

Appeals and Review Mechanism under GST

Introduction

Tax laws (or any laws, for that matter) impose *obligations*. Such obligations are broadly of two kinds: tax-related and procedure-related. The taxpayer's compliance with these obligations is verified by the tax officer (by various instruments such as scrutiny, audit, anti-evasion, etc.), as a result of which sometimes there are situations of actual or perceived *non-compliance*. If the difference in views persists, it results into a *dispute*, which is then required to be resolved.

Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further channels of appeal, to both sides.

However, since the right to appeal is a statutory right, the statute also places reasonable fetters on the exercise of that

right. The time limits prescribed by the statute for filing of appeals and the requirement of pre-deposit of a certain sum before the appeal can be heard by the competent authority are examples of such fetters on the statutory right.

GST being implemented in our country is a dual GST i.e. to say every supply attracting the levy will be leviable to both central tax and state tax. So does this mean that if a taxpayer is aggrieved by any such transaction, he will have to approach both the authorities for exercising his right of appeal? The answer is a plain NO. The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. The Act also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act) So also if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only.

Appellate Mechanism

A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority (AA, for short). It is important to note that it is only the *aggrieved* person who can file

the appeal. Also, the appeal must be against a decision or order passed *under the Act*. It is to be noted that no appeals whatsoever can be filed against the following orders:-

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

The time limit for the party to file an appeal before the AA is 3 months from the date of communication of the impugned order. But the AA may condone a delay of up to one month, if he is satisfied that there was sufficient cause for such delay.

The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds (if found reasonable), etc. The AA can also make such further inquiry as may be necessary.

On conclusion of the appeal process, the AA will pass his order (Order-in-Appeal) which may confirm, modify or annul the decision or order appealed against **but shall not refer the case back to the authority that passed the said decision or order.** The AA can also increase the “rigour”

of the order appealed against by 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, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order. Further, if 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 utilized, 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 of the CGST Act, 2017.

The Order-in-appeal has to be a “speaking order” i.e. it should state the points for determination, the decision thereon and the reasons for the decision. The law provides an advisory time limit of 1 year from date of filing of appeal for the AA to decide the appeal.

Appeals before Tribunal

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 revisional authority, by any person aggrieved by such an order-in-appeal/Order in revision.

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. If 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. 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. 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.

Appeal to the Tribunal by the aggrieved person is to be filed within 3 months from the communication of the order under appeal. Further, Tribunal has the power to condone delay (of up to 3 months in case of appeals or 45 days in case of cross objections, beyond the mandatory period) on being satisfied that there is sufficient cause for the delay. The Tribunal has the discretion not to admit any appeal involving an amount of Rs. Fifty Thousand or less.

The law also provides for filing of *cross-objections* by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal. It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding that he may not have appealed against such order or any part thereof, file within 45 days a memorandum of cross-objections against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal *as if* it were an appeal presented within the time specified for the initial appeal.

Condonation of delay (on sufficient cause) applies here also, but only to the extent of further 45 days from the date of expiry of the period for filing cross objections. The form, fees, etc. for the appeals to Tribunal shall be as prescribed by Rules.

The Tribunal after hearing both sides may 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 to the revisional authority, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. For reasons of natural justice (reasonable opportunity) it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to either side.

Concept of pre-deposit

As mentioned earlier, the right to appeal is a statutory right which operates within the limitations placed on it by the law. One such limitation flows from the principle that an appellant must first deposit the adjudged dues before his further appeal can be heard. However, often an appellant may succeed in his appeal, and hence it would (in retrospect) be unfair to saddle him with this financial burden. To balance these factors, tax laws mandate some “pre-deposit” so as to discourage frivolous appeals and also safeguard the bonafide interests of both the taxpayers and the revenue.

The CGST Act, 2017 require an appellant before AA to pre-deposit **full amount of tax, interest, fine, fee and**

penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order.

In so far as appeals to the Tribunal is concerned, no appeal can be filed before the Tribunal unless the appellant has deposited 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 a sum equal to 20% of the remaining amount of tax in dispute, **in addition to the amount deposited before the AA**, arising from the said order, in relation to which appeal has been filed.

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

Appeals by the Department (CGST/SGST) before the AA/Tribunal

At times, the *Department* itself is not in agreement with the decision or order passed by the (initial) adjudicating authority or the appellate authority. The GST Law provides that in such cases, the Department can file what is commonly known as a “review application/appeal”.

The GST Law gives powers to the Commissioner to review any order passed by his subordinates acting either

as an adjudicating authority, or the appellate authority or revisional authority. If the Commissioner is of the view that any order passed by such authorities are not legal and proper, he can direct any officer subordinate to him to apply to the competent authority. For example, if the order of adjudicating authority is reviewed, he can order his subordinate to file an appeal before the appellate authority. If the order of the appellate authority or the revisional authority is reviewed, he can direct his subordinate to file an appeal before the Tribunal. The grounds for appeal will be mentioned in his order. The review of the order and the consequent filing of appeal by the subordinate has to be done within a period of six months from the date of communication of the order. The resultant review application is required to be dealt with by the AA or the Tribunal as if it were an appeal made against the decision or order of the adjudicating authority and the statutory provisions relating to appeals shall, so far as may be, apply to such application.

Revision by Commissioner (CGST/SGST)

The GST Act also provides for the mechanism of revision, by the Revisional Authority, of the orders passed by his subordinate officers. If the Revisional Authority on examination of the case records is of the view that the decision or order passed by *any officer subordinate to him* is erroneous in so far as it is *prejudicial to the interest of the revenue, and is illegal or improper or has not taken into account material facts*, 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.

The above power is subject to the condition that non-appealable orders and decision cannot be revised. Further the power of revision cannot be exercised if: -

- (a) the order has been subject to an appeal before AA or Tribunal or High Court or Supreme Court; or
- (b) the period of six months (from the date of communication of order) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or
- (c) the order has already been taken for revision at an earlier stage; or
- (d) the order sought to be revised is a revisional order in the first place:

If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision

of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation of 3 years where proceedings for revision have been initiated by way of issue of a notice under section 108 of the CGST Act, 2017.

However, the Revisional Authority may pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/HC/SC, before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years from the date of initial order, whichever is later.

Concept of authorised representative

Any person who is entitled or required to appear before a GST Officer or the AA or the Tribunal in connection with any proceedings under the Act, may appear through an *authorised representative* (except when he is required under the Act to appear personally for examination on oath or affirmation).

For this purpose, “authorised representative” has been defined in the Act itself. Broadly, it includes a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or any person with prescribed qualifications. It is also provided that indirect tax gazetted officers can appear as authorised representative after one year from retirement.

The GST law also provides for some disqualifications for an authorised representative such as dismissal from

government service, conviction under some specified Acts, insolvency, misconduct, etc. Such orders of disqualification are, however, required to be passed after following the principles of natural justice.

Appeal to the High Court

The law provides that either side (department or party) if *aggrieved* by any order passed by the State Bench or Area Bench of the 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*. It is to be noted that on facts, the tribunal is the final authority.

Appeals to the High Court are to be filed within 180 days, but the HC has the power to condone delay on being satisfied of sufficient cause for the same.

On being satisfied that a substantial question of law is involved, the High Court shall formulate that question, and the appeal shall be heard only on the question so formulated. However, the High Court has the power to hear the appeal on any other substantial question of law if it is satisfied that the case involves such question. The High Court shall decide the questions 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. The High Court may determine any issue which has not been determined by the Tribunal or has been wrongly determined by the Tribunal, by reason of a decision on such questions of law.

Appeal to the Supreme Court

The law provides for appeals to the Supreme Court from any judgment or order passed by the High Court, in any case which, on its own motion or on an oral 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.

A (direct) appeal shall also lie to the Supreme Court from any orders passed by the National/Regional Bench of the Tribunal. It may be noted that the National/Regional Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.
