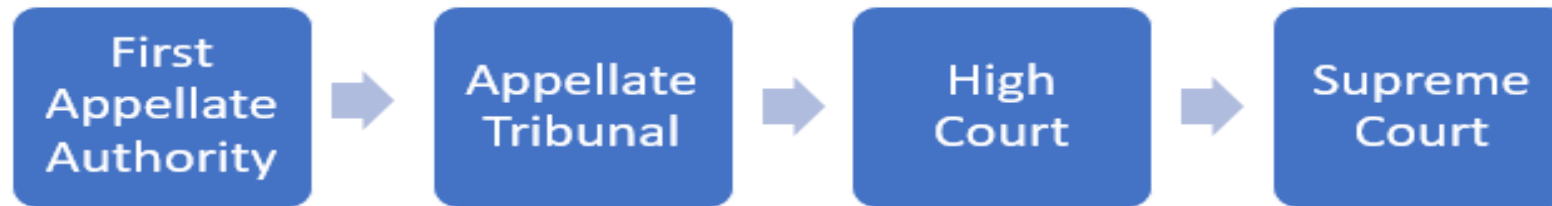
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Appeal

- The initial resolution of this dispute is done by a departmental officer by a quasi-judicial process resulting into the issue of an initial order known by various names -assessment order, adjudication order, order-in-original, etc.
- Appeals to appellate authority can be made by any person who is aggrieved against decision or order passed by adjudicating authority.
- Appeal can also be made by revenue against decision or order passed by adjudicating authority.
- GST Act defines the phrase “adjudicating authority” as any authority competent to pass any order or decision under this Act, but does not include the Board, the First Appellate Authority and the Appellate Tribunal. Thus, in a way, any decision or order passed under the Act is an act of “adjudication”.

Steps of Appeals Under GST

APPEAL LEVEL	ORDER PASSED BY	APPEAL TO	SECTIONS OF ACT
1 st	Adjudicating Authority	First Appellate Authority	107
2 nd	First Appellate Authority	Appellate Tribunal	113
3 rd	Appellate Tribunal	High Court	117
4 th	High Court	Supreme Court	118



Sec 2(4) of CGST Act states “ADJUDICATING AUTHORITY” means any authority, appointed or authorised to pass any order or decision under this Act, but **does not include**

- the CBIC
- 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 Authority referred to in sub-section (2) of section 171;

Appeal – CGST and SGST

- The person has no fundamental right of appeal and it must be provided in the statute. Any taxable person cannot appeal unless the legislature does not provide any right of appeal. Legislature can impose certain conditions as well.
- **Appeal** → Not the Fundamental Right
- Appeal → It must be provided by the statute (Legislature)
- If any taxpayer is aggrieved by any transaction (CGST and SGST) then does it mean he need to appeal to both the Authorities → **NO**
- GST Laws ensure **cross empowerment** between CGST and SGST/UTGST office → If a proper officer of the one act (say SGST) passes an order w.r.t. a transaction, he will also act as the proper officer of CGST and pass order for both CGST and SGST / UTGST component of the same transaction.
- GST Laws 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.

Can Authorised Representative Appear in Court?

Yes. Any person required to appear before a GST Officer/First Appellate Authority/Appellate Tribunal can assign an authorized representative to appear on his behalf, unless he is required by the Act to appear personally.

An authorized representative can be-

- i. a relative or a regular employee
- ii. a lawyer practising in any court in India
- iii. any chartered accountant/cost accountant/company secretary, with a valid certificate of practice
- iv. a retired officer of the Tax Dept. of any SG or of the Excise Dept. whose rank was min Group-B gazetted officer.
- v. GST Practitioner

Retired officers cannot appear in place of the concerned person within 1 year from the date of their retirement.

Disqualifications for authorized representatives. Sec 116(3) lays down that no person,—

- (a) who has been dismissed or removed from Government service; or
- (b) who is convicted of an offence connected with any proceedings under this Act, the SGST Act, the 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 under sub-section (1)—
 - (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).

Note - Any person who has been disqualified under the provisions of the SGST Act or the UTGST Act shall be deemed to be disqualified under this Act. (Sec 116(4))

Appeals to Appellate Authority (AA) (Sec 107)

	Appeal to AA by Aggrieved Person (Sec 107)	Review Application/Appeal to AA by Department (Sec 107(2))
Orders appealable	Decision/order passed by any adjudicating authority under CGST Act or SGST/UTGST Act lies before the AA by the aggrieved person	The commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order under the CGST Act or SGST/UTGST Act to satisfy himself about the legality or propriety of the said decision/order
Time Limit for filing appeal	3 months from the date of communication of such decision/order. (Condonation of delay → 1 month)	The commissioner may, by order, direct any officer subordinate to him to apply to AA within 6 months from the date of communication of the decision/order. (Condonation of delay → 1 month)
Form for filing Appeal	GST APL-01	GST APL-03*
Mandatory Pre-deposit	Yes	No
*Application shall be dealt with by the AA as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.		

Procedure after Appeal is filed in Appellate Authority (AA) (Sec 107)

Sec 107(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.

Sec 107(8) The AA shall give an opportunity to the appellant of being heard.

Sec 107(9) The AA 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 **3 times** to a party during hearing of the appeal.

Sec 107(10) The AA may, at the time of hearing of an appeal, allow an appellant to **add any ground of appeal not specified in the grounds of appeal**, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

Procedure after Appeal is filed in Appellate Authority (AA) (Sec 107)

Sec 107(11) The AA 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:

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

Provided further that where the AA is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the **appellant is given notice to show cause against the proposed order** and the order is passed within the time limit specified under section 73 or section 74.

Sec 107(12) The order of the AA disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision. **(Speaking Order)**

Sec 107(13) The AA shall, where it is possible to do so, hear and decide every appeal within a period of 1 year from the date on which it is filed: **(Order within 1 year)**

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.

Procedure after Appeal is filed in Appellate Authority (AA) (Sec 107)

Sec 107(14) On disposal of the appeal, the AA shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

Sec 107(15) A copy of the order passed by the AA shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

Sec 107(16) Every **order** passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be **final and binding on the parties**.

Pre-Deposit (Sec 107)

Sec 107(6) 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 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹25 cr, in relation to which the appeal has been filed.

Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to 25% of the penalty has been paid by the appellant. **[Inserted vide The Finance Act, 2021, w.e.f. 1-1-2022.]**

Before Appeal to AA—
Pre Deposit

Admitted Part

Full Deposit

Disputed part

10% of remaining amount of TAX (not interest/penalty) in dispute (Max ₹ 25 cr.)

BUT 25% of remaining amount of PENALTY in case of order u/s 129(3)

In case of IGST, 10% (Max ₹ 50 cr.) shall be paid
On refund of Pre-deposit, interest u/s 56 shall be paid from the date of payment of the amount (and not from the date of order of the AA) till the date of refund.

Illustration

XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-2017 under section 73 of the CGST Act, 2017 wherein it was decided as follows:

Particulars

CGST and SGST due (Total) - Rs. 6,00,000

Interest @ 18% p.a. for number of delayed days

Penalty – Rs. 60,000

The assessee filed an appeal before the Appellate Authority on 26-11-2017.

Case I :

How much the company has to pay as pre-deposit of duty under section 107 (6) of the CGST Act, 2017?

Case II :

Whether your answer would be different if the assessee appeals only against part of the demanded amount say Rs. 4,00,000 and admits the balance liability of tax amounting to Rs. 2,00,000 arising from the said order?

[CA Final, May 2018 - New] (5 Marks)

Solution :

Since order is passed by assistant commissioner, appeal would lie to appellate authority. Since it is a case of first appeal, per-deposit = 100% of admitted dues (with interest and penalty) + 10% of disputed tax, subject to a maximum of Rs. 25 Crores.

Case I : Pre-deposit = 10% of disputed tax = 10% of 6,00,000 = 60,000.

Case II : Pre-deposit = Admitted Dues (2,00,000 + 18% interest for period of delay + Proportionate penalty of 20,000) + 10% of disputed tax of Rs. 4,00,000 viz. 40,000.

Appointment of Appellate Authority

If the decision/order against which the appeal
Is to be filed, is passed by the Additional or
Joint Commissioner

Appellate
Authority



Commissioner (Appeals)

If the decision/order against which the appeal
Is to be filed, is passed by the Deputy or
Assistant Commissioner or Superintendent

Appellate
Authority



Any officer not below
the rank of Joint Commissioner
(Appeals)

[As per Rule 109A inserted by NN 55/2017-CT, dt 15-11-2017 as amended by NN 60/2018-CT, w.e.f. 30-10-2018]

Powers of Revisional Authority (Sec 108)

Sec 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 or under the SGST Act or the 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.

Powers of Revisional Authority (Sec 108)

Sec 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 or section 112 or section 117 or section 118; or
- (b) the period specified under sub-section (2) of section 107 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 clause (a) of sub-section (2), before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years referred to in clause (b) of that sub-section, whichever is later.

Sec 108(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

Powers of Revisional Authority (Sec 108)

Sec 108(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

Sec 108(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 clause (b) of sub-section (2).

Sec 108(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.

Appointment of Revisional Authority

Notification No. 5/2020-CT dt 13-1-2020

If the decision/order against which the appeal
Is to be filed, is passed by the Additional or
Joint Commissioner

Revisional
Authority



Principal Commissioner or
Commissioner

If the decision/order against which the appeal
Is to be filed, is passed by the Deputy or
Assistant Commissioner or Superintendent

Revisional
Authority



Additional Commissioner or Joint
Commissioner

Appellate Tribunal under GST Laws (Sec 109-111)

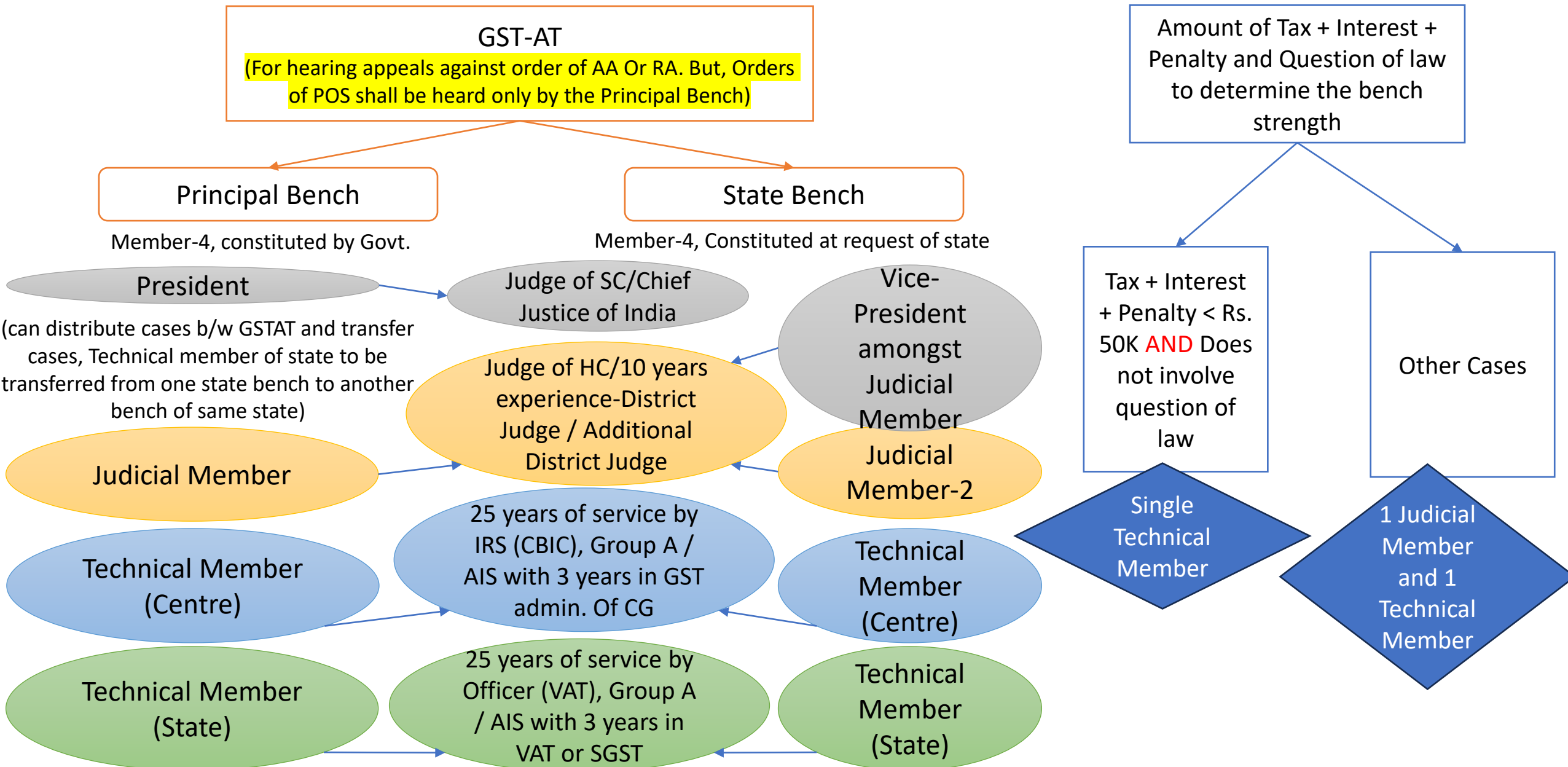
The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by RA, by any person aggrieved by such an Order-in-Appeal/Order-in-Revision.

Constitution and structure of Appellate Tribunal (Sec 109)

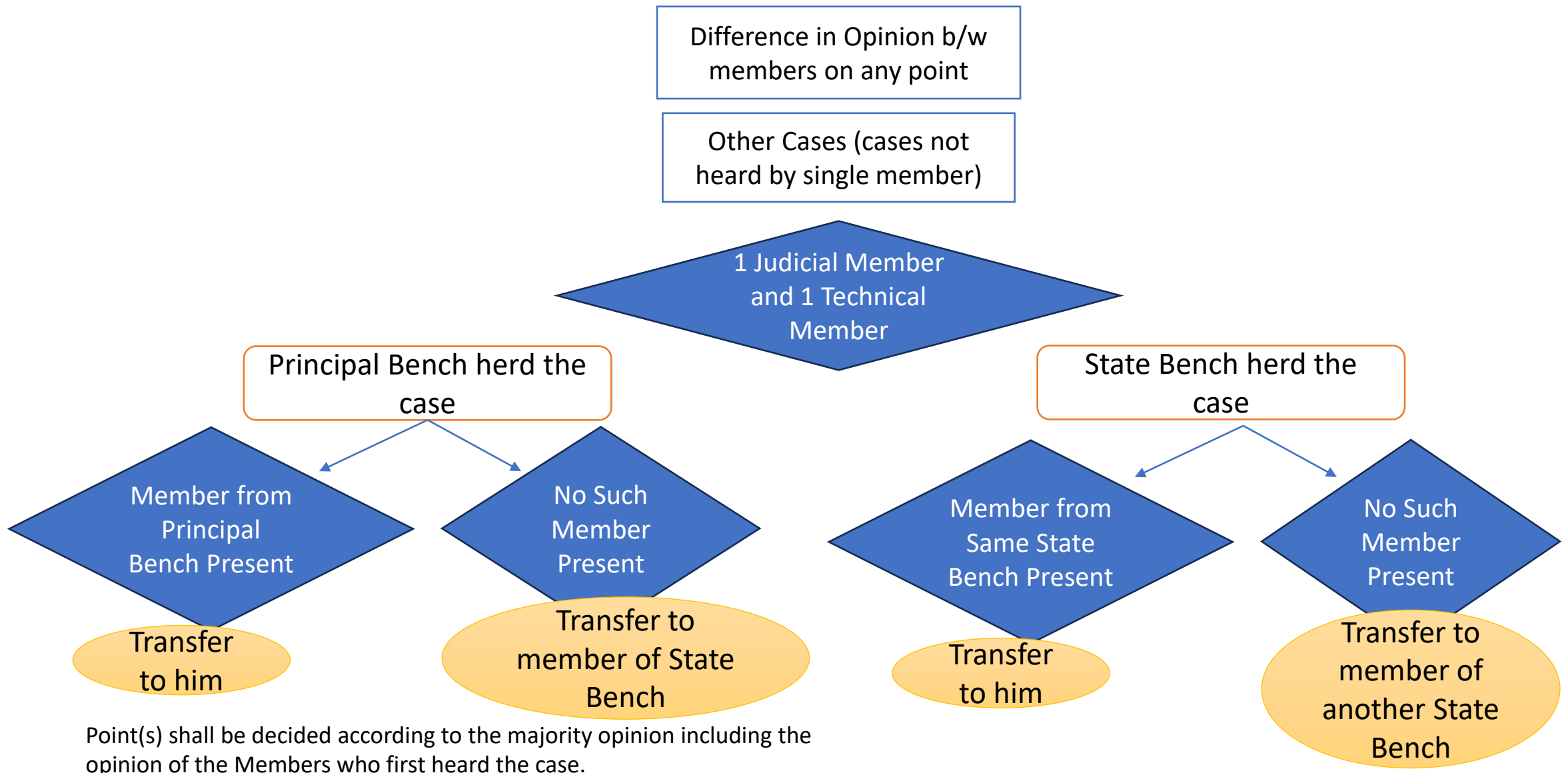
1. The law envisages constitution of a two tier Tribunal i.e. National Bench/Regional Benches and the State Bench/Area Benches. Jurisdiction of the two constituents of the GST Tribunal is also defined.
2. If the place of supply is one of the issues in dispute, then the National Bench/Regional Benches of the Tribunal will have jurisdiction to hear the appeal.
3. On the other hand, if the dispute relates to issues other than the place of supply, then the State/Area Benches will have the jurisdiction to hear the appeal.
4. An appeal from the decision of the National Bench will lie directly to the Supreme Court and an appeal from the decision of the State Bench will lie to the jurisdictional High Court on substantial questions of law.
5. The appointments to the Tribunal and functioning shall be in the manner prescribed under section 110 and 111 of the CGST Act. On ceasing to hold office, the appointees to the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.
6. In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members.

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

Structure of Appellate Tribunal under GST Laws



Structure of Appellate Tribunal under GST Laws



Point(s) shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

Structure of Appellate Tribunal under GST Laws

Search and Selection Committee

For appointment of The President, Judicial Member, Technical Member (Centre) and Technical Member (State)

Technical Member (State) of a State Bench Following officials in whose jurisdiction the state bench is located -

- (i) Chairperson - Chief Justice of the HC
- (ii) Senior-most Judicial Member in the State, and where no Judicial Member is available, a retired Judge of the HC, as may be nominated by the Chief Justice of such High Court;
- (iii) Chief Secretary of the State;
- (iv) 1 Additional Chief Secretary or Principal Secretary or Secretary of the State, as may be nominated by such State Government, not in-charge of the Department responsible for administration of State tax; and
- (v) Additional Chief Secretary or Principal Secretary or Secretary of the Department responsible for administration of State tax,

Other Members

- (i) Chairperson - CJI or a Judge of SC nominated by him, to be the of the Committee;
- (ii) Secretary of the CG nominated by the Cabinet Secretary ;
- (iii) Chief Secretary of a State to be nominated by the Council ;
- (iv) one Member, who—
 - (A) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or
 - (B) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or
 - (C) in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the SC or a retired Chief Justice of a HC nominated by the Chief Justice of India; and
- (v) Secretary of the Department of Revenue in the Ministry of Finance of the Central Government.

Procedure before Appellate Tribunal (Sec 111)

Sec 111(1) The Appellate Tribunal, while disposing of any proceedings before it or an appeal before it, Shall not → be bound by the procedure laid down in the Code of Civil Procedure, 1908, But shall be guided by → the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

Sec 111(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- 1) summoning and enforcing the attendance of any person and examining him on oath;
- 2) requiring the discovery and production of documents;
- 3) receiving evidence on affidavits;
- 4) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- 5) issuing commissions for the examination of witnesses or documents;
- 6) dismissing a representation for default or deciding it *ex parte*;
- 7) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- 8) any other matter which may be prescribed.

Procedure before Appellate Tribunal (Sec 111)

Sec 111(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated; or
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

Sec 111(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Appeals to Appellate Tribunal (Sec 112)

	Appeal to AT by Aggrieved Person	Review Application/Appeal to AT by Department
Orders appealable	Order passed against him under section 107 or section 108 of this Act or the SGST Act or the UTGST Act	The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the SGST Act or the UTGST Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal
Time Limit for filing appeal	(3 months)** from the date of communication of such decision/order. (Condonation of delay → 3 months)	The commissioner may, by order, direct any officer subordinate to him to apply to AT within (6 months)** from the date of communication of the decision/order.
Form	GST APL-05	GST APL-07*
Fees	₹1,000 for every ₹ 1,00,000 of tax or ITC involved (Max - ₹ 25,000)	
Mandatory Pre-deposit	Yes	No

*Application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1). ** Next Page

Appeals to Appellate Tribunal (Sec 112)

Note -

Sec 112(2) The Appellate Tribunal may, in its discretion, **refuse to admit** any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed ₹ 50,000.

Sec 112(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within 45 days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, 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 in sub-section (1).

(Condonation of delay in filing memorandum of cross objections → 45 days)

**** ROD – 9/2019-CT dt 3-12-19** For the removal of difficulties, it is hereby clarified that for the purpose of calculating,-
(a) the “3 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 3 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;
- (b) the “6 months from the date on which the said order has been passed” in sub-section (3) of section 112, the start of the 6 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.

Pre-Deposit (Sec 112)

Sec 112(8) 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 25% of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of ₹ 50 cr, in relation to which the appeal has been filed.

Sec 112(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

Before Appeal to AA—

Pre Deposit

Admitted Part

Disputed part

Full Deposit

20% over and above 10%
paid at the time of appeal
to AA (Max. ₹ 50 cr.)

In case of IGST, 20% (Max ₹ 100 cr.) shall
be paid

On refund of Pre-deposit, interest u/s
56 shall be paid from the date of
payment of the amount (and not from
the date of order of the AA or Tribunal)
till the date of refund.

Orders of the Appellate Tribunal (Sec 113)

Sec 113(1) The Appellate Tribunal may, after giving the parties to the appeal an **opportunity of being heard**, pass such orders thereon as it thinks fit, **CONFIRMING, MODIFYING** or **ANNULLING** the decision or order appealed against or **may refer the case back to the AA, or the RA or to the original adjudicating authority**, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

Sec 113(2) The Appellate Tribunal 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 **3 times to a party** during hearing of the appeal.

Sec 113(3) The Appellate Tribunal may **amend any order** passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order: Provided that no amendment which has the effect of **enhancing** an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an **opportunity of being heard**.

Sec 113(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of 1 year from the date on which it is filed.

Orders of the Appellate Tribunal (Sec 113)

Sec 113(5) 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 or the Commissioner of State tax or the Union territory tax.

Sec 113(6) 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.

Production of additional evidence before the AA or the AT (Rule 112)

Rule 112(1) The appellant shall not be allowed to produce before the AA or the AT any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-

- (a) where the adjudicating authority or, as the case may be, the AA has refused to admit evidence which ought to have been admitted; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the AA; or
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or
- (d) where the adjudicating authority or, as the case may be, the AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Rule 112(2) No evidence shall be admitted under sub-rule (1) unless the AA or the AT records in writing the reasons for its admission.

Rule 112(3) The AA or the AT shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
- (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

Rule 112(4) Nothing contained in this rule shall affect the power of the AA or the AT to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

Appeal to High Court (Sec 117)

Sec 117(1) Any person aggrieved by any order passed by the State Bench or ~~[Area Benches]~~ of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law. **[Word Area Bench omitted vide FA, 2023, w.e.f. 1-10-2023]**

Sec 117(2) An appeal under sub-section (1) shall be filed within a period of 180 days from the date on which the order appealed against is received by the aggrieved person and it shall be filed in Form GST APL-08:
Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

Sec 117(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

Sec 117(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

Appeal to High Court (Sec 117)

Sec 117(5) The High Court may determine any issue which—

(a) has not been determined by the State Bench [~~or Area Benches~~]; or

(b) has been wrongly determined by the State Bench [~~or Area Benches~~], by reason of a decision on such question of law as herein referred to in sub-section (3).

[Word Area Bench omitted vide FA, 2023, w.e.f. 1-10-2023]

Sec 117(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

Sec 117(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Sec 117(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

Sec 117(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Appeal to Supreme Court (Sec 118)

Sums due to be paid notwithstanding appeal, etc. (Sec 119)

Sec 118(1) An appeal shall lie to the Supreme Court—

- (a) from any order passed by the National Bench [~~or Regional Benches~~] of the Appellate Tribunal; or
- (b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

[Word Regional Bench omitted vide FA, 2023, w.e.f. 1-10-2023]

Sec 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.

Sec 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.

Sec 119 The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding that an appeal has been preferred to High Court or Supreme Court, as the case may be.

Appeal not to be filed in certain cases (Sec 120)

Board's power to issue instructions regulating filing of appeal/revision by Department

Sec 120(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

Non filing of appeal, etc as per aforesaid instructions, No bar on department to file appeal in future

Sec 120(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

Non filing of appeal, etc as per aforesaid instruction, Assessee cannot contend that matter was acceptable by the dept.

Sec 120(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

The Commissioner (Appeals) or Appellate Tribunal or court to have regard to this section when appeal, etc not filed

Sec 120(4) 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 officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

Non-Appealable decisions and orders (Sec 121)

Sec 121 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 (i.e. payment in EMI)