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Appeals, Review and Revision in GST

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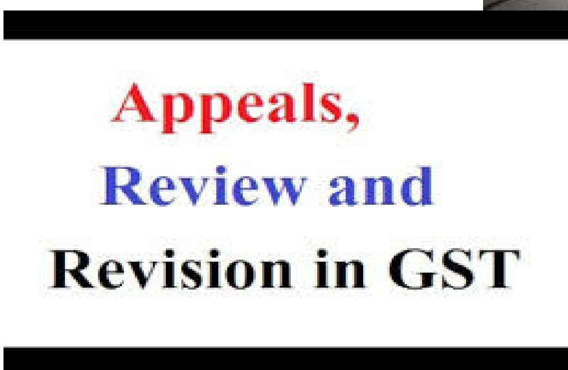


Introduction

Tax laws broadly impose two types of obligation : a] Tax related b] Procedural related. Some times there are situation of actual and perceived non compliance. If difference in views persist , it result into disputes that need to be resolved. There may be different view and opinion on one subject , therefore it is likely that taxpayer may not be agree on “adjudication order” passed by the tax officer. It is also possible that department may not agree with the adjudication order in some cases. That is why GST Law has provided channel of appeal to both sides. Appeal is statutory right. The Act also provide that if proper officer under the CGST , SGST and UTGST ACT has passed the order, appeal, review or revision against the said order shall lie with the proper officer of the Act .

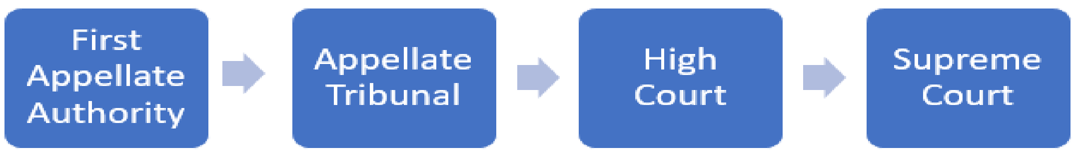
Should every appeal be made to both CGST & SGST authorities?

No. As per the CGST & SGST/UTGST officers are empowered to pass orders. As per the Act, an order passed under CGST will also be deemed to apply to SGST. However, if an officer pass order under CGST , any appeal/review/ revision/rectification against the order will lie only with the officers of CGST. Similarly, for SGST, for any order passed by the SGST officer the appeal/review/revision/rectification will lie with the proper officer of SGST only.

Appellate Mechanism

A taxpayer aggrieved by the order of adjudicating authority can file a appeal with Appellate Authority [AA]. Appeal must be against a order of adjudicating authority.

Channel of Appeal is shown below;



Can all decisions be appealed against?

No. Appeals cannot be made for the following decisions taken by a GST officer-

1. An order to transfer the proceedings from one officer to another officer
2. An order to seize or retain books of account and other documents; or
3. An order sanctioning prosecution under the Act; or
4. An order allowing payment of tax and other amount in installments

A person unhappy with any decision or order passed against him under GST by an adjudicating authority can appeal to the First Appellate Authority**.**

If they are not happy with the decision of the First Appellate Authority they can appeal to the Appellate Tribunal, then to High Court and finally Supreme Court

First Appeal with Appellate Authority: [Section -107 of CGST Act,2017]

1. Appeal shall be filed with in three months from the date of communication of said order.
2. Commissioner at his own or request from commissioner of state or UT can review the order and apply to Appellate Authority within 6 months from the date of communication of the said order.
3. Before filing the first appeal by the appellant, the following payment need to be paid;

    a) Amount of tax, interest, fee and penalty as agreed by appellant from the impugned order.
    b) A sum equal to 10% of the remaining amount of tax in dispute.

4. The AA will dispose of the appeal within period of one year from the date of filing.

Form of Appeal to Appellate Authority----> GST APL-01
Form of Appeal to Appellate Authority----> GST APL-03 [in case of Review or revision order]

Power of Revisionary Authority [Section 108 of CGST Act,2017]

1. Revisionary authority at his own motion or request from commissioner of state or UT can call for examine the order passed under this act or under SGST or UTGST by any officer subordinate to him if the same is erroneous, improper or prejudicial to the interest of revenue. This may also on the observation of CAG also. RA can pass order which he may think proper including addition , deletion and annulling the order.
2. Revisionary authority can not exercise his power in the following cases;

    a) Where the order has been in any four type of appeals as mentioned above
    b) If the period of six months has been expired or three year have been expired after passing the order sought to be revised .
    c) The order has already been taken in revision.
    d) The order has already been passed.

Provided that RA may passed an order sub section -1, where any point has not been taken in appeal.

Appeal to Appellate Tribunal [Section 112 of CGST Act, 2017]

1. Any person aggrieved by order of Appellate Authority or Revisionary Authority of CGST, SGST or UTGST Act file appeal to Appellate Tribunal within 3 months from the date of order communicated.
2. Appellate Tribunal can refuse to accept the appeal if the amount under appeal does not exceed Rs. 50000. Amount of appeal may be of Tax, input credit or the amount of any fees or penalty.
3. Appellate tribunal may accept the appeal within three months after the expiry of initial three months under point no.1.
4. On receipt of the notice that appeal has been filed under this section, the party against whom the appeal has been filed , may move an memorandum of cross objection within 45 days from the date of receipt of notice, against any part of the order . Such memorandum shall be disposed by Appellate Tribunal as it was appeal in due course.
5. No appeal shall be filed unless the appellant has ;

    a) Paid tax, interest ,fees and penalty in full from the impugned order as admitted by him.
    b) Paid 25% of the remaining amount in dispute of the impugned order.

6. Appearance by Authorized Representative means the following person ;

    a) His relative or regular employees
    b) Advocate entitle to practice
    c) Chartered Accountant, cost accountant or company secretary who hold certificate of practice.
    d) Retired officer of commercial tax department of any state or UT who has not worked below the post of Grade-B Gazetted officer for not less than two years.

Form of Appeal to Appellate Tribunal- GST APL -05
Form of Appeal to Appellate Tribunal- GST APL -06 [in Case of Cross objection]
Form of Appeal to Appellate Tribunal- GST APL -07[Appeal of AT by Department]

Appeal to High Court [Section-117 of CGST Act,2017]

1. Appeal to the High Court shall be filed within 180 days from the date of order of the appellate tribunal has been received by the aggrieved person. HC can accept the appeal even after the said period if satisfied that there was reasonable cause for not filing the appeal.
2. Appeal filed in High Court shall be heard by bench of not less than two judges.

Form of Appeal to Appellate Tribunal- GST APL -08

Appeal to the Supreme Court [Section -118 of the CGST Act,2017]

1. Appeal to the Supreme Court Shall lie ;

   a) Against the order of Appellate tribunal [National or Regional Bench]
   b) Against the of order of High Court

Steps of appeals under GST

Appeal level	Orders passed by….	Appeal to	Sections of Act
1st	Adjudicating Authority	First Appellate Authority	107
2nd	First Appellate Authority	Appellate Tribunal	112
3rd	Appellate Tribunal	High Court	117
4th	High Court	Supreme Court	118

Disclaimer :

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About the Author:

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